



Key Patent Innovations, like the rest of Europe, is gearing up for a Summer of Sport with the [Summer Olympics](#) (Paris 2024) and [UEFA European Football Championship](#) (Euro) both rapidly approaching. Even the [Unified Patent Court](#) (UPC) is set for exciting summer results as the final decisions of the first actions (filed roughly one year ago) start arriving.

The UPC has also embraced the European Summer of Sport through some of the technology it has considered in its actions. For example, we noted a recent UPC action relating to technology that assists a referee when deciding whether a football player is offside. To make such a decision normally requires a referee noting where players are positioned at the very moment a football is kicked. Given the football is normally kicked from a location well separated from the relevant players, and humans cannot look at two different locations at once, deciding on whether a player is offside is tough and error prone. This is a major concern, as getting offside decisions wrong can have a huge influence on the outcome of matches – as any [Bayern Munich](#) fan will be “delighted” to explain.

Let me tell you about European Patent [EP1944067](#), owned by Dutch company Ballinno, which promises a solution to this age-old problem. Their innovative solution uses a sound sensor inside a football to detect kicks which are signalled to a referee. Potentially, this then allows the referee to ignore the ball and focus on player positioning hereby allowing more accurate assessment of whether a player is offside.

Ballinno filed an action alleging their patent was infringed by the Union of European Football Associations (UEFA) and Kinexon. Kinexon being the company that worked with Adidas to develop the [Fussballliebe](#): UEFA’s official Euro 2024 match ball. The Fussballliebe is a smart football that has a sensor inside to provide “*Connected ball Technology*” and supplement semi-automatic offside detection. Interestingly, this is not the first time the Connected Ball Technology has been used in a major football competition. For example, the [2022 World Cup match ball](#) (below) was similarly equipped. You can also see other examples of Kinexon’s innovation in their patents e.g., [US11150321](#).



Returning to the recent Ballinno action, this patent infringement action was filed at the Hamburg Local Division of the UPC. Ballinno also requested a preliminary injunction (PI). A PI is a court order that can be issued and enforced whilst a main infringement action proceeds separately.

Potentially, such a PI might have stopped the defendants (UEFA and Kinexon) being able to use their referee-assisting offside detecting technology in the upcoming Euro. Therefore, if Ballinno secured a PI, it might be able to exert significant pressure on the defendants to settle before the Euro commenced.

At the UPC, there is a basic principle that the losing party pays at least part of the costs of the winning party. Prior to the hearing on the PI for the Ballinno action, the defendants (Kinexon) requested that Ballinno provide security for costs of €200,000 arguing that this amount of security was necessary to ensure Ballinno could reimburse the costs the defendants might incur in opposing the action. The defendants pointed out that the sole shareholder of Ballinno was one of the inventors of the European Patent and alleged that Ballinno had no known assets other than the patent in suit. Ballinno countered including arguing that requiring security would limit access to justice, especially for small enterprises.

Previous UPC orders have stressed the need to balance access to justice with ensuring defendants are able to enforce potential future cost orders. For the Ballinno action, the Hamburg Local Division [ordered](#) that security was required to proceed based on a perceived insolvency risk to Ballinno. The security was however set at a relatively modest level of €56,000.

This order seems to fit a rough UPC trend whereby the financial strength of the relevant parties is a major factor in the decision of whether to require security. If the UPC judges consider a party may be unable to pay costs if it loses, they may well decide security is required before the action proceeds. On the other hand, UPC judges seem unlikely to be concerned about a financially secure party. Hence, a financially secure party is unlikely to face orders for security because such a party will clearly be able to pay costs if necessary.

Limiting security orders to when they are actually required seems pragmatic and reasonable (it also reduces the risk of clashes with the EU's Enforcement Directive, as an earlier UPC order [noted](#)). However, divergence on security questions within the UPC are clear: on the amounts ordered, and on whether security is available for PI applications. Divergence is to be expected at this early stage in the UPC case law development. It is therefore likely that we will see further clarification about security orders in the future, possibly from the UPC's Court of Appeal.

In the Ballinno action, following the security order, the Hamburg UPC Local Division went ahead and decided on Ballinno's PI application on the 3<sup>rd</sup> June 2024: refusing the PI application. The associated reasoning for the refusal has not yet been published. However, the speed of the decision on the PI is notable. The Ballinno action was filed on 18 April 2024 and the PI was decided less than seven weeks!

While there may yet be an appeal, with the opening game of the Euro on 14<sup>th</sup> June 2024, it seems highly likely that the Euro will have all its assistive technology operating as normal. Is this something to celebrate? Well ... that probably depends on the outcome and who you support.

[Anthony Kavanagh](#) welcomes any questions you might have with respect to the above.

