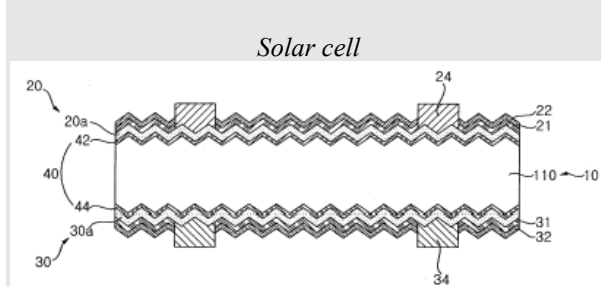


## UPC CFI, Local Division Hamburg, 9 May 2025, JingAo v Chint



### PATENT LAW – PROCEDURAL LAW

Panel review of dismissal of security for costs by order of 2 April 2025 rejected ([Article 69\(4\) UPCA](#), [R. 158 RoP](#), [R. 333 RoP](#))

- Reference can be made to [the contested order](#) for the reasons. The Defendants have not put forward any new convincing arguments.
- [There is no experience available with regard to the enforcement of decisions on costs of the UPC in the People's Republic of China.](#)

Although the Defendants correctly point out that service in the People's Republic of China is effected both by the UPC and by the national courts via the Hague Service Convention, and that therefore no distinction can be made in this respect. Still, there is no experience available with regard to the enforcement of decisions on costs of the UPC in the People's Republic of China. The mere reference to experience with the service of statements of claims by national courts is not sufficient in this regard. The Defendants mainly allege that enforcement of foreign judgments in China has proven to be enormously difficult. However, Defendants still have not presented concrete evidence that could support their allegation that enforcing an order of reimbursement of legal costs would be particularly difficult in the future.

Source: [Unified Patent Court](#)

### UPC Court of First Instance, Local Division Hamburg, 9 May 2025

(Klepsch, Schilling, Rinkinen, Checcaci)

UPC\_CFI\_429/2024

#### Procedural Order

of the Court of First Instance of the Unified Patent Court delivered on 09/05/2025

#### CLAIMANT

**1) JingAo Solar Co., Ltd.** (Claimant) - Jinglong Street, Ningjin County - 055550 - Xingtai City, Hebei Province - CN

Represented by Christopher Maierhöfer

#### DEFENDANT/S

**1) Chint New Energy Technology Co., Ltd.** (Defendant) - NO.1 Jisheng Road, Jianshan New Zone - 314415 - Haining City, Zhejiang Province - CN

Represented by Phillip Rektorschek

**2) Astronergy Europe GmbH** (Defendant) - Stralauer Platz 33-34 - 10243 - Berlin - DE

Represented by Phillip Rektorschek

**3) Astronergy GmbH** (Defendant) - Stralauer Platz 33-34 - 10243 - Berlin - DE

Represented by Phillip Rektorschek

**4) Astronergy Solarmodule GmbH** (Defendant) - Stralauer Platz 33-34 - 10243 - Berlin - DE

Represented by Phillip Rektorschek

**5) Astronergy Solar Netherlands B.V.** (Defendant) - Transformatorweg 38 - 1014AK - Amsterdam - NL

Represented by Phillip Rektorschek

**6) Chint Solar Netherlands B.V.** (Defendant) - Transformatorweg 38 - 1014AK - Amsterdam - NL

Represented by Phillip Rektorschek

#### PATENT AT ISSUE

Patent no. Proprietor/s

[EP4092759](#) JingAo Solar Co., Ltd.

#### DECIDING JUDGE

This order has been issued by the presiding judge and Judge-rapporteur Sabine Klepsch, legally qualified Judges Dr. Stefan Schilling and Petri Rinkinen and the technically qualified judge Giorgio Checcacci.

#### LANGUAGE OF PROCEEDINGS

English

#### SUBJECT-MATTER OF THE PROCEEDINGS

panel review of cost order, [R 333 RoP](#)

#### PROCEDURAL HISTORY:

With final [order dated 2 April 2025](#), the judge-rapporteur dismissed the Defendants' application to order the Claimant to provide adequate security. With application dated 17 April 2025 the Defendants request a review of said order by the panel.

#### SUMMARY OF THE ARGUMENTS

The Defendants argue that the Local Division Munich has made an order dated [19 March 2025 in the parallel proceeding App 54919/2024, UPC CFI 425/2024](#) between the same parties and the Court came to the exact opposite conclusion and ordered the Claimant to provide adequate security. The Claimant has not appealed the decision.

They are further of the opinion, that the objected order cannot be upheld because its reasons, particularly the Court's distinction between national court of the EU of EU member states and the UPC, are neither supported by facts nor by procedural aspects, and also the Claimant did not provide any other substantial counterargument. In the objected order, the Court explains that well-reasoned facts are required to show that a cost decision by the UPC cannot actually be enforced. In the order, the Court further states that difficulties of service under the Hague Service Convention in Germany do not constitute such well-reasoned facts for a security for costs order. This omits the fact that there is formally and particularly for purposes of service of documents no difference between the UPC and national EU courts both pursuant to The Hague Service Convention and that the UPC is – from that point of view – nothing else than a national EU court / a court which has been assigned with national jurisdictional capacities. Therefore, the opposite has to be assumed: Just like, for example, German decisions, UPC decisions cannot be enforced in China in a way that could justify not providing security in the present case.

As long as there was not a UPC cost decision which has been successfully enforced in China, the assumption must be – identically to the findings of the Munich Local Division in the parallel case – that enforcement is practically not possible.

