



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

25 February 2025*

(Reference for a preliminary ruling – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Article 4(1) – General jurisdiction – Article 24(4) – Exclusive jurisdiction – Jurisdiction in proceedings concerned with the registration or validity of patents – Infringement action – European patent validated in Member States and in a third State – Challenge to the validity of the patent raised as a defence – International jurisdiction of the court hearing the infringement action)

In Case C-339/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Svea hovrätt, Patent- och marknadsöverdomstolen (Svea Court of Appeal, Patent and Commercial Court of Appeal, Stockholm, Sweden), made by decision of 24 May 2022, received at the Court on 24 May 2022, in the proceedings

BSH Hausgeräte GmbH

v

Electrolux AB,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, K. Jürimäe, C. Lycourgos, I. Jarukaitis, M.L. Arastey Sahún, S. Rodin, A. Kumin, N. Jääskinen and M. Gavalec, Presidents of Chambers, E. Regan, Z. Csehi and O. Spineanu-Matei (Rapporteur), Judges,

Advocate General: N. Emiliou,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 22 June 2023, after considering the observations submitted on behalf of:

- BSH Hausgeräte GmbH, by M. Dahlman and T. Grennard, advokater, and R. Sedlmaier, Rechtsanwalt,
- Electrolux AB, by C. Harmsen, Rechtsanwalt, P. Larsson, B. Rundblom Andersson and J. Westerberg, advokater,

* Language of the case: Swedish.

- the French Government, by R. Bénard, A. Daniel and E. Timmermans, acting as Agents,
- the European Commission, by M. Gustafsson, S. Noë and I. Söderlund, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 February 2024,

having regard to the order of 16 April 2024 reopening the oral proceedings and further to the hearing on 14 May 2024,

after considering the observations submitted on behalf of:

- BSH Hausgeräte GmbH, by M. Dahlman and T. Grennard, advokater, and R. Sedlmaier, Rechtsanwalt,
- Electrolux AB, by C. Harmsen, Rechtsanwalt, and B. Rundblom Andersson, advokat,
- the French Government, by R. Bénard, A. Daniel and E. Timmermans, acting as Agents,
- the European Commission, by P. Němečková, S. Noë and I. Söderlund, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2024,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 24(4) 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 (OJ 2012 L 351, p. 1; ‘the Brussels I *bis* Regulation’).
- 2 The request has been made in proceedings between BSH Hausgeräte GmbH (‘BSH’), a company incorporated under German law, and Electrolux AB, a company incorporated under Swedish law, concerning the infringement of a European patent.

Legal context

European Union law

- 3 Recitals 13, 15 and 34 of the Brussels I *bis* Regulation state as follows:

‘(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.

...

(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. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

...

(34) Continuity between the [Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by the successive conventions on the accession of new Member States to that convention (“the Brussels Convention”)], [Council] Regulation (EC) No 44/2001 [of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1; “the Brussels I Regulation”)] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of the ... Brussels Convention and of the Regulations replacing it.’

4 Chapter II of that regulation, headed ‘Jurisdiction’, contains 10 sections. Article 4 of that regulation, which appears in Section 1 of Chapter II, headed ‘General provisions’, provides, in paragraph 1 thereof:

‘Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.’

5 Under Article 24 of the Brussels I *bis* Regulation, which is part of Section 6 of Chapter II, headed ‘Exclusive jurisdiction’:

‘The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

...

(4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, 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.

Without prejudice to the jurisdiction of the European Patent Office [(EPO)] under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that Member State;

...’

- 6 Article 27 of that regulation, which forms part of Section 8 of Chapter II thereof, headed ‘Examination as to jurisdiction and admissibility’, provides:

‘Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24, it shall declare of its own motion that it has no jurisdiction.’

- 7 In Section 9 of that chapter, headed ‘*Lis pendens* – related actions’, Articles 33 and 34 of the Brussels I *bis* Regulation determine the conditions under which a court of a Member State may stay the proceedings, or even dismiss the proceedings before it, or, conversely, continue those proceedings, where its jurisdiction is based in particular on Article 4 of that regulation and proceedings are pending before a court of a third State at the time when that court in a Member State is seised, respectively, of an action involving the same cause of action between the same parties as the proceedings in the court of the third State or of an action which is related to the action in the court of the third State.

- 8 Article 63(1) of that regulation, in Chapter V, headed ‘General provisions’, provides that, for the purposes of that regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat, central administration or principal place of business.

