Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Appeal n°:
UPC_CoA_789/2025

UPC_CoA_813/2025

Order

of the Court of Appeal of the Unified Patent Court concerning a referral for a preliminary ruling by the Court of Justice of the European Union issued on 6 March 2026

KEYWORDS

Appeal; provisional measures; international jurisdiction; intermediary

APPELLANT IN APPEAL 789/2025, RESPONDENT IN APPEAL 813/2025 (APPLICANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Dyson Technology Limited, Malmesbury, Wiltshire, United Kingdom

hereinafter "**Dyson**"

represented by attorney-at-law Dr. Constanze Krenz, DLA Piper UK LLP, and other representatives of that firm

RESPONDENTS IN APPEAL 789/2025, APPELLANTS IN APPEAL 813/2025 (DEFENDANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. **Dreame International (Hongkong) Limited**, Tsu-en Wan, Hong Kong, China

2. **Eurep GmbH**, Ingolstadt, Germany

hereinafter "**Dreame International**" and "**Eurep**"

Dreame International represented by attorney-at-law Dr. Anna-Katharina Friese-Okoro, and Eurep by attorney-at-law Christian Stoll and by other representatives of the firm Hogan Lovells International LLP

PATENT AT ISSUE
EP 3 119 235

PANEL AND DECIDING JUDGES

Panel 1a:
Klaus Grabinski, President of the Court of Appeal
Peter Blok, legally qualified judge and judge-rapporteur
Emmanuel Gougé, legally qualified judge
Simon Michels, technically qualified judge
Lorenzo Parrini, technically qualified judge

LANGUAGE OF THE PROCEEDINGS

English

DATE OF THE ORAL HEARING

22 January 2026

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- □ Order of the Court of First Instance of the Unified Patent Court, Hamburg Local Division dated 14 August 2025
- □ Numbers attributed by the Court of First Instance:
  UPC_CFI_387/2025
  ACT_20368/2025
  ORD_33668/2025

SUMMARY OF FACTS AND REQUESTS OF THE PARTIES

1. Dyson is part of the international Dyson Group. It markets a hair treatment device under the name "*Dyson Airwrap*", which can be used to curl hair, among other things.

2. Dyson is the registered proprietor of European Patent 3 119 235 (the "patent") relating to a handheld device, in particular a hair care appliance. Unitary effect was registered in the Register for unitary patent protection on 8 May 2025. The patent is in force in all Member States party to the Agreement on a Unified Patent Court ("UPCA") and in the Kingdom of Spain ("Spain").

3. Dreame International is part of the Dreame Group, which is involved in developing and commercializing consumer goods, including hair dryer products.

4. Dreame International is the website operator of several country specific websites incorporating country specific webshops for, inter alia, Germany and Spain.

5. Dreame International manufactured and offered through its websites multi-functional hairdryers, including products named "*Dreame Airstyle*" and "*Dreame Pocket* (the "Old Dreame Products"), and "*Dreame Airstyle Pro*" and "*Dreame Pocket Neo*" (the "New Dreame Products").

6. Eurep is mentioned on the packaging of the Old Dreame Products and the New Dreame Products. According to the German commercial register, Eurep acted as the so-called "Authorized Representative" for manufacturers based in a non-EU-Member-State and thus served as a contact point

for consumers and authorities in the European Union ("EU"). Accordingly, Eurep is presented as the "EU representative" on the website of Dreame International.

7. On 2 May 2025, Dyson lodged an application for provisional measures against Dreame International and Eurep, and against Teqphone GmbH ("Teqphone") and Dreame Technology AB ("Dreame Technology") (the four defendants jointly, "Dreame") with the Hamburg Local Division of the Court of First Instance of the Unified Patent Court ("UPC"), requesting, *inter alia,* an order prohibiting – in summary – infringement of the patent by Dreame within the territory of the Contracting Member States to the UPCA (the "UPC Territory") and Spain. Dyson argues that the Old Dreame Products and the New Dreame Products fall within the scope of protection of the patent.

