An Assessment of the Unified Patent Court's International Jurisdiction and the Sovereign Response of Third States in Light of Recent Case Law

The scope of the international jurisdiction of the Unified Patent Court ("UPC") has, in recent years, become one of the most striking and controversial issues in patent litigation. Having commenced its operations in 2023, the Court was established with the objective of creating a uniform and centralized patent adjudication system across Europe. However, through its recent decisions, the UPC appears not to confine its jurisdiction to Contracting Member States alone, but rather to extend it so as to encompass non-contracting states as well.

The issue commonly referred to as "long-arm jurisdiction" in the context of EU courts - and now associated with the UPC - finds its roots in the answers given by the Court of Justice of the European Union ("CJEU") to preliminary references submitted by national courts of EU Member States in cross-border infringement disputes.

In disputes concerning European patents, the starting point of the "long-arm jurisdiction" debate is often considered to be the CJEU's judgment of 25 February 2025 in Case C-339/22, **BSH Hausgeräte GmbH v Electrolux AB**. This is not because the question of cross-border jurisdiction of EU courts was raised for the first time in that case. On the contrary, earlier jurisprudence - notably *Roche Nederland BV and Others v Frederick Primus and Milton Goldenberg* and *Solvay SA v Honeywell Fluorine Products Europe BV* - had already laid important foundations. What distinguishes *BSH v Electrolux* is that it systematized and reinterpreted previously fragmented CJEU case law specifically in the context of patent infringement claims and invalidity defenses.

In that dispute, BSH alleged that Electrolux's activities in various European countries infringed different national patents derived from the same European patent, including the Turkish validation. The action was brought before the Swedish courts, as the courts of the defendant's domicile. Electrolux raised a jurisdictional objection, arguing that a national court may adjudicate only infringements of patents valid within its own territory and lacks jurisdiction to rule on patents valid in other states.

The referring court was uncertain how the general rule of jurisdiction under Article 4 of the Brussels I-bis Regulation - conferring jurisdiction on the courts of the defendant's domicile - should operate in light of the exclusive jurisdiction rule concerning validity proceedings, which reserves such jurisdiction to the courts of the state in which the patent is registered. It therefore referred the matter to the CJEU.

The decisive distinction drawn by the CJEU concerned the relationship between infringement proceedings and patent validity. While confirming that jurisdiction to rule on the validity of a patent belongs exclusively to the courts of the state concerned, the Court clarified that this exclusive jurisdiction does not displace the jurisdiction of the courts of the defendant's domicile in infringement actions. In other words, the mere invocation of an invalidity defense does not deprive the court seized of jurisdiction over the infringement claim. Validity may either be treated as a preliminary issue for the purposes of the infringement analysis or left to separate revocation proceedings, but the infringement action itself may proceed.

Following the CJEU's *BSH v Electrolux* judgment, particular significance has attached to the question of how international jurisdiction will be determined in actions brought before the UPC alleging infringement of the same European patent in multiple countries. The issue becomes especially critical where the countries in which infringement is alleged include states that are not members of

the EU - and therefore not part of the UPC system - but are parties to the European Patent Convention ("EPC") and where the European patent in suit has been validated.

This matter is of particular importance for states such as Türkiye, the United Kingdom, Switzerland and Norway, which are parties to the EPC but remain outside the EU/UPC framework.

Indeed, in its decision of 28 January 2025 in Case No. UPC_CFI_355/2023 (*Fujifilm v Kodak*), the Düsseldorf Local Division held that the defendants' domicile in an EU Member State sufficed to establish UPC jurisdiction to adjudicate infringement claims concerning the United Kingdom part of a European patent. However, the Court also ruled that it lacked competence to revoke the UK national part of the European patent with erga-omnes effect.

At the same time, the Court clarified that in an infringement action before the UPC concerning the UK validation of a European patent, the defendant may raise an invalidity defense without being required to initiate separate national revocation proceedings in the United Kingdom. In such a case, the UPC would assess validity only as a preliminary issue for the purposes of the infringement analysis.