- 9 Article 73 of the Brussels I *bis* Regulation, which forms part of Chapter VII thereof, headed ‘Relationship with other instruments’, provides:

‘1. This Regulation shall not affect the application of the [Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Lugano on 30 October 2007 (OJ 2007 L 339, p. 3; “the Lugano Convention”)].

2. This Regulation shall not affect the application of the [Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed at New York on 10 June 1958].

3. This Regulation shall not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of [the Brussels I Regulation] which concern matters governed by this Regulation.’

Swedish law

- 10 The second subparagraph of Paragraph 61 of the Patentlagen (1967: 837) (Law on patents (1967: 837; ‘the Law on patents’) provides as follows:

‘If an action concerning patent infringement is brought and the person against whom the action is brought claims that the patent is invalid, the question of invalidity may be considered only after an action to that effect has been brought. The court shall order the party claiming that the patent is invalid to bring such an action within a specific period.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 11 BSH is the holder of European patent EP 1 434 512, which protects an invention in the field of vacuum cleaners. That patent was validated in Germany, Greece, Spain, France, Italy, the Netherlands, Austria, Sweden, the United Kingdom and Türkiye, which gave rise to the grant of national patents from those States.
- 12 On 3 February 2020, BSH brought an action against Electrolux alleging infringement of all the national parts of that European patent before the Patent- och marknadsdomstolen (Patent and Commercial Court, Sweden). BSH sought, inter alia, an order requiring Electrolux to cease using the patented invention in all States in which the same European patent had been validated and for Electrolux to be ordered to pay equitable remuneration and damages for the allegedly unlawful use of that invention.
- 13 Electrolux argues that those claims should be dismissed. It also pleaded that the claims relating to infringements of the national parts of patent EP 1 434 512 other than the Swedish part ('the foreign patents') were inadmissible.
- 14 In that regard, Electrolux argued that the foreign patents were invalid and that the Swedish courts did not have jurisdiction to rule on whether they had been infringed. According to Electrolux, the infringement action must be regarded as a dispute 'concerned with the ... validity of patents' within the meaning of Article 24(4) of the Brussels I *bis* Regulation, in so far as it is indissociable from the issue of the validity of the patents in question. Therefore, under that provision, the courts of the Member States in which the foreign patents have been validated have jurisdiction to hear BSH's claims relating to the infringement of those national patents. It follows that the Swedish court seised does not have jurisdiction to rule on the infringement of those patents.
- 15 In addition, according to Electrolux, the second subparagraph of Paragraph 61 of the Law on Patents, which provides that the issue of the validity of a patent must be examined in proceedings separate from the action alleging infringement of that patent, concerns only Swedish patents. Since Swedish law applies exclusively to Swedish patents, a Swedish court cannot, on the basis of that provision, hear a dispute in which the defendant argues, in the context of an infringement action, that a patent granted by a State other than the Kingdom of Sweden is invalid. It follows that BSH has to bring infringement actions relating to the foreign patents in the States in which they were validated.
- 16 By decision of 21 December 2020, the Patent- och marknadsdomstolen (Patent and Commercial Court) declared, on the basis of Article 24(4) and Article 27 of the Brussels I *bis* Regulation, that it did not have jurisdiction to hear the action alleging an infringement of patents validated in Member States other than the Kingdom of Sweden brought by BSH. It also declared that it did not have jurisdiction to hear the action alleging infringement of the patent validated in Türkiye ('the Turkish patent') on the ground that Article 24(4) is the expression of a principle of jurisdiction recognised at international level.
- 17 BSH appealed against that decision to the Svea hovrätt, Patent- och marknadsöverdomstolen (Svea Court of Appeal, Patent and Commercial Court of Appeal, Stockholm, Sweden), which is the referring court. BSH argued that Article 24(4) of the Brussels I *bis* Regulation is not applicable to 'pure' patent infringement actions, with the result that a court seised on the basis of Article 4(1) of the Brussels I *bis* Regulation may hear an action alleging infringement of a foreign patent even if it does not have jurisdiction to rule on an action for a declaration that that patent is

invalid. Furthermore, according to that party in the main proceedings, the Patent- och marknadsdomstolen (Patent and Commercial Court) could hear an action alleging infringement of a foreign patent which has not been granted or validated in a Member State, such as, in the present case, the Turkish patent, on account of the international jurisdiction arising under Article 4(1) of that regulation. It follows that that court had jurisdiction to rule on the infringement action in its entirety, including in respect of the Turkish patent. The principle that the courts of the State in which the defendant is domiciled have jurisdiction is recognised in international law.

