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UPC's first ruling on an infringement action by the Paris local division

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Just over a year after the UPC Agreement came into force, the Paris local division handed down UPC's first decision on an infringement action. Unfortunately for the patentee, the court dismissed his action, ruling that the patent invoked was null and void.

In this case, two manufacturers, DEXCOM and ABBOTT, were involved in a dispute over glucose monitoring devices. DEXCOM claimed that patent [EP 3 435 866](#) was infringed by monitoring devices marketed by ABBOTT. In reply, ABBOTT claimed that the patent was invalid. The Paris division ruled in favor of the defendant, holding that the patent in question should be revoked. This decision applies to all 17 countries currently members of UPC.

Some will point out that it gives concrete expression to the fears that patentees had of the UPC system, which explain the large number of carve-outs before it came into force. At the same time, while it's true that caution is always called for, and that the use of this jurisdiction involves more risks than with multiple national lawsuits on European territory (i.e., cross-border actions), I'm not sure that the case reported here can be held up as an example of its kind. Indeed, this is a large-scale case, in which similar patents have been asserted for various territories, and, unfortunately for the patentee, in which various jurisdictions have already adopted a position identical to that of the Paris local division. Without entering into the debate on the merits, we can simply note that German and English judges, often cited, rightly or wrongly, as "pro-patentees", had already adopted positions similar to that of the Parisian judges for national parts of the same European patent (an annulment decision by the English High Court and an unfavorable preliminary opinion by the German Federal Patent Court).

It could also be noted that fees to reimburse will be fixed in a separate procedure and that Paris division rejected the provision of 100,000 euros claimed by ABBOTT, since, according to the Court, the interim award was not sufficiently justified by the claimant.

Eventually, the decision handed down by the Paris local division seems simply to be in line with previous decisions on patent EP'866. But, still, this position could change in Luxembourg if DEXCOM lodges an appeal.

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