

# Global injunctions in Europe

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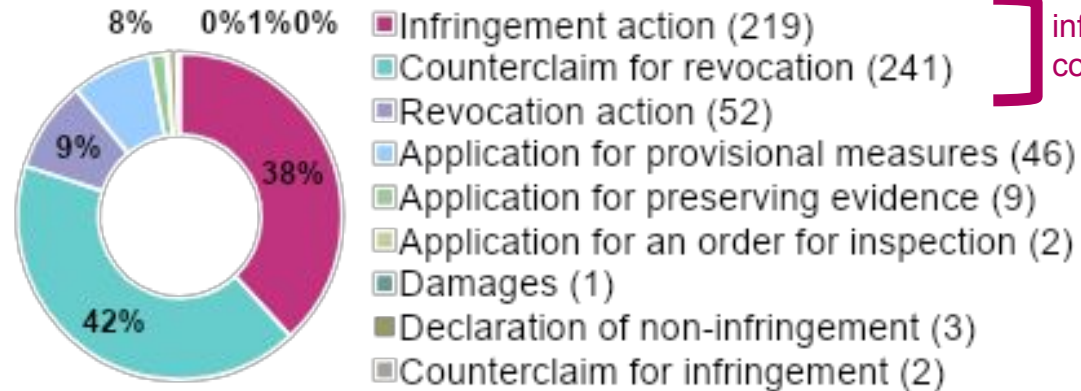
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COUR DE JUSTICE  
DE L'UNION EUROPÉENNE

# UPC Statistics on Preliminary and Permanent Injunctions

- As of November 2024, **almost 80% cases** received by UPC Court of First instance are infringement actions (460/585).

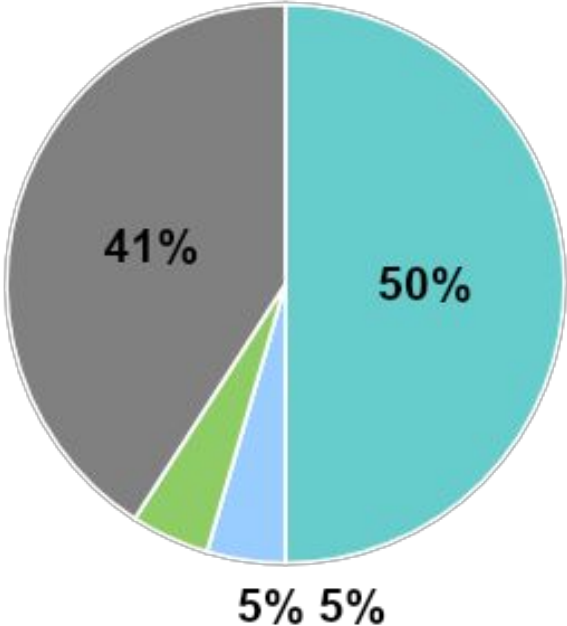


infringement cases + infringement with counterclaim(s) for revocation cases ≈ 80%

- Focus on preliminary injunctions (PI) as of 19 November 2024:
  - 10 permanent injunctions** issued
  - 12 preliminary injunctions** issued
    - 1 PI overturned** on appeal
    - 1 PI confirmed** on appeal
  - 11 PI applications** dismissed.
    - 2 PI** dismissed on lack of UPC jurisdiction (although this dismissal order has been overturned on appeal and reverted back to the court of first instance) or at the request of the applicant and not on the merits

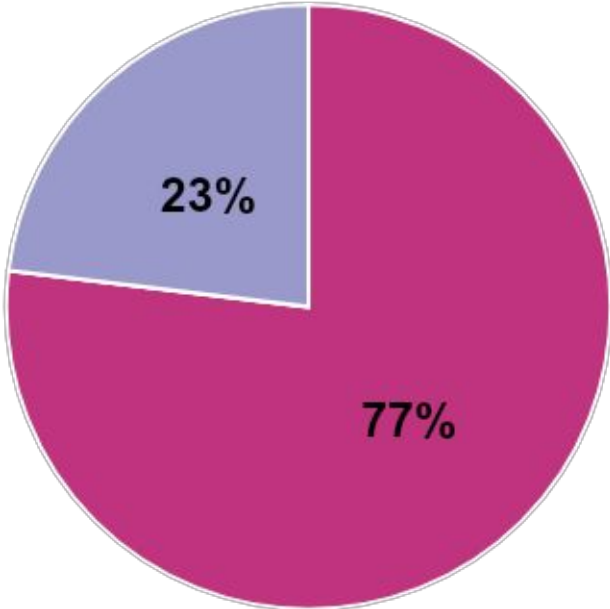
# Breakdown of UPC Statistics on preliminary and permanent injunctions

## Preliminary injunctions statistics



- Ordered (including overturned or confirmed)
- Ordered but overturned
- Ordered and confirmed
- Dismissed

## Permanent injunctions statistics



- Infringement and permanent injunction granted
- Infringement but no permanent injunction granted
- Infringement claim dismissed

# The BSH v. Electrolux Case



*BSH Hausgeräte GmbH*  
v.  
*Electrolux AB*  
(C-332/22)

## Brussels I Bis

- **Article 4(1)**: persons domiciled in a Member State shall be sued in the courts of that Member State.
- **Article 24(4)**: exclusive jurisdiction in proceedings concerned with the registration or validity of patents, irrespective of whether the issue is raised by way of an action or as a defence, from **the courts of the Member State in which the deposit or registration has been applied for**, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place.