- 18 Before the referring court, Electrolux reiterated, in essence, the position it had put forward before the Patent- och marknadsdomstolen (Patent and Commercial Court), arguing that Article 24(4) of the Brussels I *bis* Regulation applies to infringement proceedings in which the invalidity of the patent in question is relied on as a defence. The Swedish courts have no jurisdiction to hear the judicial proceedings as a whole, since the infringement and validity issues are indissociable.
- 19 The referring court has doubts as to whether the Swedish courts have jurisdiction. It is uncertain, first of all, whether Article 24(4) of the Brussels I *bis* Regulation must be interpreted as meaning that the expression ‘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’, also includes a patent infringement action where the defendant has raised a plea of invalidity in respect of that patent as a defence. That provision could be interpreted as meaning that the national court does not have jurisdiction to hear the action alleging infringement of all the national parts of the European patent other than the one validated in the Member State of that court, where the defendant has raised, in the context of that action, a plea in which it claims that those national parts are invalid. A single set of proceedings before one court would reduce the risk of conflicting decisions, but such an interpretation would oblige the applicant to bring infringement actions again in other Member States.
- 20 The referring court states that another possible interpretation would be to take the view that the national court seised of a patent infringement action, in the context of which the defendant raises a plea alleging that foreign patents are invalid, lacks jurisdiction to hear only that plea and could, therefore, rule on that infringement action. Such an interpretation is supported, in particular, by the need to interpret Article 24(4) of the Brussels I *bis* Regulation restrictively, as an exception to the general rule set out in Article 4(1) of that regulation, and by its objective of allowing disputes concerning the validity of patents to be heard only by the courts of the State of registration.
- 21 Next, if Article 24(4) of the Brussels I *bis* Regulation were to be interpreted as meaning that, where a plea of invalidity is raised in proceedings relating to a patent infringement action, that action comes within the exclusive jurisdiction provided for in that provision, the referring court is unsure whether that interpretation may be precluded by a provision of national law, such as the second subparagraph of Paragraph 61 of the Law on patents, which requires the defendant to bring a separate action seeking a declaration that that patent is invalid.
- 22 Lastly, the referring court is uncertain whether the fact that the European patent at issue in the main proceedings has been validated in a third State has any impact on its jurisdiction. According to that court, it is not clear whether Article 24(4) of the Brussels I *bis* Regulation applies to the courts of a third State – the Republic of Türkiye, in the present case – whereas Articles 33 and 34 of that regulation do refer to such courts. In that context, the referring court

notes that it could follow from the judgment of 1 March 2005, *Owusu* (C-281/02, EU:C:2005:120, paragraphs 26 and 35), that Article 4 of the Brussels I *bis* Regulation also applies to the courts of third States.

23 In those circumstances, the Svea hovrätt, Patent- och marknadsöverdomstolen (Svea Court of Appeal, Patent and Commercial Court of Appeal, Stockholm), decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 24(4) of [the Brussels I *bis* Regulation] to be interpreted as meaning that the expression “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” implies that a national court, which, pursuant to Article 4(1) of that regulation, has declared that it has jurisdiction to hear a patent infringement dispute, no longer has jurisdiction to consider the issue of infringement if a defence is raised that alleges that the patent at issue is invalid, or is the provision to be interpreted as meaning that the national court only lacks jurisdiction to hear the defence of invalidity?

(2) Is the answer to Question 1 affected by whether national law contains provisions, similar to those laid down in the second subparagraph of Paragraph 61 of the [Law on patents], which means that, for a defence of invalidity raised in an infringement case to be heard, the defendant must bring a separate action for a declaration of invalidity?

(3) Is Article 24(4) of the [Brussels I *bis* Regulation] to be interpreted as being applicable to a court of a third [State], that is to say, in the present case, as also conferring exclusive jurisdiction on a court in [Türkiye] in respect of the part of the European patent which has been validated there?’

Consideration of the questions referred

The first and second questions

24 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 24(4) of the Brussels I *bis* Regulation must be interpreted as meaning that a court of the Member State of domicile of the defendant seised, pursuant to Article 4(1) of that regulation, of an action alleging infringement of a patent granted in another Member State, still has jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent.

25 The referring court also seeks to ascertain whether the fact that a national procedural rule requires that defendant to bring a separate action seeking a declaration that that patent is invalid has any bearing on the answer to be given to that question.

26 In the latter regard, the Court notes at the outset that such a national rule cannot affect the interpretation of Article 24(4) of the Brussels I *bis* Regulation. That provision makes no reference to the law of the Member States, with the result that the expressions which it contains must be regarded as autonomous concepts of EU law which must be interpreted uniformly in all the Member States, irrespective of any national rule or procedure in that regard (see, to that effect, judgment of 8 September 2022, *IRnova*, C-399/21, EU:C:2022:648, paragraph 38 and the case-law cited).

