



**UPC\_CFI\_2070/2025**  
**Procedural Order**  
**of the Court of First Instance of the Unified Patent Court**  
**delivered on 14/04/2026**  
**(R.19 RoP- preliminary objection)**

**HEADNOTES**

The Paris Local Division has no international jurisdiction over a defendant domiciled in a third country (non-UPC, non-EU), who is not alleged to have committed any act of infringement within the territory of a Member State of the European Union.

**KEYWORDS**

International jurisdiction- defendant domiciled in a third-country- No alleged infringing act committed within the European Union.

**CLAIMANT**

**BMS Innovations, LLC**  
1900 K Street, NW, Suite 725,  
Washington, D.C 20006, United States of America

Represented by Christian DEKONINCK  
TAYLOR WESSING Brussels

**DEFENDANTS**

**1-BYD Company Ltd**  
No. 3009, BYD Road, Pingshan,  
Shenzhen, Guangdong Province,  
518100, People's Republic of China

**2-BYD Auto Co., Ltd**  
No.1 Qinling Avenue West,  
Caotang, Science and Technology Industry Base Xi'an,  
Shaanxi, 710311, People's Republic of China

**3-BYD Europe B.V.**

Gravelandseweg 256,  
3125 BK, Schiedam,  
Kingdom of the Netherlands

**4-BYD France SAS**

8 rue Leonard de Vinci,  
60000 Beauvais, France

**5-BYD Automotive GmbH**

Albert-Dulk-Str. 9,  
70327 Stuttgart, Germany

**6-BYD Mobility GmbH**

Albert-Dulk-Straße 9,  
70327 Stuttgart, Germany

**7-BYD (U.K.) Co., Ltd.**

Building 5, Arc Uxbridge Sanderson Road, Denham,  
Uxbridge, England, UB8 1DH

Represented by Anne-Charlotte LE BIHAN,  
BIRD & BIRD AARPI- Paris

PATENT AT ISSUE

EP2937706

DECIDING JUDGE

Judge-rapporteur

Carine Gillet

LANGUAGE OF PROCEEDINGS: English

**ORDER**

On 19 December 2025, BMS Innovations LLC (hereafter BMSI) brought an infringement action, before the Paris Local Division, against BYD Group entities, domiciled in the People’s Republic of China (China) (Defendants 1 and 2), in the Netherlands (Defendant 3), in France (Defendant 4), in Germany (Defendants 5 and 6) and in the United Kingdom (Defendant 7).

The judge-rapporteur set on 16 February 2026, the starting-point for the time-periods mentioned in R.19 and R.23 Rules of Proceedings (RoP).

On 16 March 2026, BYD Company Ltd (Defendant 1) and BYD Auto Co. Ltd (Defendant 2) domiciled in China and BYD (UK) CO. Ltd (Defendant 7), domiciled in the UK, filed a preliminary objection, challenging the Paris Local Division’s international jurisdiction, stating that the seized Court lacks jurisdiction, for Defendant 1 (BYD Company) and Defendant 2 (BYD Auto) for the alleged infringing acts committed in the UK and for Defendant 7 (BYD UK) for the alleged infringing acts committed in the UK and in the relevant UPC states.

BYD informs the Court that it has filed a similar preliminary objection before the Local Division of The Hague (2228/2025), relating to another European Patent.

In the application for preliminary objection, Defendants request the judge-rapporteur to:

In view of Articles 8(1), 71(a) and 71b (2) of EU Regulation No 1215/2012,

In view of Rules 19, 20, 21, 266 and 295(i) of the RoP,

In view of Article 267 of the TFEU,

as soon as practical, before the Statement of Defence by BYD Company Ltd., BYD Auto Co., Ltd., and BYD (U.K.) Co., Ltd. is due:

1. UPHOLD the preliminary objection in that the Unified Patent Court declines international jurisdiction for all claims and requests of BMS Innovations, LLC that are directed at BYD (UK) Co., Ltd. for the acts it allegedly committed in the UPC Member States;

Consequently,

DISMISS all claims and requests of BMS Innovations, LLC that are directed against BYD (UK) Co., Ltd. for the acts it allegedly committed in the UPC Member States;

2. UPHOLD the preliminary objection in that the Unified Patent Court declines international jurisdiction for all claims and requests of BMS Innovations, LLC that are directed against BYD Company Ltd., BYD Auto Co., Ltd., and BYD (U.K) Co., Ltd. for the acts they allegedly committed in the United Kingdom;

