



The Hague - Local Division
UPC-CFI-2228/2025
UPC-CFI-1546/2026

Order
of the Court of First Instance of the Unified Patent Court
issued on 19/05/2026
R.20

Claimant:

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

represented by Christian Dekoninck,
Christopher Thornham, Thomas Witte and
Laura Coucke (Taylor Wessing)

Defendants:

- 1) BYD Company Ltd
No. 3009, BYD Road, Pingshan
518100 Shenzhen, Guangdong Province
People's Republic of China
- 2) BYD Auto Co., Ltd
No.1 Qinling Avenue West, Caotang
Science and Technology Industry Base
710311 Xi'an, Shaanxi
People's Republic of China
- 3) BYD Europe B.V.
's-Gravelandseweg 256
3125 BK Schiedam
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-Str. 9
70327 Stuttgart
Germany
- 7) BYD Sweden AB
c/o United Spaces
Elektrogatan 10
171 54 Solna
Sweden
- 8) BYD (U.K.) Co., Ltd.
Building 5, Arc Uxbridge Sanderson Road
Denham, Uxbridge UB8 1DH
United Kingdom
- 9) BYD POLSKA SPÓŁKA Z OGRANICZONĄ
ODPOWIEDZIALNOŚCIĄ
ul. Domaniewska 48
02-672 Warszawa
Poland

Defendants 1-9 are collectively also referred to as “**BYD**”. Defendants 1 and 2 are separately referred to as **BYD Company** and **BYD Auto**, respectively, and defendant 8 as **BYD UK**.

BYD are represented by Rien Broekstra, Elard Schenck zu Schweinsberg, Rik Lambers, Chia-Jung Hu and Eveline Lots (Brinkhof)

PATENT AT ISSUE: EP3393001

DECIDING JUDGE

This order is issued by the judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

Subject-matter of the proceedings: Infringement action

Summary of facts and procedure

1. BMSI filed a statement of claim (“SoC”) on 23 December 2025 at the LD The Hague of the UPC to initiate an infringement action against BYD. On 3 February 2026, at the request of the parties, the date of service on all defendants was set as 5 February 2026. The deadlines for filing the Preliminary Objection (“PO”) and the Statement of Defence (“SoD”) were consequently 5 March 2026 and 5 May 2026, respectively.
2. By submission of 3 March 2026, Defendants filed a preliminary objection (“PO”), supplemented by an additional submission of 17 March 2026 to comment on an order of the Court of Appeal of the UPC (“CoA”) that was issued after the filing and that was deemed relevant.¹ BMSI responded.

REQUESTS

3. BYD requests:
 - a. to allow this PO, to decline international jurisdiction over BYD Company and BYD Auto for alleged infringement in the United Kingdom, and for BYD UK concerning any alleged infringement (i.e. in the United Kingdom, all relevant UPC states and Poland), and insofar to dismiss the claim of Respondent BMSI;
 - b. to render a separate decision on this PO as soon as practical before the Statement of Defence by BYD Company, BYD Auto and BYD UK is due;
 - c. On the condition that the Court would be of the opinion that the PO should not be allowed, BYD requests the Court to refer questions on the understanding and international scope of Art. 8(1) and 71b(2) Brussels I bis recast to the CJEU.
 - d. On the condition that the Court does not allow the PO in whole or in part, BYD requests leave to appeal the order in which that is decided.
4. BMSI in response requests that:
 - a. the Court rejects each and every request of the Defendants in their PO and Rule 9 Application with no grant of leave to appeal.
 - b. the Court orders that the PO be dealt with in the main proceedings.
 - c. the Court refuses to refer questions to the CJEU on long arm jurisdiction.
 - d. there be an oral hearing fixed if the Court is considering making any order other than as requested above.
 - e. if the Court wishes to deal with the PO now then it rejects each and every objection in the PO.
 - f. If the Court allows the PO in whole or in part, BMSI requests leave to appeal the order in which that is decided.
 - g. If the Court decides to refer questions to the CJEU on long arm jurisdiction, BMSI requests leave to appeal the order in which that is decided, insofar as leave to appeal is required.