8. On 14 August 2025, the Hamburg Local Division ordered (the "impugned order"), by way of preliminary injunction, in summary, that
    a. Dreame International, Teqphone and Dreame Technology refrain from infringing the patent within the UPC Territory,
    b. Eurep refrain from providing services for infringing the patent within the UPC Territory.

   The injunction was extended to the territory of Spain only with respect to Dreame International and Eurep. The Hamburg Local Division found that it is more likely than not that the patent was infringed by the offer and distribution of the Old Dreame Products. However, in the view of the Hamburg Local Division, the New Dreame Products do not fall within the scope of protection of the patent.

9. Both Dyson and Dreame appealed against the impugned order. Dyson requests that the impugned order be set aside to the extent that the application for provisional measures with respect to the New Dreame Products was dismissed and that the Court of Appeal – in summary – extend the injunction to these products. Dyson did not appeal the rejection of an injunction against Teqphone and Dreame Technologies with respect to the territory of Spain. Dreame requests that the impugned order be set aside and that the application for provisional measures be rejected in its entirety.

REASONS FOR THE ORDER

Partial stay and referral to the CJEU

10. Pursuant to Article 38(2) of the Statute of the UPC ("UPCS") and R. 266.5 of the Rules of Procedure of the UPC ("RoP"), the Court of Appeal will stay the appeal proceedings to the extent that they concern:
    - the action against Dreame International, to the extent that it relates to the territory of Spain; and
    - the action against Eurep.

    As the Court of Appeal will set out below, these parts of the case raise questions concerning the interpretation of EU law which the Court of Appeal will refer to the Court of Justice of the European Union ("CJEU").

11. The Court of Appeal will not stay the proceedings in relation to any other parts of the case, namely:
    - the action against Dreame International to the extent that it relates to the UPC Territory, and
    - the action against Teqphone and Dreame Technologies.

    The questions which the Court of Appeal will refer to the CJEU are not relevant to the decision in these other parts of the case. Therefore, a stay in this respect is not necessary. Nor is a stay appropriate,

particularly since the case concerns provisional measures. Therefore, the Court of Appeal will, by separate order of the same date as the present order, issue an order in respect of these other parts of the case. To that extent, the Court of Appeal will dismiss the appeal by Dreame International, Teqphone and Dreame Technologies. In the appeal brought by Dyson, the Court of Appeal – in summary – will revoke the impugned order to the extent that the Hamburg Local Division rejected the application against Dreame International, Teqphone and Dreame Technologies and will issue provisional measures relating to, inter alia, the New Dreame Products against these three defendants within the UPC Territory.

Article 8(1) in conjunction with Article 71b(2) of Regulation 1215/2012

12. The Hamburg Local Division correctly concluded that this Court has jurisdiction concerning the action brought against Eurep. The jurisdiction concerning this action follows from the fact that Eurep is domiciled in a Contracting Member State of the UPCA, namely Germany (Article 4 in conjunction with Article 71b(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, including any subsequent amendments, "Regulation 1215/2012"). Jurisdiction pursuant to these provisions is not limited to acts of the defendant within the UPC Territory. The connection with the UPC Territory is established by the domicile of the defendant, and not the location where the acts of the defendant occurred. Accordingly, contrary to the view expressed by Dreame and the Hamburg Local Division, it is not necessary to examine the plausibility of any acts committed by Eurep in Spain for the purposes of establishing jurisdiction in respect of Eurep.

13. The action brought against Dreame International, insofar as it relates to the territory of Spain, however, raises two questions concerning the interpretation of Regulation 1215/2012 that have not yet been clarified in the case-law of the CJEU. Furthermore, the correct interpretation of Regulation 1215/2012 on these two issues is not so obvious as to leave no scope for any reasonable doubt.