- 27 According to settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraph 34 and the case-law cited).
- 28 In the specific context of the interpretation of the Brussels I *bis* Regulation, it is also necessary, in accordance with recital 34 of that regulation, to ensure continuity in the interpretation of the provisions which replaced those which may be regarded as ‘equivalent’ in the previous legislation, such as Article 16(4) of the Brussels Convention and Article 22(4) of the Brussels I Regulation, which have been replaced by Article 24(4) of the Brussels I *bis* Regulation (see, to that effect, judgment of 8 September 2022, *IRnova*, C-399/21, EU:C:2022:648, paragraphs 29 and 37).
- 29 In accordance with Article 4(1) of Regulation No 44/2001, persons domiciled in a Member State are to be sued in the courts of that Member State. Article 63(1) of that regulation states that a company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat, central administration or principal place of business.
- 30 However, that rule of jurisdiction of the courts of the Member State of the defendant’s domicile is laid down in Article 4(1) ‘subject to’ the other provisions of the Brussels I *bis* Regulation. While that rule of jurisdiction constitutes, in accordance with recital 15 of that regulation, a rule of principle, that regulation lays down a number of exceptions. Among those provisions, Article 24 of the same regulation provides that the courts of a particular Member State are to have exclusive jurisdiction of in respect of certain matters referred to in that article ‘regardless of the domicile of the parties’.
- 31 As regards, in particular, patents, in accordance with the wording of the first subparagraph of Article 24(4), ‘in proceedings concerned with the ... validity of patents ..., irrespective of whether the issue is raised by way of an action or as a defence, the courts of the Member State in which the ... registration [of the patent] 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’ (‘the Member State granting the patent’) are to have exclusive jurisdiction.
- 32 In accordance with the second subparagraph of that paragraph 4, the courts of each Member State are to have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that Member State.
- 33 Under the second subparagraph of Article 24(4) of the Brussels I *bis* Regulation, a European patent granted by the EPO in accordance with the procedure laid down in that regard by the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, that has subsequently been validated in a Member State is subject to the same rules of jurisdiction over validity as a national patent.
- 34 Furthermore, it is clear from the wording of the first subparagraph of Article 24(4) of that regulation, referred to in paragraph 31 of the present judgment, that, as regards the exclusive jurisdiction of the courts of the Member State concerned, it is irrelevant whether the issue of the registration or validity of the patent is raised by way of an action or as a defence.

- 35 Consequently, pursuant to Article 24(4), the courts of the Member State granting the patent are to have exclusive jurisdiction to hear a dispute concerned with the registration or validity of that patent, irrespective of whether that issue is raised by way of an action or as a defence in an infringement action before a court of another Member State.
- 36 That exclusive jurisdiction of the courts of the Member State granting the patent over disputes concerned with the registration or validity of that patent is justified both by the fact that the grant of patents involves the intervention of the national authorities, and by the fact that those courts are best placed to hear cases in which the dispute itself concerns the validity of the patent or whether or not deposit or registration has occurred. The courts of the Member State in which the registers are kept may rule, applying their own national law, on the validity of the patents which have been issued in that State. That concern for the sound administration of justice becomes all the more important in the field of patents since, given the specialised nature of that area, a number of Member States have set up a system of specific judicial protection, to ensure that those types of cases are dealt with by specialised courts (see, to that effect, judgment of 13 July 2006, *GAT*, C-4/03, EU:C:2006:457, paragraphs 22 and 23).
- 37 It follows that, where a court of the Member State in which the defendant is domiciled is seised, pursuant to Article 4(1) of the Brussels I *bis* Regulation, of an action alleging infringement of a patent granted by another Member State, in the context of which the defendant challenges, as its defence, the validity of that patent, that court cannot establish, indirectly, the invalidity of that patent, but must declare that it does not have jurisdiction, in accordance with Article 27 of that regulation, as regards the issue of the validity of that patent, in the light of the exclusive jurisdiction of the courts of the Member State in which the patent is granted, as provided for in Article 24(4) of that regulation (see, as regards Article 16(4) of the Brussels Convention, judgment of 13 July 2006, *GAT*, C-4/03, EU:C:2006:457, paragraphs 26 and 31).
- 38 However, the question arises whether, in such a situation, the court of the Member State in which the defendant is domiciled still has jurisdiction to hear that infringement action or whether it must declare that it does not have jurisdiction in respect of any aspect of dispute relating to the patent granted by another Member State.
- 39 In that regard, the Court notes that, in accordance with Article 24(4) of the Brussels I *bis* Regulation, the exclusive jurisdiction rule laid down therein covers only proceedings ‘concerned with the registration or validity of patents’.
- 40 The Court has held previously that that provision does not concern, inter alia, patent infringement actions, although the examination of such an action does involve a thorough analysis of the scope of the protection conferred by that patent in the light of the patent law of the State in which that patent was granted (see, to that effect, judgments of 15 November 1983, *Duijnste*, 288/82, EU:C:1983:326, paragraphs 22 and 23, and judgment of 8 September 2022, *IRnova*, C-399/21, EU:C:2022:648, paragraph 48).
- 41 It follows that the exclusive jurisdiction rule laid down in Article 24(4) of the Brussels I *bis* Regulation concerns only the part of the dispute relating to the validity of the patent. Accordingly, a court of the Member State in which the defendant is domiciled, which has jurisdiction, under Article 4(1) of the Brussels I *bis* Regulation, in an action alleging infringement of a patent granted in another Member State, does not lose that jurisdiction merely because, as its defence, that defendant challenges the validity of that patent.

