

EIP



UPC sets aside provisional injunction on hand-held vacuum cleaners

**SharkNinja Germany GmbH, SharkNinja Europe Limited v. Dyson Technology Limited
(UPC_CFI_443/2023 and UPC_CoA_297/2024)**

Decisions of 5 May 2024 (Order no. ORD_598328/2023) and 3 December 2024 (Order no. ORD_62483/2024).

Introduction

On 21 May 2024 in the initial proceedings of this case, the Munich Local Division issued a provisional injunction against SharkNinja Europe Limited and SharkNinja Germany GmbH (“SharkNinja”). The injunction ordered the halting of sale in France and Germany of hand-held vacuum cleaners considered likely to infringe European patent, EP2043492, owned by Dyson Technology Ltd (“Dyson”).

SharkNinja successfully appealed, with the Court of Appeal setting aside the impugned order on 3 December 2024.

Initial Proceedings

EP2043492 is directed towards a hand-held vacuum cleaner with a cyclone-based debris separator and a specific arrangement of components such that the weight distribution around the handle aids comfortable use. Dyson alleged that various devices (the contested embodiments) infringing EP2043492 were offered for sale on SharkNinja's French and German websites and consequently, applied to the Local Division on 27 November 2023 requesting a provisional injunction against SharkNinja.

In reaching its decision, the Local Division addressed the following issues:

- the urgency of Dyson's actions;
- validity of EP2043492; and
- the interpretation of claim 1 of EP2043492.

Urgency

The contested embodiments were first publicly disclosed at the IFA trade fair in Berlin from 1 September to 5 September 2023 and first offered for sale on SharkNinja's French website on 27 September 2023, two months before Dyson's application.

Applying Rule 209(2)(b) of the Rules of Procedure (RoP), the Local Division stated that the ordering of a provisional injunction requires that the injured party acts in a way which demonstrates they are interested in a timely and effective settlement of their claims. Further, the applicant must proceed with appropriate determination in pursuit of their rights such that it is justified to allow them to benefit from the ordering of an injunction.

Dyson argued that though the contested embodiments had first been disclosed in early September 2023, it was not feasible to examine the embodiments during the IFA trade fair and so Dyson first became aware of potential infringement on 27 September 2023. SharkNinja argued that the interval between awareness of the contested embodiments and application demonstrated a lack of urgency, adding that they believed it would have also been easily possible to determine at the IFA trade fair whether features of EP2043492 were realised in the contested embodiments.

Ultimately, the Local Division found that Dyson treated the matter with necessary urgency stating, if the injured party "files the application for interim measures within two months [...] it cannot normally be concluded that it has waited an unreasonably long time". The Munich Local Division has since applied this criterion in other cases, more recently allowing Syngenta Limited two months to apply for provisional measures after being in possession of the knowledge and documentation to establish that infringement is taking place (Sumi Agro Europe Limited, Sumi Agro Limited v. Syngenta Limited ORD 47657/2024). However, the Düsseldorf Local Division seems to apply a one-month

period as in *Ortovox Sportartikel GmbH v. Mammüt Sports Group AG, Mammüt Sports Group GmbH* (ORD 4016/2024).

Validity

Due to the accelerated nature of proceedings relating to provisional measures, the number of arguments raised against the validity of EP2043492 by SharkNinja was limited by the Local Division to three – an approach since reiterated in *Scandit AG v. Hand Held Products, Inc.* (ORD 46277/2024). SharkNinja's arguments were for lack of inventive step vis-à-vis:

- Japanese patent JP54027573; and
- German utility model DE1863708
 - alone; and
 - in combination with Korean patent KR20000067144A.

The Local Division found with “sufficient certainty” that claim 1 of EP2043492 was novel and inventive (Art 54, 56 EPC) over these submissions.

Infringement

During the initial proceedings, in arguing infringement, the interpretation of three features of claim 1 of EP2043492 was disputed; the first of which is as follows, “a cyclone separator arranged in conjunction with the suction duct to separate dirt and dust from the air flow”. A cyclone separator is a component which separates debris from air by means of centrifugal force. In the initial proceedings SharkNinja argued that to be a cyclone separator, it is necessary that the cyclone is generated by a tangential inflow of debris-laden air, a feature not realised in the contested embodiments.

Applying Article 69 EPC and the Protocol on the Interpretation of Article 69 EPC, the Local Division stated that the claim is the decisive basis for determining protective scope, but the description and the drawings are always used to interpret the claims and resolve ambiguity. However, no further description of a cyclone separator is given in the specification of EP2043492 and thus, the Local Division found that there was no indication that the cyclone generation was limited to tangential inflow.

The Local Division found that a cyclone separator should therefore be interpreted in a function-related manner, assessing whether the contested embodiments cause debris-laden air to move in a helical motion and separate debris from air by means of centrifugal force. This was done by the assessment of video evidence of a contested embodiment in use, submitted by Dyson.

The court found that the video evidence displayed, “at least partially helical air movement” and “particles (debris) [...] separated by means of centrifugal force” and thus, the contested embodiments made use of a cyclone separator. Additionally, it was found by the court that the remaining two contested features were similarly realised by the contested embodiments.

Appeal

Infringement

Following the order given by the Local Division, SharkNinja appealed. Within the appeal, SharkNinja argued that an incorrect assessment of the video evidence had occurred, stating that centrifugal force-induced separation of debris and air within one of the contested embodiments was not demonstrated.

Upon reassessment of the video evidence, the Court of Appeal found that it could not be established whether helical motion was the predominant mode in which debris moved and that “if there is centrifugal force, it does not show in the videos to the requisite legal standard”.

Consequently, the Court of Appeal found that it was more likely than not that the contested embodiments did not realise a cyclone separator.

Conclusion

Given the finding that the contested embodiments most likely did not infringe, the Court of Appeal set aside the provisional measures and found that there was no need to assess the other contested claim features or other grounds of the appeal such as urgency or validity. Additionally, Dyson was ordered to bear SharkNinja’s costs for the proceedings in both the first instance and the appeal.