14. The first question is whether the jurisdiction of this Court concerning the action brought against Dreame International relating to the territory of Spain may be derived from its jurisdiction concerning the other defendant, Eurep. More specifically, the question is whether Article 8(1) in conjunction with Article 71b(2) of Regulation 1215/2012 must be interpreted as meaning that a situation where, in proceedings before a common court within the meaning of Article 71a(2) of Regulation 1215/2012, a first company that is established in a third State is alleged to have committed an infringement of a national part of a European patent which is in force in an EU Member State that is not party to the instrument establishing the common court, and a second company that is established in an EU Member State that is party to the instrument establishing the common court is alleged to be an intermediary whose services are used by the first company to infringe in the EU Member State that is not party to the instrument establishing the common court, is capable of leading to "irreconcilable judgments" resulting from separate proceedings as referred to in Article 8(1) Regulation 1215/2012.

15. Pursuant to Article 71b(2) of Regulation 1215/2012, where a defendant is not domiciled in an EU Member State, and Regulation 1215/2012 does not otherwise confer jurisdiction over that defendant, Chapter II of Regulation 1215/2012 is to apply, as appropriate, to the determination of the jurisdiction of a common court, irrespective of the defendant's domicile. The Court of Appeal understands this to

mean that, under Article 71b(2) in conjunction with Article 8(1) of Regulation 1215/2012, a person not domiciled in an EU Member State may be sued before a common court where that person is one of several defendants and one of the co-defendants is domiciled in an EU Member State that is party to the instrument establishing the common court, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

16. In the case-law of the CJEU, it has been clarified that Article 8(1) Regulation 1215/2012 must be interpreted as meaning that a situation where two or more companies are each separately alleged to have committed an infringement of the same national part of a European patent by carrying out reserved actions with regard to the same product is capable of giving rise to "irreconcilable judgments" resulting from separate proceedings as referred to in that provision (see, in relation to the similar provision of Article 6(1) of Regulation (EC) No 44/2001, CJEU, judgement of 12 July 2012, Solvay v Honeywell, C-616/10, ECLI:EU:C:2012:445).

17. It may be argued that the same reasoning applies where a first defendant is alleged to have infringed a national part of a European patent and a second defendant is alleged to have acted as an intermediary whose services are used by the first company to commit that infringement. Dealing with these actions in separate proceedings may lead to irreconcilable judgements, for instance where a first court concludes that the first defendant has not infringed the patent, whereas a second court finds that the first defendant has infringed the patent and, in doing so, has used the services of the second defendant.

18. However, the CJEU has held that, in order for judgments to be regarded as at risk of being irreconcilable within the meaning of Article 8(1) of Regulation 1215/2012, it is not sufficient that there be a divergence in the outcome of the dispute, but that divergence must also arise in the same situation of fact and law (CJEU, judgment of 12 July 2012, Solvay v Honeywell, C-616/10, ECLI:EU:C:2012:445, para. 24). It may be argued that the position of an alleged infringer is not the same as that of an intermediary who allegedly offers services which a third party uses to infringe. Furthermore, to the extent that the situations may be considered to coincide, the legal position of the alleged intermediary is dependent on the legal position of the alleged infringer, since an injunction against the intermediary would only be granted if the third party to whom the intermediary is offering its services is found to have infringed the patent. It could therefore be argued that, under Article 8(1) of Regulation 1215/2012, the courts of the domicile of an alleged infringer may have jurisdiction to hear claims against an alleged intermediary, whereas the converse does not follow.

Article 71b(2) of Regulation 1215/2012

19. It is apparent from the caselaw of the CJEU that the court which has jurisdiction as to the substance of the case, for instance by virtue of Article 4, 7 or 8 of Regulation 1215/2012, also has jurisdiction to order provisional or protective measures, without that jurisdiction being subject to any further conditions (see, in relation to the similar provisions of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, ECJ, judgement of 17 November 1998, Van Uden v Decoline, C-391/95, ECLI:EU:C:1998:543). It follows that, if the CJEU answers the first question in the affirmative, this Court has jurisdiction to order the provisional

measures against Dreame International, including provisional measures relating to the territory of Spain. Should the CJEU answer the first question in the negative, the question arises as to whether this Court can derive jurisdiction to order such measures against Dreame International relating to the territory of Spain from Article 71b(2), second sentence, of Regulation 1215/2012.