- 42 The interpretation of Article 24(4) of the Brussels I *bis* Regulation accepted in the preceding paragraph of the present judgment is borne out by the background of that regulation and by the objectives pursued both by it and by that provision.
- 43 In the first place, the concept of ‘proceedings concerned with the ... validity of patents’, within the meaning of Article 24(4) of the Brussels I *bis* Regulation, must be interpreted strictly since it establishes exclusive jurisdiction which is an exception to the general rule, set out in Article 4 of that regulation, that the courts for the place where the defendant is domiciled have jurisdiction (see, to that effect, judgments of 15 November 1983, *Duijnste*, 288/82, EU:C:1983:326, paragraph 23, and judgment of 8 September 2022, *IRnova*, C-399/21, EU:C:2022:648, paragraph 39 and the case-law cited).
- 44 Moreover, an interpretation to the effect that a court of the Member State in which the defendant is domiciled loses its jurisdiction in an action alleging infringement of a patent granted in another Member State merely because that defendant challenges, indirectly, the validity of that patent would mean, as the Advocate General observed, in essence, in points 69 and 70 of his Opinion of 22 February 2024, that the exception provided for in Article 24(4) of the Brussels I *bis* Regulation would become the rule in many patent disputes.
- 45 As the Court observed in paragraph 17 of its judgment of 13 July 2006, *GAT* (C-4/03, EU:C:2006:457), the issue of the validity of the patent is very frequently raised as a defence in patent infringement actions. The application of the general rule of jurisdiction laid down in Article 4(1) of the Brussels I *bis* Regulation would therefore be limited to disputes in which such a ground of defence is not raised, whereas that rule is the expression of the jurisdiction of the courts of the Member State of the defendant’s domicile, which, as is apparent from recital 15 of that regulation, is the principle underlying the rules of jurisdiction contained in that regulation.
- 46 In the second place, it is apparent from recital 15 that the Brussels I *bis* Regulation seeks to ensure legal certainty by making the rules of jurisdiction highly predictable. Such an objective could not be achieved if it were accepted that, depending on the defence chosen by the defendant and, as the case may be, whenever the defendant considers it appropriate – in particular where the rules of procedure of the forum permit such a defence to be raised at any stage of the proceedings – a court of a Member State would lose its jurisdiction in an action of which it has properly been seised. As the Advocate General pointed out in points 73 and 74 of his Opinion of 22 February 2024, such an interpretation of Article 24(4) of the Brussels I *bis* Regulation would mean that, throughout the proceedings before that court, there is a risk that it will have to decline jurisdiction.
- 47 Furthermore, given that, under Article 27 of the Brussels I *bis* Regulation, a court of a Member State is required to declare that it has no jurisdiction due to the exclusive jurisdiction of a court of another Member State, without being able to refer the case to that court, such an interpretation would mean that a defendant could, by raising a plea of invalidity in respect of a patent granted in a Member State other than that of its domicile, bring to an end infringement proceedings which were nevertheless properly brought against it before a court of the Member State in which it is domiciled.
- 48 In the third place, the interpretation of Article 24(4) of the Brussels I *bis* Regulation accepted in paragraph 41 of the present judgment fully satisfies the objective of that provision – which, as noted in paragraph 36 of the present judgment, consists of allowing disputes which themselves concern the registration or validity of a patent to be heard only by the courts of the Member

State in which that patent is granted, which, on account of their physical and legal proximity, are best placed to hear those disputes – without going beyond what is necessary to achieve that objective.