Consequently,

DISMISS all claims and requests of BMS Innovations, LLC that are directed against BYD Company Ltd., BYD Auto Co., Ltd., and BYD (U.K.) Co., Ltd. for the acts they allegedly committed in the United Kingdom;

In the alternative to point 2,

3. REQUEST the Court to refer questions on the understanding and international scope of Art. 8(1) and 71b(2) Brussels Ia recast to the CJEU, where the question subject to the preliminary ruling could be formulated as follows: *“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 a third State via the exploitation of a product in that third State, 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 commit infringement of the same national part of the European patent via the exploitation of the same product in that third State, is capable of leading to “irreconcilable judgments” resulting from separate proceedings as referred to in Article 8(1) Regulation 1215/2012?”*

4. STAY the proceedings to the extent that they concern the claims directed at BYD Company Ltd., BYD Auto Co., Ltd., and BYD (U.K) Co., Ltd. for the acts they allegedly committed in the United Kingdom pending the preliminary ruling of the CJEU.

If the Court does not allow the preliminary objection in whole or in part,

5. GRANT leave to appeal the order in which that is decided.

In accordance with Rule 19.5 RoP, the Registry notified the preliminary objection to the Claimant on 17 March 2026.

On 30 March 2026, BMSI requests that the Court :

- (a) rejects each and every request of the Defendants in their Preliminary Objection and Rule 9 Application with no grant of leave to appeal.
- (b) orders that the Preliminary Objection be dealt with in the main proceedings.
- (c) refuses to refer questions to the CJEU on long arm jurisdiction.
- (d) sets an oral hearing if the Court is considering making any order other than as requested above.
- (e) rejects each and every objection in the Preliminary Objection, if the Court wishes to deal with the PO now,
- (f) grants leave to appeal the order if the Court allows the preliminary objection, in whole or in part,
- (g) grants leave to appeal the order, if the Court decides to refer questions to the CJEU on long arm jurisdiction, insofar as leave to appeal is required.

### Parties' arguments

**The Applicants** argue that:

-Article 8(1) BR I, which must be interpreted strictly, requires a risk of irreconcilable decisions, as well as predictability and does not provide a basis for the Court's jurisdiction in respect of defendants not domiciled in a Member State of the European Union and for acts of infringement alleged to have taken place in a non-EU Member State. The UPC is not obliged to accept jurisdiction over defendants domiciled in a non-EU Member State, for alleged infringement acts in a non-EU Member State.

-Whilst the CJEU has confirmed mandatory and universal cross-border jurisdiction on the basis of Article 4(1) BR I, Article 8(1) cannot be invoked to justify jurisdiction over defendants domiciled in third countries in respect of acts of infringement committed in third countries,

-the risk of irreconcilable judgments only relates to judgments handed down within the European Union,

- Art. 8(1) BR I, through Art.71 b(2) BR I, can also apply to defendants not domiciled in the EU territories, but only if it is "appropriate", that means if it is expedient to hear and determine together to avoid the risk of irreconcilable judgments. It is not appropriate when a non-EU country has jurisdiction, since in such cases there is no issue of lis pendens or related actions, nor is there automatic recognition or enforcement,

-Alternatively, BYD requests a referral to be made to the CJEU, and meanwhile a stay of the proceedings, regarding BYD Company Ltd, BYD Auto Co and BYD (UK) Co., for the alleged acts committed in the UK.

-In any event, BYD state that the acts allegedly committed by the three defendants, are not substantiated and do not justify the international jurisdiction.

Defendant 1 is not the parent company of the BYD defendants, except for BYD Europe and it is not liable for any alleged act of infringement. It is not substantiated that it plays any relevant role in distribution of the accused products in the UK and that it operates the website, which does not offer the products in the UK.

It is not proven that Defendant 2 (BYD Auto) would export the products either to the EU Countries or to the UK, and BMSI made a confusion between the activities of BYD Europe and those of BYD Auto Co Ltd.

The acts alleged against Defendant 7 (BYD UK) take place exclusively in the UK. Consequently, international jurisdiction cannot be based on Article 7(2), as the harmful event did not occur within the territory of a Member State.

**BMSI** responds that:

-It would be more efficient and in conformity with the general principles to deal with the preliminary objection, together with the decision on the merits. A separate and early decision on the objection will provide no real benefits. Indeed, Defendant 1 and Defendant 2 challenge the international jurisdiction, only for the alleged infringing acts in the UK, but are in any case still involved for the other alleged infringing acts in the EU territory. In any event, the Court and the parties will have to address the infringement of the UK part of the patent, for the other defendants. A decision deferring the question of the preliminary objection to the decision on the merits is not subject to appeal.