20. More specifically, the question is whether Article 71b(2), second sentence, of Regulation 1215/2012 must be interpreted as meaning that a common court has jurisdiction in relation to an action for provisional measures against a company established in a third State that is alleged to have infringed a European patent in force in an EU Member State that is not party to the instrument establishing the common court, as well as in some or all EU Member States that are party to the instrument establishing the common court, by offering the same products in all those EU Member States through websites that are identical apart from the language. In addition, the question arises whether the fact that the company uses the services of a company that is established in an EU Member State that is party to the instrument establishing the common court in order to infringe is a relevant circumstance for the purposes of answering this second question.

21. Under Article 71b(2), second sentence, of Regulation 1215/2012, an application for provisional measures may be made to a common court even if the courts of a third State have jurisdiction as to the substance of the matter. The Court of Appeal understands that this article provides a basis for jurisdiction in respect of applications for provisional measures for common courts which is comparable to the basis of jurisdiction which national law may confer on courts of an EU Member State under Article 35 of Regulation 1215/2012.

22. In the case-law of the CJEU, it has been clarified that the granting of provisional or protective measures on the basis of Article 35 Regulation 1215/2012 is conditional on, inter alia, the existence of a real connecting link between the subject matter of the measures sought and the territorial jurisdiction of the EU Member State of the court before which those measures are sought (see, in relation to the similar provision of Article 24 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, ECJ, judgement of 17 November 1998, Van Uden v Decoline, C-391/95, ECLI:EU:C:1998:543). The Court of Appeal understands that the application of Article 71b(2), second sentence, of Regulation 1215/2012 is subject to the same condition, since that provision appears to pursue the same purpose for common courts as Article 35 Regulation 1215/2012 serves for the courts of one EU Member State.

23. It may be argued that there is a real connecting link between the subject matter of the measures sought and the territorial jurisdiction of the EU Member States party to the instrument establishing the common court where the measures concern both the territory of an EU Member State not party to the instrument establishing the common court and the territory of some or all EU Member States that are party to the instrument establishing the common court, in particular where the measures are intended to prevent infringements committed by offering the same products in all these EU Member States through websites that are identical save for the language, and where the defendant uses the services of an intermediary established in an EU Member State that is party to the instrument establishing the common court to infringe.

24. This interpretation would imply that a common court may have jurisdiction in relation to an application for "cross-border" provisional measures, i.e. measures extending outside the territory of the EU Member States party to the instrument establishing the common court. It may be argued that the CJEU has, implicitly, allowed a similar cross-border effect in its decision in the Solvay-Honeywell case (CJEU, judgement of 12 July 2012, Solvay v Honeywell, C-616/10, ECLI:EU:C:2012:445, para. 24). In that decision, the CJEU held that Article 22(4) of Regulation No 44/2001 (corresponding to Article 22(4) of Regulation 1215/2012) must be interpreted as not precluding, in circumstances such as those at issue in the main proceedings, the application of Article 31 of that regulation (corresponding to Article 35 Regulation 1215/2012). The case concerned a situation in which two or more companies established in different EU Member States were, in proceedings pending before a court of one of those EU Member States, each separately alleged to have infringed the same national part of a European patent in force in another EU Member State by carrying out reserved actions with regard to the same product.

25. However, recital 33 of Regulation 1215/2012 provides that where provisional measures are ordered by a court of an EU Member State not having jurisdiction as to the substance of the matter, the effects of such measures should be confined to the territory of that EU Member State. Although this recital appears in the context of the recognition and enforcement of decisions rather than jurisdiction, it may indicate that the application of Article 35 of Regulation 1215/2012 should be confined to provisional measures producing effects within the territory of the Member State of the court seised. If so, a similar restriction may apply to the application of Article 71b(2) Regulation 1215/2012.