- 49 In particular, as the Advocate General observed in points 75 and 77 of his Opinion of 22 February 2024, that interpretation, unlike the one referred to in paragraph 44 of the present judgment, allows the holder of a European patent, who believes that that patent has been infringed by the same defendant in several Member States, to concentrate all of its infringement claims and to obtain overall compensation in a single forum, thus avoiding, inter alia, the risk of divergent decisions.
- 50 Lastly, the interpretation of Article 24(4) of the Brussels I *bis* Regulation set out in paragraph 41 of the present judgment is not called into question by the fact that its application may cause infringement proceedings, which remain pending before a court of the Member State in which the defendant is domiciled, to be divided from the dispute relating to the validity of the patent granted in another Member State, for which the courts of the latter Member State have exclusive jurisdiction, pursuant to that provision.
- 51 As the Advocate General observed, in essence, in points 79 to 94 of his Opinion of 22 February 2024, such a division does not mean that the court of the Member State in which the defendant is domiciled that is seised of the infringement action should disregard the fact that an action for a declaration that the patent granted in another Member State is invalid has been duly brought by that defendant in that other Member State. If it considers it justified, in particular where it takes the view that there is a reasonable, non-negligible possibility of that patent being declared invalid by the court of that other Member State that has jurisdiction (see, by analogy, judgment of 12 July 2012, *Solvay*, C-616/10, EU:C:2012:445, paragraph 49), the court seised of the infringement action may, where appropriate, stay the proceedings, which allows it to take account, for the purpose of ruling on the infringement action, of a decision given by the court seised of the action seeking a declaration of invalidity.
- 52 In the light of the findings above, the answer to the first and second questions is that Article 24(4) of the Brussels I *bis* Regulation must be interpreted as meaning that a court of the Member State of domicile of the defendant which is seised, pursuant to Article 4(1) of that regulation, of an action alleging infringement of a patent granted in another Member State, does still have jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent, whereas the courts of that other Member State have exclusive jurisdiction to rule on that validity.

The third question

- 53 By its third question, the referring court asks whether Article 24(4) of the Brussels I *bis* Regulation must be interpreted as meaning that it applies to a court of a third State and, consequently, as conferring exclusive jurisdiction on that court as regards the assessment of the validity of a patent granted or validated in that State.
- 54 Under Article 24(4) of that regulation, the courts of the Member State which granted the patent have exclusive jurisdiction, inter alia, in proceedings concerned with the validity of patents, regardless of the domicile of the parties. As is apparent from paragraph 33 of the present judgment, that provision makes no distinction, in that regard, between a national patent granted in a Member State and a European patent validated in a Member State.

- 55 It follows from the wording of Article 24(4) of that regulation that the subject of that provision is the exclusive jurisdiction of the courts of the Member States in proceedings concerned with the registration or validity of patents granted by those Member States. As the Advocate General observed, in essence, in point 23 of his Opinion of 5 September 2024, the regime laid down by the Brussels I *bis* Regulation, like the acts which preceded it, is a system of jurisdiction internal to the European Union which pursues objectives specific to it, such as the proper functioning of the internal market and the establishment of an area of freedom, security and justice.
- 56 In that regard, the Court has held previously that Article 24(4) of the Brussels I *bis* Regulation cannot be regarded as applicable in a situation in which the patents concerned are granted or validated not in a Member State, but in a third State (see, to that effect, judgment of 8 September 2022, *IRnova*, C-399/21, EU:C:2022:648, paragraph 35).
- 57 Accordingly, it must be held that Article 24(4) of the Brussels I *bis* Regulation does not apply to a court of a third State and, consequently, does not confer any jurisdiction, whether exclusive or otherwise, on such a court as regards the assessment of the validity of a patent granted or validated in that State.
- 58 That said, in view of the doubts raised by the referring court concerning the interpretation of Article 4(1) of the Brussels I *bis* Regulation and in order to provide an answer that is of assistance to that court, it is still necessary to determine whether, where a court of a Member State is seised, on the basis of Article 4(1), of an action alleging an infringement of a patent granted or validated in a third State in which the issue of the validity of that patent is raised, as a defence, that court has jurisdiction, pursuant to Article 4(1), to rule on that defence.
- 59 In that regard, the Court recalls that, in order to come within the scope of the Brussels I *bis* Regulation, it is necessary for the legal relationship at issue to have an international element. This may result both from the location of the defendant's domicile and from the subject matter of the proceedings, which may be located in a third State, provided that that situation is such as to raise questions before a court of a Member State relating to the determination of international jurisdiction (see, to that effect, judgment of 8 September 2022, *IRnova*, C-399/21, EU:C:2022:648, paragraphs 27 to 29).
- 60 It is common ground that the legal relationship at issue in the main proceedings, which is the subject of the third question, involves international elements linked, first, to the applicant's domicile, in that it is situated in a Member State other than that of the defendant's domicile, and, second, to its subject matter, in that the patent at issue in the main proceedings has been validated in a third State, namely Türkiye. Therefore, that legal relationship comes within the scope of that regulation.
- 61 It follows that, under the general rule laid down in Article 4(1) of the Brussels I *bis* Regulation, the courts of the Member State in which the defendant is domiciled have, in principle, jurisdiction in an infringement action brought against that defendant by the holder of a patent granted or validated in a third State which is domiciled in another Member State. In addition, the jurisdiction of the court of the Member State thus seised does, in principle, by virtue of that general rule, extend to the question of the validity of that patent raised as a defence in the context of that infringement action.