Another noteworthy decision in which infringement of a European patent in a non-UPC state was invoked before the UPC is the Milan Local Division's order of 8 April 2025 in Case No. ORD_64124/2024 (*Alpinestars S.p.A. v Dainese S.p.A.*). In that case, the Milan Local Division interpreted Articles 4 and 71b(3) of the Brussels I-bis Regulation in conjunction. The Court concluded that where the defendant is domiciled in a UPC Member State, and provided that there is a sufficient connection between the alleged infringements, the claims are not necessarily limited to UPC Member States. At the same time, the Court expressly acknowledged the continued existence of the European patent as a bundle of national rights and emphasized that the assessment must be conducted separately under the applicable national law for each country concerned.

By positioning the defendant's domicile within the EU as the central and decisive criterion, the Court shifted the axis of international jurisdiction debates in European patent law.

While non-EU and non-UPC states have questioned the legal and equitable foundations of this expansive approach, the Hamburg Local Division has taken the matter even further. In its decision of 14 August 2025 in Case No. UPC_CFI_387/2025 (*Dyson Technology Ltd v Dreame Technology (Tianjin) Co., Ltd.*), the defendant was not domiciled in an EU Member State but was an EU-external manufacturer. The UPC nevertheless asserted jurisdiction on the basis that the products were introduced and marketed in Europe pursuant to a single commercial plan and organizational structure.

The Court considered that, although the defendant was not EU-domiciled, its activities were carried out through European subsidiaries and operational infrastructure, thereby establishing a sufficiently close connection with Europe. As a result, jurisdiction was linked not merely to formal domicile but to the center of economic activity directed at the European market. The UPC thus effectively expanded its jurisdiction by grounding it in a unified economic infringement strategy rather than the classical domicile-based connecting factor.

Taken together, these recent decisions demonstrate that the UPC's jurisdiction extending toward non-Contracting States has first been constructed and subsequently broadened.

The European Union is, at its core, an economic union, and its legal instruments are designed to support that economic structure. It is therefore unsurprising that the Unified Patent Court - open

only to EU Member States and deriving its jurisdictional regime directly from the Brussels I-bis Regulation - may evolve from a neutral judicial forum equally representing all parties to a model prioritizing the effective protection of intra-EU economic activity.

However, when the issue concerns international jurisdiction, principles of state sovereignty and judicial authority carry particular weight. The UPC's progressively expansive interpretation of cross-border jurisdiction must therefore remain within the limits of proportionality and foreseeability. Otherwise, third states may inevitably develop countermeasures designed to safeguard their own jurisdictional domain and to limit the practical effects of UPC decisions.

One such measure - increasingly prevalent in recent years - is the anti-suit injunction ("ASI"). An anti-suit injunction is an interim measure by which a court restrains a party from initiating or continuing proceedings in another jurisdiction.

A striking example is the decision of the Mannheim Local Division of 22 December 2025 in Case No. UPC_CFI_936/2025 (*InterDigital v Amazon*), concerning a standard-essential patent (SEP). Upon InterDigital's application, the Court granted an anti-interim-licence injunction ("AILI"), a specific form of ASI. InterDigital argued that Amazon might seek relief before the UK courts aimed at preventing InterDigital from pursuing infringement proceedings before the UPC.

The Mannheim Local Division prohibited Amazon from seeking an ASI before the UK courts or from pursuing any equivalent legal or administrative remedy capable of preventing InterDigital from bringing infringement proceedings before the UPC.

The UK courts did not remain silent. Interpreting the UPC's order as effectively encompassing the final relief sought in the UK proceedings and seeking to safeguard the continuation of the substantive RAND (reasonable and non-discriminatory) determination, the UK court granted an anti-anti-suit injunction ("AASI") in favor of Amazon.

As illustrated in *InterDigital v Amazon*, the UPC's expansive interpretation of cross-border jurisdiction has transcended a purely technical jurisdictional debate and has become a matter directly touching upon the judicial sovereignty of states. The AILI order of the Mannheim Local Division and the responsive AASI granted by the UK court constitute tangible manifestations of competing jurisdictions seeking to protect their procedural autonomy and judicial authority. These developments demonstrate how rapidly an injunction versus anti-injunction spiral may be triggered in multi-forum patent disputes.

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