-By combination of Art.8(1) BR I, Art.71 b(2) BR I and Recital 6 of Regulation 15 May 2014 amending Regulation (EU) n° 1215/2012, the UPC as a common court, has jurisdiction against defendants domiciled in third states when the claims are so closely connected with other claims in the case that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. In the case at hand, the risk of irreconcilable judgment arises if one of the defendants is found responsible for infringement in the UK, whilst other defendants belonging to the same group are able to continue their activities in this country, in relation to the same product alleged to infringe the same national part of the patent, without any restrictions.

-the alleged infringement acts must be assessed in the proceedings on the merits. If this issue is addressed in the preliminary objection at an early stage, there is a risk that the Court will take a cursory look at the allegation and evidence. BMSI contends that it brought sufficient evidence to establish long-arm jurisdiction over BYD Company and BYD Auto.

-Regarding BYD UK (Defendant 7), which is responsible for distributing the allegedly infringing products in the UK, BMSI only alleges that this defendant infringes the UK national part of the patent. The same above-mentioned reasoning as that applied to Defendants 1 & 2, relating to long-arm jurisdiction, must apply.

-There is no need to refer questions to CJEU. The suggested request 3 is speculative and unnecessary and lacks any substance. The pending referral to the CJEU (Dyson v. Dreame) relates to different legal and factual matters (provisional measures' proceedings and the position of an intermediary).

-BMSI requests for an online oral hearing if the Court intends to rule immediately on the PO or to ask the CJEU for preliminary rulings.

-If the Court admits in part or whole the request, BMSI seeks leave to appeal.

## **GROUNDINGS FOR THE ORDER**

The request for preliminary objections was raised within the time limit set out in Rule 19(1) RoP and is admissible.

R.20.1 RoP provides that "The judge-rapporteur shall give the parties an opportunity to be heard", which means, within the meaning of R 264 RoP, that the Court has the discretion to hold a hearing or to request written submissions.

In this case, the Judge-rapporteur considers that it is not necessary to hold an oral hearing, even though BMSI requested one, as BMSI has submitted written submissions.

## **1 -International jurisdiction of the UPC**

According to Art.31 UPCA, the international jurisdiction of the UPC is established in accordance with Regulation EU No 1215/2012 (Brussels I bis) and, where applicable, on the basis of the Lugano Convention.

Pursuant to Art. 71a (1) and (2)(a) BR I, the UPC, as a common Court to several European Union Member States, is deemed to be a European Union Member States' Court having jurisdiction, where a European Union Court would have jurisdiction.

According to the BR I provisions, the jurisdiction of the court of one of the EU Member States is, in principle, the court where the defendant is domiciled (Art. 4.1). Alternatively, jurisdiction can be based on Art. 7.2 or 8.1 BR which form(s) an exception(s) to the main rule.

In case of multiple defendants, pursuant to Art. 8.1 BR I, a person domiciled in a Member States may also be sued “ where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, 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”.

Art. 71b (2) BR I provides “Where the defendant is not domiciled in a Member State and this regulation does not otherwise confer jurisdiction over him; Chapter II shall apply as appropriate regardless of the defendant’s domicile”.

In the case at hand, the three defendants challenging the jurisdiction of the Court are domiciled outside UPCA and EU territory, respectively, in China (Defendants 1 & 2) and in the UK (Defendant 7).

### - Jurisdiction over Defendant 1 and Defendant 2

BYD contends that the Paris Local Division does not have jurisdiction over these defendants in respect of alleged infringing acts committed in the UK.

These two defendants are domiciled in China and are accused in the Statement of Claim of acts committed within the territory of the EU and in the UK, together with the other defendants, and especially with the EU-based BYD Europe (Defendant 3). The domicile of one of the multiple defendants (BYD France SAS, defendant 4) is located in France, where the Paris Local Division has jurisdiction.

However, the claims brought against these two defendants (Defendants 1 & 2) in the infringement proceedings initiated by BMSI in the UK are undeniably closely connected to those brought against the other defendants, in EU territory but also in the UK, as they concern the same products alleged to have been infringed in the UK, the same national part of the patent and acts committed by companies belonging to the same group.

So, there is a risk of conflicting judgments if these two defendants were not tried alongside the other defendants in relation to the acts committed within France/the European Union, for alleged infringement acts in the UK.

Furthermore, the facts regarding the alleged infringement by defendants 1 and 2 put forward are sufficiently substantiated at this stage of the proceedings by the documents and evidence submitted by BMSI.