- 62 Nevertheless, the Court observes that that jurisdiction in principle of the courts of the Member State in which the defendant is domiciled which are seised of such a dispute over the part of that dispute relating to the validity of a patent granted or validated in a third State may be limited by special rules such as those laid down in Article 73 of the Brussels I *bis* Regulation.
- 63 Thus, under Article 73(1) of that regulation, the courts of the States that are party to the Lugano Convention are to have exclusive jurisdiction to settle issues relating to the validity of a patent granted in one of the States that is a party to that convention, since that convention contains, in Article 22(4) thereof, a rule similar to the one set out in Article 24(4) of that regulation.
- 64 Similarly, a bilateral convention concluded between a Member State and a third State in the circumstances referred to in Article 73(3) of that regulation may stipulate that the courts of that third State are to have exclusive jurisdiction over disputes relating to the validity of patents granted in that third State.
- 65 Furthermore, in the circumstances referred to in Articles 33 and 34 of the Brussels I *bis* Regulation, a court of a Member State whose jurisdiction is based on Article 4 of that regulation may be prompted to recognise the jurisdiction of the courts of third States, by staying proceedings, or even terminating the proceedings before it, where proceedings are already pending before a court of a third State at the time when that first court is seised either of an application between the same parties involving the same subject matter and cause of action as the application brought before the court of the third State, or of an application related to the one brought before the court of the third State.
- 66 Subject to verification by the referring court, no restriction provided for by such special rules seems to have to be taken into consideration in the present case. The Republic of Türkiye is not a State that is party to the Lugano Convention and the file before the Court contains no indication as to whether there is an applicable convention between the Kingdom of Sweden and that third State or as to whether there are proceedings pending before a court of that third State, within the meaning of Articles 33 and 34 of the Brussels I *bis* Regulation.
- 67 Furthermore, as the Advocate General observed in point 23 of his Opinion of 22 February 2024, the Convention on the Grant of European Patents, signed at Munich on 5 October 1973 does not contain any provision expressly defining or restricting the jurisdiction of the courts of the parties to that convention in cross-border disputes relating to the European patent.
- 68 That said, it is necessary to determine whether the jurisdiction, based on Article 4(1) of the Brussels I *bis* Regulation, of a court of a Member State to rule on the issue of the validity of a patent granted or validated in a third State where that question is raised as a defence in the context of an infringement action brought before that court, is restricted by general international law.
- 69 In that regard, the Court recalls that the rules and principles of general international law are binding, as such, upon the EU institutions and form part of the EU legal order (see, to that effect, judgments of 27 February 2018, *Western Sahara Campaign UK*, C-266/16, EU:C:2018:118, paragraph 47, and of 7 May 2020, *Rina*, C-641/18, EU:C:2020:349, paragraph 54 and the case-law cited). It follows that a measure adopted by virtue of the powers of the European Union, such as the Brussels I *bis* Regulation, must be interpreted, and its scope limited, in the light of those rules and principles (see, to that effect, judgments of 24 November 1992, *Poulsen and Diva Navigation*,

C-286/90, EU:C:1992:453, paragraph 9, and of 3 September 2008, *Kadi and Al Barakaat International Foundation v Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 291).

