

Dispute Resolution in the Nordic Countries



The choice of regional and local courts respectively in light of the UPC

– *From a practical point of view* –

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Case: The Nordic Snow Shovel Battle

SNOWMASTERS AB

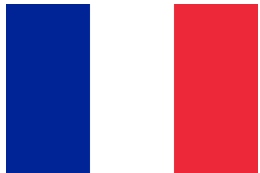
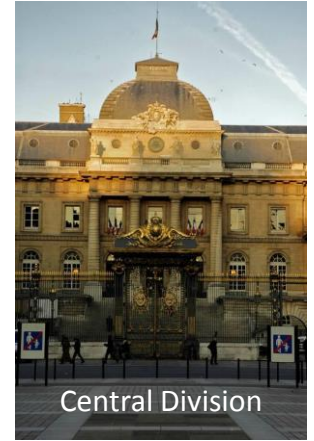
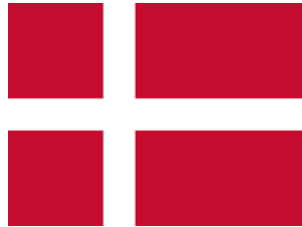


- Global manufacturer and seller of snow shovels
- Swedish limited liability company domiciled in Kiruna (Sweden)
- Main product a global bestseller, unique snow shovel “SnowMaster2000”
- Holder of a European patent EP 98765432 “*Snow shovel*” filed on 5 February 1999 and granted on 3 June 2005
- EP is a product patent covering “SnowMaster 2000”
- EP validated in SE, FI, DK, DE, FR, ES, and IT

P PRODUCTION OY



- Global manufacturer and seller of plastic products for gardening and winter use
- Finnish limited liability company domiciled in Sotkamo (Finland)
- Developed its new snow shovel product the SnowExpert2015 during 2012
- Production plant in Finland and distribution center in Sweden
- Marketing of product, e.g., in Sweden, Germany, Finland, the Netherlands, and Italy.



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Transitional Regime (Art. 83 of the UPCA)

"ARTICLE 83

Transitional regime

- (1) *During a transitional period of seven years after the date of entry into force of this Agreement, an action for infringement or for revocation of a European patent or an action for infringement or for declaration of invalidity of a supplementary protection certificate issued for a product protected by a European patent may still be brought before national courts or other competent national authorities.*
- (2) *An action pending before a national court at the end of the transitional period shall not be affected by the expiry of this period.*
- (3) *Unless an action has already been brought before the Court, a proprietor of or an applicant for a European patent granted or applied for prior to the end of the transitional period under paragraph 1 and, where applicable, paragraph 5, as well as a holder of a supplementary protection certificate issued for a product protected by a European patent, shall have the possibility to opt out from the exclusive competence of the Court. To this end they shall notify their opt-out to the Registry by the latest one month before expiry of the transitional period. The opt-out shall take effect upon its entry into the register.*
- (4) *Unless an action has already been brought before a national court, proprietors of or applicants for European patents or holders of supplementary protection certificates issued for a product protected by a European patent who made use of the opt-out in accordance with paragraph 3 shall be entitled to withdraw their opt-out at any moment. In this event they shall notify the Registry accordingly. The withdrawal of the opt-out shall take effect upon its entry into the register.*
- (5) *[---]"*

National Courts and the UPC: Comparison Finland – Sweden

	National Courts		UPC		
	Finland	Sweden	Finland	Nordic-Baltic	Central
Name:	Market Court	Patent and Market Court	Local Division	Regional Division	Central Division
Location:	Helsinki	Stockholm	Helsinki	Stockholm	Paris/London/Munich
Judges:	Specialized	Specialized	Specialized	Specialized	Specialized
Technical judge:	Yes	Yes	Possible	Possible	Possible
Language:	FI, SE	SE	FI, SE, EN	EN	Language of the patent (EN)
Court fee:	EUR 2 000	SEK 2 800 (EUR 280)	> EUR 11 000	> EUR 11 000	> EUR 11 000
<i>Ex parte</i> PI:	2 – 3 days/week	2 – 3 days/week	N/A	N/A	N/A
Regular PI:	1 – 3 months	1 – 4 months	N/A	N/A	N/A
Injunction:	12 –18 months	12 –18 months	N/A	N/A	N/A
Bifurcation:	No*	No*	Possible	Possible	Possible

*Separate actions; handled jointly.

Parallel Jurisdiction under the Transitional Period

Snowmasters AB

OK?

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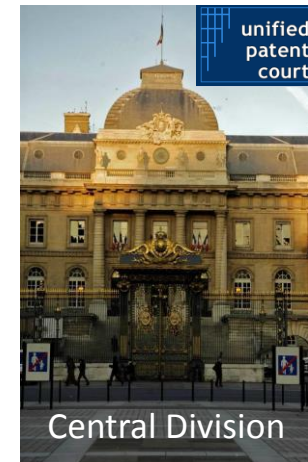
Action for provisional measures

- Art. 83(1) and Art. 32 of the UPCA
- Art. 71a, 71c(2), and 35 of the Brussels I Regulation

Revocation action



Preliminary injunction and seizure



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Parallel Jurisdiction under the Transitional Period

Snowmasters AB

OK?

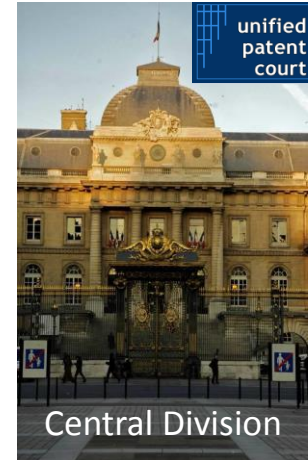
Infringement action

- Art. 83(1) UPCA
- Art. 71c(2) BIR
- *Not the same action between the same parties?*
- *Stay the proceedings in Sweden (Art. 30 BIR)?*



P Production Oy

Revocation action



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Forum Choice within the UPC?

Snowmasters AB

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OK?

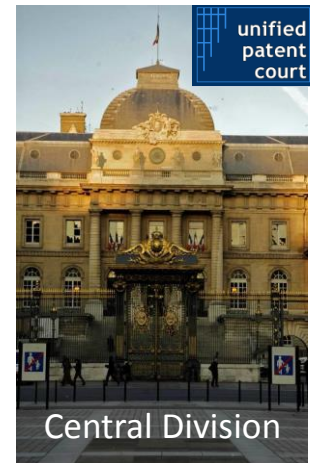
Infringement action

• Art. 33(5) UPCA

Revocation action

OR

OR ?



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To "Opt-In" or to Opt-Out?

Snowmasters AB

P Production Oy

Infringement action

Factual opt-out Art. 83(4) UPCA
- *Bundle or the national right?*

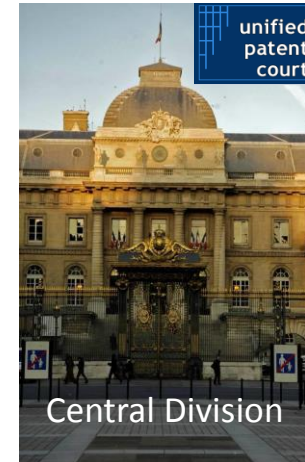
Revocation action

Revocation action

Torpedo factual "opt-in"
Art. 83(3) UPCA



Torpedo factual opt-out Art. 83(4) UPCA
- *Bundle or the national right?*



Questions and Comments

Thank You!

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