Defendant 1 is the owner of the website [www.bydeurope.com](http://www.bydeurope.com) and is designated in the copyright note for BYD's website in France ([www.byd.com/fr](http://www.byd.com/fr)). It is alleged to play a role in placing the accused products on the market (see BMSI exhibits n° Fig. 51, 52 and 53). This website is specifically targeting among others the public, in the UK.

Defendant 2 (BYD Auto) is "the automotive subsidiary of BYD" (see BMSI Exhibits Fig .14). It is said to manufacture Electric Vehicles and to operate shipping of vehicles from China to the Netherlands.

Both Defendants 1 and 2 have a place of business in the Netherlands, at the address of BYD Europe BV (Defendant 3).

Therefore, it is appropriate and expedient to hear and determine them together, to avoid the risk of irreconcilable judgments resulting from separate proceedings and it does not appear necessary to rule at this stage on the question of the UPC's lack of jurisdiction in respect of the alleged acts committed on the UK territory, relating to the UK national part of the patent.

It will be for the Court to address the acts committed in the UK, with the full panel, in the context of the decision to be given on the merits of the case. The court's lack of international jurisdiction over the acts allegedly committed by these defendants in the UK will therefore be examined as part of the proceedings on the merits.

This decision is neither a decision allowing the preliminary objection, nor a decision rejecting the preliminary objection. As this order does not fall within any of the grounds for appeal referred to Art. 73.1 and 73.2 AJUB or rule R220.1 RoP, the provisions of the second sentence of rule R 21.1 of the RoP must apply by analogy (UPC\_CoA\_4/2026, 11 February 2026 Valeo v. Bosch).

This order is therefore subject to appeal in accordance with the provisions set out by R220.2 RoP.

#### - Jurisdiction over Defendant 7

BYD argues that the Paris Local Division lacks jurisdiction for the acts allegedly committed by Defendant 7 in the UK, France and Germany.

Defendant 7 is domiciled in the UK.

No act of infringement is alleged to have been committed within the territory of the UPC. The alleged acts of which Defendant 7 is accused by BMSI take place exclusively in the UK (BMSI -SoC 19 December 2025 point 8.38 and written comments 30 March 2026- point 3.17).

Jurisdiction can therefore not be based on Art. 4 BR I. As Defendant 7 is only asserted to infringe in the UK and not in UPC territory, international jurisdiction can thus also not be based on Art. 7(2) BR I. The Court also finds that Art. 8(1) BR I cannot confer jurisdiction on the UPC for Defendant 7/BYD UK in the circumstances of this case for the following reasons.

Since the defendant is not domiciled within the territory of the European Union or the UPC, and the acts of which it is accused take place exclusively within the territory of a third country (neither a UPC nor an EU member state), there is no connection with the territory of the UPC or European Union whatsoever.

In these circumstances it is not appropriate to declare a division of the UPC competent to hear the action, concerning that defendant. The UK defendant cannot be expected to be sued before the UPC where its acts are limited to UK territory.

Consequently, the Paris Local Division has no international jurisdiction over a defendant domiciled in a third country (non-UPC, non-EU), who is not alleged to have committed any act of infringement within the territory of a Member State of the European Union.

The preliminary objection concerning the defendant 7 domiciled in the UK is well-founded. The UPC has no international jurisdiction over Defendant 7.

As this is a decision granting the preliminary objection, which terminates proceedings as regards that defendant, the decision concerning Defendant 7 is subject to appeal under Rule 220.1 of the Rules of Procedure.

## **2- preliminary ruling**

The alternative request for a preliminary ruling to be referred to CJEU is without merit, both in respect of Defendants 1 and 2, for whom the issue of lack of jurisdiction is deferred to the decision on the merits, and in respect of Defendant 7, in relation to whom the Court held that it lacked international jurisdiction.

### **FOR ALL THESE REASONS,**

The judge-rapporteur orders that:

1-the question of the UPC's international jurisdiction for the UK over Defendants 1 and 2 shall be determined in the forthcoming decision on the merits,

-this decision is subject to appeal in accordance with Rule 220.2 pursuant to Rule 22.1 of the Rules of Procedure

2-the UPC's lack of international jurisdiction over Defendant 7 is well-founded,

-this decision is subject to appeal in accordance with Rule 220.1 pursuant to Rule 22.1 of the Rules of Procedure

3- there is no need to refer the matter to the CJEU.

Issued in Paris on 14 April 2026.

Carine Gillet, judge-rapporteur

#### ORDER DETAILS

*Date of issue: 14/04/2026*

*UPC number: UPC\_CFI\_2070/2025*

*Type of action: infringement action*

*Type of request: R.19 preliminary objection*