- 70 First, the Court notes that it follows from its case-law that the jurisdiction of the courts of a Member State, based on the fact that the defendant is domiciled in that Member State, to rule in a dispute which is connected, at least in part, because of its subject matter, with a third State, is not contrary to the international law principle of the relative effect of treaties (see, to that effect, judgment of 1 March 2005, *Owusu*, C-281/02, EU:C:2005:120, paragraphs 30 and 31).
- 71 Second, it must be observed that that jurisdiction of the court of the defendant's domicile must be exercised without infringing the principle of non-interference, according to which a State may not interfere in cases which essentially come within the national jurisdiction of another State.
- 72 In the exercise of its powers, a State may grant, validate and register intellectual property rights which, within that State, confer on their holder exclusive intellectual property rights, such as a patent. It is also apparent from Mr P. Jenard's report on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1979 C 59, p. 1) that one of the reasons why Article 16(4) of that convention – to which Article 24(4) of the Brussels I *bis* Regulation corresponds – conferred exclusive jurisdiction on the courts of a State that is a party to that convention which has granted a patent to rule on disputes concerned with the registration or validity of that patent is that 'the grant of a national patent is an exercise of national sovereignty'. Furthermore, as has been pointed out in paragraph 36 of the present judgment, that exclusive jurisdiction is justified both by the fact that the grant of patents involves the intervention of the national authorities, and by the fact that those courts are best placed to hear cases in which the dispute itself concerns either the validity of the patent or the issue of whether or not deposit or registration has occurred.
- 73 Where a judicial decision annulling a patent affects the existence or, in the event of annulment in part, the content of those exclusive rights, only the courts having jurisdiction in that State may give such a decision. It follows from the principle of non-interference referred to in paragraph 71 of the present judgment that only the courts of the third State in which a patent is granted or validated have jurisdiction to declare that patent invalid by a decision that may cause the national register of that State to be amended as regards the existence or content of that patent.
- 74 By contrast, the court of the Member State in which the defendant is domiciled which is seised, as in the case in the main proceedings, on the basis of Article 4(1) of the Brussels I *bis* Regulation, of an infringement action in the context of which the issue of the validity of a patent granted or validated in a third State is raised as a defence, does have jurisdiction to rule on that issue if none of the restrictions referred to in paragraphs 63 to 65 of the present judgment is applicable, given that the decision of that court sought in that regard is not such as to affect the existence or content of that patent in that third State, or to cause its national register to be amended.
- 75 As the Advocate General observed in point 62 of his Opinion of 22 February 2024 and as the parties to the main proceedings and the European Commission stated at the hearing on 14 May 2024 before the Court, that decision has only *inter partes* effects, that is to say, a scope limited to the parties to the proceedings. Thus, where the issue of the validity of a patent granted in a third State is raised as a defence in an action alleging infringement of that patent before a court of a Member State, that defence seeks only to have that action dismissed, and does not seek

to obtain a decision that will cause that patent to be annulled entirely or in part. In particular, under no circumstances can that decision include a direction to the administrative authority responsible for maintaining the national register of the third State concerned.

- 76 It follows from all the findings above that the answer to the third question is that Article 24(4) of the Brussels I *bis* Regulation must be interpreted as not applying to a court of a third State and, consequently, as not conferring any jurisdiction, whether exclusive or otherwise, on such a court as regards the assessment of the validity of a patent granted or validated by that State. If a court of a Member State is seised, on the basis of Article 4(1) of that regulation, of an action alleging infringement of a patent granted or validated in a third State in which the question of the validity of that patent is raised, as a defence, that court has jurisdiction, pursuant to Article 4(1), to rule on that defence, its decision in that regard not being such as to affect the existence or content of that patent in that third State or to cause the national register of that State to be amended.

Costs

- 77 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. Article 24(4) 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**

must be interpreted as meaning that a court of the Member State of domicile of the defendant which is seised, pursuant to Article 4(1) of that regulation, of an action alleging infringement of a patent granted in another Member State, does still have jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent, whereas the courts of that other Member State have exclusive jurisdiction to rule on that validity.

- 2. Article 24(4) of Regulation No 1215/2012**

must be interpreted as not applying to a court of a third State and, consequently, as not conferring any jurisdiction, whether exclusive or otherwise, on such a court as regards the assessment of the validity of a patent granted or validated by that State. If a court of a Member State is seised, on the basis of Article 4(1) of that regulation, of an action alleging infringement of a patent granted or validated in a third State in which the question of the validity of that patent is raised, as a defence, that court has jurisdiction, pursuant to Article 4(1), to rule on that defence, its decision in that regard not being such as to affect the existence or content of that patent in that third State or to cause the national register of that State to be amended.

[Signatures]