The Claimant defends the order of the judge-rapporteur and argues that the Court has applied the correct legal standard when assessing the request to provide security and has correctly stated that the burden of substantiating and providing an order for security for costs is appropriate on the applicant. Only if the reasons and facts in the request have been presented in a credible manner, it is up to the claimant to challenge these reasons and facts and in a substantiated manner. The Claimant is of the opinion that the Defendants failed to present reliable facts that a potential cost order may only be enforceable in an unduly burdensome way. The mere fact that Claimant is located in the People's Republic of China does not justify an order to provide security for costs. The Court correctly acknowledged this as such assumption would be a form of a priori discrimination. There is also no indication that Claimant would not comply with an order from this Court. It is by no means certain that a possible judgment of this Court would have to be enforced in Court at all, let alone in a Chinese court, or that the Claimant would frustrate this enforcement.

The Court also correctly dismissed Defendants' argument that service under the Hague Convention has proven to be difficult for German courts. It is up to the Defendants to substantiate and prove the allegation that potential difficulties relating to service under the Hague Convention prejudice potential difficulties with respect to the enforcement of cost decisions. The Court rightfully found that Defendants did not present well-reasoned facts giving rise to such assumption.

#### **STATEMENTS OF THE FORMS OF ORDER SOUGHT BY THE PARTIES:**

The Defendants request

for said Order made by the Presiding Judge and Judge-Rapporteur to be reviewed by the Panel and to order the Claimant to provide adequate security as requested on 7 October 2024.

In the alternative, if the Panel does not order to provide adequate security, the Defendants furthermore request (pursuant to [R. 220 RoP](#)), for the Panel to grant leave to appeal said Order.

The Claimant requests

to dismiss the Request for Review and the Request for Leave to Appeal.

#### **GROUND FOR THE ORDER:**

The application for panel review is admissible, but remains unsuccessful on the merits.

##### **I.**

The Claimant rightfully did not contest that the application for panel review is admissible. An order under [R. 158](#) of the Rules of Procedure (RoP) is a case management order, which is subject to review by the panel, as provided for in [R. 333 RoP](#).

##### **II.**

The application for panel review is not successful on the merits. The panel exercises the power to reject the application to order the Claimant to provide adequate security under [R. 158 RoP](#) in the same way as the judge-rapporteur.

##### **1.**

The Court has the discretion to order a security for legal costs and other expenses. In accordance with the case law of the UPC (see [CoA, Order of 17 September 2024 in case UPC CoA 217/2024, Audi./NST](#)), the Court, when exercising its discretion under [Art. 69\(4\) UPCA](#) and [Rule 158 RoP](#), must determine, in the light of the facts and arguments brought forward by the parties, whether the financial position of the claimant gives rise to a legitimate and real concern that a possible order for costs may not be recoverable and/or the likelihood that a possible order for costs by the UPC may not, or in an unduly burdensome way, be enforceable. The burden of substantiation and proof why an order for security for costs is appropriate in a particular case is on the Defendant making such a request, but that – once the reasons and facts in the request have been presented in a credible manner – it is up to the claimant to challenge these reasons and facts and in a substantiated manner, especially since that party will normally have knowledge and evidence of its financial situation. It is for the Claimant to argue that and why a security order would unduly interfere with its right to an effective remedy (see also [CoA, order of 29 November 2024 in case UPC CoA 548/2024, Arke J. SodaStream](#)).

##### **2.**

Applying the above principles to the case at hand, the Defendants' interests in obtaining a security does not outweigh the interest of the Claimant in view of the facts and arguments brought forward by the parties.

Reference can be made to the contested order for the reasons. The Defendants have not put forward any new convincing arguments.

There are no facts presented that would suggest that a decision on costs issued by the Court cannot be enforced in the People's Republic of China. The panel has considered the parallel decision of the Munich Local Division, but does not concur with the opinion expressed therein. The Defendants rightfully do not claim that there is any binding effect.

Although the Defendants correctly point out that service in the People's Republic of China is effected both by the UPC and by the national courts via the Hague Service Convention, and that therefore no distinction can be made in this respect. Still, there is no experience available with regard to the enforcement of decisions on costs of the UPC in the People's Republic of China. The mere reference to experience with the service of statements of claims by national courts is not sufficient in this regard. The Defendants mainly allege that enforcement of foreign judgments in China has proven to be enormously difficult. However, Defendants still have not presented concrete evidence that could support their allegation that enforcing an order of reimbursement of legal costs would be particularly difficult in the future.

##### **II.**

The appeal must be granted because the questions regarding the scope and requirements of requests for adequate security under [Rules 158](#) of the Rules of Procedure have not yet been decided uniformly and are of significance beyond the individual case.

**ORDER**

1. The application to dismiss the procedural [order of the judge-rapporteur dated 2 April 2025](#) and the application to order the Claimant to provide adequate security as requested on 7 October 2024 are rejected.
2. Leave to appeal for the Defendants is granted.

**ORDER DETAILS**

Order no. ORD\_19226/2025 in ACTION NUMBER:  
ACT\_42773/2024

UPC number: UPC\_CFI\_429/2024

Action type: Infringement Action

Related proceeding no. Application No.: 18705/2025

Application Type: APPLICATION\_ROP\_333

Sabine Klepsch Presiding Judge und Judge-rapporteur  
Dr. Stefan Schilling Legally qualified Judge  
Petri Rinkinen Legally qualified Judge  
Giorgio Checcacci Technically qualified Judge  
[...]

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