Measures against Eurep

26. The action brought against Eurep raises a question concerning the interpretation of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights ("Directive 2004/48"), in particular as regards the concept of an intermediary.

27. Article 62(1) UPCA reads as follows:

> "*The Court may, by way of order, grant injunctions against an alleged infringer or against an intermediary whose services are used by the alleged infringer, intended to prevent any imminent infringement, to prohibit, on a provisional basis and subject, where appropriate, to a recurring penalty payment, the continuation of the alleged infringement or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder*."

This provision implements Article 9(1)(a) of Directive 2004/48/EC, which has a similar wording.

28. The Hamburg Local Division established that Eurep did not perform any infringing acts and cannot be regarded as an "infringer" within the meaning of Article 62 UPCA. These findings are not disputed in the appeal proceedings and the Court of Appeals concurs with them. The question arises whether Eurep can be regarded as an "intermediary" within the meaning of Article 62 UPCA and Article 9(1)(a) of Directive 2004/48 whose services are used by the alleged infringer, namely Dreame International. More specifically, the question is the following: in a situation, in which a third party places products on the market to which Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May

2023 on general product safety ("Regulation 2023/988") and Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products ("Regulation 2019/1020") apply, and in which an authorised representative performs the tasks laid down in these Regulations on behalf of the third party, does Article 9(1)(a) of Directive 2004/48, or any other provision of Union law, preclude case-law of a national or common court under which an interlocutory injunction aimed at preventing or prohibiting infringement of a patent may be granted against that authorised representative?

29. It is common ground that Regulation 2023/988 and Regulation 2019/1020 are applicable to the products of Dreame International at issue in the present proceedings. Under Article 16(1) of Regulation 2023/988 and Article 4(1) of Regulation 2019/1020, these products may be placed on the market only if there is an economic operator established in the EU who is responsible for the performance of certain tasks. This condition would not be met if Dreame International were to perform these tasks itself, since Dreame International is not established in the EU. However, pursuant to Article 4(2)(c) of Regulation 2019/1020, the economic operator established in the EU may also be an authorised representative who has a written mandate from the manufacturer designating that representative to perform the tasks on the manufacturer's behalf. Dreame International and Eurep have acknowledged that they entered into an agreement under which Eurep was designated to perform certain tasks of an economic operator within the meaning of Regulation 2023/988 and Regulation 2019/1020 on behalf of Dreame International, and that Eurep in fact performed such tasks, including representing Dreame International vis-à-vis the EU and national authorities, storing technical documentation and providing information. The question is whether, on that basis, Eurep can be regarded as an "intermediary" whose services are used by a third party to infringe a patent within the meaning of Article 9(1)(a) of Directive 2004/48.

30. The CJEU has clarified that, in order for an economic operator to fall within the concept of an "intermediary" within the meaning of Directive 2004/48, it must be established that that operator provides a service capable of being used by one or more other persons to infringe one or more intellectual property rights; however, it is not necessary for that operator to maintain a specific contractual relationship with that or those persons (CJEU, judgement of 7 July 2016, Tommy Hilfiger v Delta Center, C-494/15, ECLI:EU:C:2016:528, para. 23; see also CJEU, judgement of 27 March 2014, UPC Telekabel Wien v Constantin Film, C-314/12, ECLI:EU:C:2014:192, para. 34 and 35). The CJEU also found that, in that regard, it is irrelevant whether the services are provided online or in the physical world (CJEU, judgement of 7 July 2016, Tommy Hilfiger v Delta Center, C-494/15, ECLI:EU:C:2016:528, para. 29).

31. Applying this standard, it may be argued that Eurep constitutes an intermediary within the meaning of Article 9 of Directive 2004/48. By acting as Dreame International's authorised representative within the meaning of Regulation 2023/988 and Regulation 2019/2020, Eurep provided services capable of being used by Dreame International in order to infringe the patent. Eurep's representation services enable Dreame International to place the products at issue on the EU market in compliance with these regulations.