¹ Order of the CoA of 6 March 2026, UPC_CoA_813/2025, Dyson v Dreame (referral to the CJEU)

GROUNDS

5. The timely filed PO is admissible and is partly successful: the Court has no jurisdiction vis-à-vis BYD UK in the circumstances asserted in the SoC, the PO and the response to the PO.
6. The scope of the PO is limited. BYD only challenges international jurisdiction with respect to three of the nine defendants, Chinese based BYD Company and BYD Auto and UK based BYD UK.

- BYD UK

7. With respect to BYD UK, domiciled in the United Kingdom (“UK”) and therefore outside UPCA and EU territory, BMSI only asserts infringing acts within the UK. BMSI does not contend that BYD UK (also) infringes or threatens to infringe in UPCA territory or elsewhere in the EU. This is undisputed. Any suggestion to the contrary in BYD’s request at a. (see 3. above), is clearly an error (as BMSI pointed out). Jurisdiction can thus not be based on Art. 4 or Art. 7(2) of the Brussels Regulation² (“BR”).
8. BYD correctly submits that the UPC’s jurisdiction over BYD UK also cannot be based on Art. 8(1) BR. BMSI’s assertion that the LD The Hague may assume jurisdiction over BYD UK under Article 8(1) BR in conjunction with Article 71b(2) BR because other defendants allegedly infringe in the UK as well, is not valid. Art. 71b(2) BR stipulates, in the context of ‘a common court’, that the BR’s rules also apply to non-EU Member States:

(2) 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.

This rule is necessary in the context of courts common to several member states such as the UPC, because jurisdiction for such court cannot be based on national law (cf. Art. 6 BR).

9. However, the jurisdiction rules of the BR must be interpreted in the context of the BR as a whole. Furthermore, the application of the BR’s rules to defendants who are not domiciled in a Member State, is limited to situations where this is appropriate, regardless of domicile (cf. 71b(2) BR). Clearly, a prerequisite for accepting jurisdiction is that there must be a connection to the addressed court. This follows from the considerations set out in the BR, for instance:

(13) There must be a connection between proceedings to which this Regulation applies and the territory of the Member States. Accordingly, common rules of jurisdiction should, in principle, apply when the defendant is domiciled in a Member State.

² Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (EU) no 1215/2012).

(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well- defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. (...)

(16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. [emphasis added by the court]

10. BYD UK's alleged infringing activities are confined to UK territory. There is no connection whatsoever with the territory of the UPC. Furthermore, BYD UK could also not reasonably expect to be sued for such acts before the UPC. Art. 8(1) BR, as an alternative ground for jurisdiction, is an exception to the general rule of jurisdiction of [the court of] domicile and should be interpreted narrowly. Therefore, the combination of Art.71b and Art.8(1) BR cannot be used to create jurisdiction for acts that have no connection with the territory of the UPC.

11. In view of the above, BYD's challenge regarding jurisdiction for BYD UK, succeeds.

- BYD Company and BYD Auto

12. BYD asserts that that the LD The Hague cannot accept jurisdiction based on Art. 8(1) Brussels I in connection with Art. 71b(2) Brussels I over BYD Company and BYD Auto (both domiciled in China) for alleged infringement in the United Kingdom. This objection thus concerns long-arm jurisdiction only and this issue – for which the outcome of the recent referral to the CJEU mentioned in footnote 1 may be relevant – is to be dealt with in the main proceedings.

- CJEU referral

13. The condition for addressing the requested referral is not fulfilled.

ORDER

Having heard the parties, the Court decides that

- I. The objection regarding the jurisdiction vis-à-vis BYD UK is successful: the court does not have jurisdiction to hear the case against BYD UK;
- II. The objection to the jurisdiction of the UPC for alleged infringement in the UK by BYD Company and BYD Auto, is to be dealt with in the main proceedings;
- III. The main will proceedings will continue according to the RoP against defendants 1-7 and 9.

On behalf of the Registry:

The JR:

Information about appeal

The order at I. above is subject to appeal in accordance with Rule 220.1 pursuant to Rule 22.1 of the Rules of Procedure.

The order at II. is subject to appeal in accordance with Rule 220.2 pursuant to Rule 22.1 of the Rules of Procedure.