## Background

- BSH is the owner of **EP 1 434 512** (vacuums cleaners) and filed an **infringement action** against Electrolux (domiciled in Sweden) before the Swedish IP Court.
- Electrolux defences:
  - The patent is **not valid**
  - Swedish courts have **no jurisdiction** over EP 512 regarding its non-Swedish parts
- Swedish Court agreed and **declined jurisdiction** for the non-Swedish parts of the patent
- BSH appealed to the Swedish Court of Appeal which referred the question to the ECJ: **do the Swedish courts have jurisdiction for ruling on infringement arising from non-Swedish parts of patents?**
- No decision yet but **two opinions** rendered by advocates general

# The Electrolux v. BSH Case

1) Do Member States' courts have jurisdiction to hear an infringement claim in relation to a patent registered in another Member State where the validity of the patent allegedly infringed is challenged by the opposing party?

<b>Option 1</b>	Article 24(4) Ø when invalidity claim is only raised as a defence to an infringement claim.	<ul style="list-style-type: none"> <li>• Inconsistent with wording of article 24(4)</li> <li>• Rejected by previous ECJ caselaw</li> </ul>
<b>Option 2 (broad reading)</b>	Invalidity defence = infringement proceedings become “concerned with the validity of patents” = exclusive jurisdiction.	<ul style="list-style-type: none"> <li>• Would result in infringement proceedings being almost always decided by the registration State</li> <li>• ≠ predictability because jurisdiction would depend on whether or not an invalidity defence has been raised</li> </ul>
<b>Option 3 (narrow reading)</b>	Court seized of the infringement claim has jurisdiction but cannot adjudicate the validity of the patent which can only be determined by the courts of the State of registration.	<p><b>Recommended solution</b></p> <ul style="list-style-type: none"> <li>• Safeguards the principle of article 4 on infringement case</li> <li>• Various legal systems derogate from the principle that jurisdiction to determine an action extends to defences</li> <li>• Practical measures can be adopted to address potential delays resulting from such bifurcation</li> </ul>

- **Practical consequences:**
- **Separate proceedings:** defence on invalidity cannot be brought in an infringement action but as separate proceedings before the court of registration.
  - **No systematic stay of the infringement action:** stay of infringement action only when the revocation claim has a genuine prospect of success. Otherwise, and to avoid undue delay, the court should assume that the patent is valid and rule accordingly on the infringement claim.
  - **Potential deadlines to introduce validity proceedings:** the infringement court should stay + set a deadline for the introduction of invalidity proceedings.
  - **Possible heightened recourse to provisional measures:** if stay of infringement action, the court can make use of protective provisional measures.

# The Electrolux v. BSH Case

## 2) Do Member State courts have jurisdiction over the validity of patents registered in third-States?

<b>Option 1</b>	Application by analogy of article 24 = no jurisdiction	<ul style="list-style-type: none"> <li>• Incompatible with the principle of strict interpretation of exceptions</li> <li>• Principle of mutual trust which justifies a Member State court declining jurisdiction in favor of another Member State court does not apply to third-States</li> </ul>
<b>Option 2</b>	Application of article 4 = court of the Member State of defendant's domicile have jurisdiction and are bound to exercise it (except in limited circumstances).	<ul style="list-style-type: none"> <li>• Inconsistent with the objectives of EU Law and the principle of sovereign equality</li> <li>• Incoherence in the fact that Member State courts would jurisdiction over the validity of a third-State patent but not on the validity of a Member State patent</li> </ul>
<b>Option 3 (reflex effect)</b>	Application of article 4 = courts have jurisdiction but may decline it if: (i) exclusive jurisdiction of third-State on patent validity following their own conflict rules + (ii) litigants may obtain effective redress before them.	<p><b>Recommended solution</b></p> <ul style="list-style-type: none"> <li>• Achieves purpose of Brussels I bis + ensures its consistency with higher norms</li> <li>• Gives narrow latitude to Member State courts who will decline jurisdiction if third-State courts can provide effective redress</li> </ul>
<b>Option 4</b>	Article 4 ≠ jurisdiction to Member State courts, <u>but</u> if the validity claim is raised as a defence, they can determine the issue as an incidental question for the sole purpose of the infringement action.	<ul style="list-style-type: none"> <li>• Practical difficulties when no jurisdiction of Member State courts and litigants have to go before a third-State court which does not offer fair trial guarantees</li> </ul>

### □ Practical consequences:

- If **sufficient guarantees** from third-State courts: Member State court will **decline** jurisdiction
- If **no sufficient guarantees** from third-State courts: Member State court will **rule on** the invalidity claim
- If status of the third-State court is unclear: **stay proceedings** until parties seize the competent third-State court and clear that it will rule on the matter