



Local Division Munich
UPC_CFI_298/2023
ACT_568963/2023

Procedural Order
of the Court of First Instance of the Unified Patent Court
Local Division Munich
issued on 11 April 2025

Headnotes:

1. In light of Rule 30.1 (c) RoP, a total of 4 auxiliary requests is indisputably in each case *reasonable in number*.
2. The longer a proceeding has already lasted, the greater weight is given to the right to be heard within a reasonable period of time in a fair proceeding when deciding whether to continue the proceeding.

Claimant:

1. **10x Genomics, Inc.**
2. **President and Fellows of Harvard College**

represented by: Tobias Wuttke

Defendants:

1. **Bruker Spatial Biology, Inc.**
2. **LUXENDO GmbH**
3. **BRUKER NEDERLAND B.V.**
4. **Bruker Corporation**

represented by: Oliver Jan Jüngst

Language of the proceedings:

English

Patent at issue:

EP 4 108 782

Deciding Judge:

This order has been issued by presiding judge Matthias Zigann and the legally qualified judges András Kupecz and Tobias Pichlmaier

Points at issue:

Continuation of the written procedure

Facts

The infringement action on which this proceedings are based was filed on

31 August 2023.

In the meantime, the proceedings had to be stayed for many months, initially due to insolvency on the part of the former defendants and later with regard to the oral hearing before the Opposition Division of the EPO.

On 19 August 2024 claimant 2) filed 55 auxiliary requests within the application to amend the patent at issue. The judge-rapporteur thereupon and with reference to Rule 30.1 c) RoP ordered claimant 2) to reduce the number of auxiliary requests to a one-digit number. The Panel modified this order within a proceeding according to Rule 333 RoP. Claimant 2) was then ordered to submit auxiliary requests within 20 days after the decision of the Opposition Division of the EPO. This order did not include a restriction on the number of auxiliary requests. Defendants have appealed against this order. This appeal is pending.

Already in November 2024, the parties agreed on 17 September 2025 as the date for the oral hearing in the proceedings before the Court of First Instance.

On 20 March 2025, the Opposition Division maintained the patent at issue in a limited version

On 9 April 2025, claimants submitted a revised application to amend the patent with a total of 4 auxiliary requests (App_17184/2025; App_17187/2025; App_17189/2025) and an application for leave to change claim (App_17191/2025).

Reasons

The panel is aware that the Court of Appeal is dealing with the appeal dated 27 January 2025 concerning the admissibility of the *former* application to amend the Patent and the quantity of auxiliary requests.

The panel is also aware that the court of appeal suggested to await the decision of the Court of Appeal before submitting the revised application and/or drafting a response to such revised application. However, this suggestion was made at a time when the Court

of Appeal could not have known that the number of auxiliary requests would be reduced to just four.

It cannot be ignored that the filing of new auxiliary requests on 9 April 2025 has created a new situation: Claimant now has filed a one-digit number of auxiliary requests (4).

This is indisputably in each case a reasonable number of auxiliary requests according to Rule 30.1 c) RoP.

In view of

- the fact that there are now only 4 auxiliary requests remaining in the proceedings,
- the fact that the proceedings have already lasted almost two years due to the suspensions that have occurred,
- the fact that a date for an oral hearing has already been agreed with the parties, which will become obsolete if the proceedings are not continued without further delay,
- the fact that the Local Division is already booked up in such a way that it would otherwise not be possible to hold the oral hearing this year,
- the right of the parties to be heard in a fair hearing within a reasonable period of time,

the local division exercises its discretion in conducting the proceedings to order the immediate continuation of the proceedings.

This decision is based on the consideration that the Unified Patent Court should be devised to ensure expeditious and high quality decisions, striking a fair balance between the interests of both parties and taking into account the need for proportionality and flexibility.

This specifically means that the longer a proceeding has already lasted, the greater weight is given to the right to be heard within a reasonable period of time in a fair proceeding when deciding whether to continue the proceeding.

Order

1. The immediate continuation of the written procedure is ordered.
2. The deadline for defendants to lodge a reply to claimant's written submissions dated 9 April 2025 (App_17184/2025; App_17187/2025; App_17189/2025 and App_17191/2025) is set for **11 June 2025**.
3. The deadline for claimants to lodge a reply to defendant's written submission, that will be received not later than 11 June 2025, is set for **11 July 2025**.
4. The deadline for defendants to lodge a reply to claimant's written submission, that will be received not later than 11 July 2025, is set for **11 August 2025**.
5. The date for the oral hearing as agreed with the parties (17/18 September 2025) remains unchanged.
6. The parties are requested to indicate by **9 May 2025** whether they will be available for an interim conference (by video conference) on 14 August 2025. The judge-rapporteur offers Monday, 18 August 2025, as an alternative date for an interim conference. If the parties are of the opinion that an interim conference is not required, this must also be stated until 9 May 2025.

Dr. Matthias Zigann Presiding Judge	
András Kupecz Legally qualified Judge	
Tobias Pichlmaier Legally qualified Judge	