32. However, the case-law of the CJEU on the concept of "intermediary" has to date concerned services, either online or in the physical world, which enable the alleged infringing act of a third party in fact, not in law. It may therefore be argued that the concept does not extend to a provider of services which

merely ensures compliance with certain laws, and which is not, in practice, capable of controlling the allegedly infringing act by the third party.

Conclusion

33. Pursuant to Article 267 of the Treaty on the Functioning of the European Union, Article 21 UPCA, Article 38 UPCS and R.266 RoP, the Court of Appeal will refer the four questions concerning the interpretation of EU law to the CJEU.

ORDER

The Court of Appeal

I. stays the appeal proceedings to the extent that they concern:
- the action against Dreame International to the extent that it relates to the territory of Spain; and
- the action against Eurep;

II. requests the CJEU to give a preliminary ruling on the following four questions:

1. Must Article 8(1) in conjunction with Article 71b(2) of Regulation 1215/2012 be interpreted as meaning that a situation where, in proceedings before a common court within the meaning of Article 71a(2) of Regulation 1215/2012, a first company that is established in a third State is alleged to have committed an infringement of a national part of a European patent which is in force in an EU Member State that is not party to the instrument establishing the common court, and a second company that is established in an EU Member State that is party to the instrument establishing the common court is alleged to be an intermediary whose services are used by the first company to infringe in the EU Member State that is not party to the instrument establishing the common court, is capable of leading to "irreconcilable judgments" resulting from separate proceedings as referred to in Article 8(1) Regulation 1215/2012?

2. Must Article 71b(2), second sentence, of Regulation 1215/2012 be interpreted as meaning that a common court has jurisdiction in relation to an action for provisional measures against a company established in a third State that is alleged to have infringed a European patent in force in an EU Member State that is not party to the instrument establishing the common court, and in some or all EU Member States that are party to the instrument establishing the common court by offering the same products in all those EU Member States through websites that are identical apart from the language?

3. Is the fact that the company uses the services of a company that is established in an EU Member State that is party to the instrument establishing the common court in order to infringe a relevant circumstance in answering this second question?

4. Does Article 9(1)(a) of Directive 2004/48 or any other provision of Union law preclude case-law of a national or common court under which an interlocutory injunction aimed at preventing or prohibiting infringement of a patent by a third party by placing products on the market to which

Regulation 2023/988 and 2019/1020 apply may be granted against an authorised representative that performs the tasks laid down in these Regulations on behalf of the third party?

This order was issued on 6 March 2026.

KLAUS STEFAN MARTIN Grabinski

Digitally signed by KLAUS STEFAN MARTIN Grabinski
Date: 2026.03.05 17:27:51 +01'00'

Klaus Grabinski

President of the Court of Appeal

Peter Hendrik Blok

Digitally signed by Peter Hendrik Blok
Date: 2026.03.06 08:35:25 +01'00'

Peter Blok

Legally qualified judge and judge-rapporteur

EMMANUEL, LUCIEN, RENÉ GOUGÉ

Signé numériquement par EMMANUEL, LUCIEN, RENÉ GOUGÉ
Date : 2026.03.05 17:33:12 +01'00'

Emmanuel Gougé

Legally qualified judge

KLAUS STEFAN MARTIN Grabinski

Digitally signed by KLAUS STEFAN MARTIN Grabinski
Date: 2026.03.05 17:28:37 +01'00'

Simon Michels

Technically qualified judge

due to his unavailability signed by Klaus Grabinski on his behalf

LORENZO SALVATORE AMERIGO PARRINI

Firmato digitalmente da LORENZO SALVATORE AMERIGO PARRINI
Data: 2026.03.05 17:46:49 +01'00'

Lorenzo Parrini

Technically qualified judge