



UPC Court of Appeal
UPC_CoA_36/2024
APL_4881/2024
APP_7573/2023

ORDER

**of the Court of Appeal of the Unified Patent Court
issued on 22 February 2024
concerning a request (APP_7573/2024) for shortening
of a time period
pursuant to R.225(e), R.9.3(b) Rules of Procedure (expedition of the appeal)**

HEADNOTES:

In the appeal against an order allowing a request for extension of the main action with another patent, a request by the Applicants applied for on the last day of the time periods under R. 224.1(b) and R.224.2(b) RoP for shortening of a time period pursuant to R.9.3 (b) RoP for lodging the Statement of response is dismissed in view of the interests of the Respondent and principles of due process, even though this could mean that in the proceedings before the Court of First Instance the Statement of defense has to be lodged before a decision in the appeal proceedings has been rendered.

KEYWORDS:

Expedition of the appeal, R.225 (e), R.9.3 (b) RoP

APPLICANTS / DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE:

Netgear Inc.

Netgear Deutschland GmbH

Netgear International Limited

Herinafter also jointly referred to as: Netgear (in singular)''

represented by: Rechtsanwalt Dr Stephan Dorn, Freshfields Bruckhaus Deringer Rechtsanwälte, Düsseldorf

RESPONDENT / CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Huawei Technologies Co. Ltd

Hereinafter also referred to as Huawei,

represented by: Rechtsanwalt Dr Tobias J. Hessel, Clifford Chance, Düsseldorf

LANGUAGE OF THE PROCEEDINGS:

German

PATENTS AT ISSUE

EP 3611989

EP 3678321

PANEL

Second Panel

DECIDING JUDGES:

This order has been adopted by

Rian Kalden, Presiding judge and judge rapporteur

Ingeborg Simonsson, legally qualified judge

Patricia Rombach, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Date: 18 January 2024 (uploaded on 23 January 2023; ORD_597550/2023 in related proceedings APP_595631/2023 to the main action ACT_459771/2023)
- Action number attributed by the Court of First Instance: UPC_CFI_9/2023

SUMMARY OF FACTS

In the impugned order, the panel of the Court of First Instance of the Local Division Munich, in a procedure pursuant to Rule 333.1 RoP (panel review; APP_595631/2023) confirmed the decision of the judge rapporteur (ORD_589178/2023 dated 11 December 2023) to grant the extension of the main action with EP 3678321, as requested by Huawei (APP_587438/2023 dated 23 November 2023). The main infringement action, initiated by Huawei on 1 June 2023, was initially only based on EP 3611989.

INDICATION OF PARTIES' REQUESTS

Netgear has appealed the order and, in the main proceeding before the Court of Appeal, APL_4881/2024, requests that the Court of Appeal:

1. annul the order of the Local Division Munich ORD_597550/2023 (in proceedings App_595631/2023), as well as the order of the judge-rapporteur of the Local Division Munich ORD_589178/2023 (in proceedings APP_587438/2023),
2. reject Huawei's application for admission of the extension of the action of 23 November 2023,
3. annul the order of the Munich Local Division ORD_593106/2023 (in proceedings ORD_593105/2023) to separate the subject matter of the extension of the action; [this request is subject of APP_7580/2024 in APL_5395/2023 UPC_CoA_44/2024]
4. in the alternative, in the event that the Court of Appeal assumes the admissibility of the extension of the action, to order a reasonable time limit for the appellants' defense, which allows the appellants to assert all intended defenses to which they would be entitled against a new action, also against the subject matter of the extension of the action;
5. to order the expedition of the appeal proceedings concerning applications for leave to appeal 1 to 4 pursuant to R. 225(e) in conjunction with R.9.3(b) RoP and to shorten the time limits for commenting in these appeal proceedings at the discretion of the Court of Appeal [as per APP_7573/2024].

Netgear argues that it has an urgent interest and it states: ‘the Local Division Munich assumes that the time limit for filing a defense will expire on 11 March 2024, i.e. less than five weeks after the filing of this appeal against order ORD_597550/2023. There is therefore concern that, without an expedition order, a decision by the Court of Appeal on the applications for appeal will not be possible prior to the end of the term for lodging the defense.’ Netgear requests that the term for filing a Statement of response is shortened and that a date for the hearing is set promptly.

POINTS AT ISSUE

Request for a shortening of a time period (expedition of the appeal), R.225 (e), R.9.3 (b) RoP

GROUNDINGS FOR THE ORDER

1. The request for a shortening of the time period is admissible.
2. There is no need to consult Huawei about this request.
3. Pursuant to R.224.2 (b) a respondent has 15 days from service of the Statement of grounds of appeal to lodge a Statement of response.
4. R.9.3 (b) empowers the Court to shorten any time period on a reasoned request by a party.
5. Netgear filed the request for expedition of the appeal, at the same time as it lodged the Statement of appeal, containing the grounds of appeal, on 7 February 2024 after business hours, thus having used the full 15 days available under R.224.1(b) and R.224.2(b) RoP.
6. The Court of Appeal is of the opinion that Netgear has with its request insufficiently taken into account the interests of Huawei to be given sufficient time to properly prepare its Statement of response, in proportion to the time Netgear has itself taken to prepare its Statement of grounds of appeal. Allowing the request for expedition of the appeal would be contrary to the principles of proportionality, fairness and equity that the court has to take into account when applying the Rules of Procedure. The Court of Appeal is aware that this could mean that the Statement of defence will have to be lodged in the proceeding before the Court of First Instance before a decision in the appeal proceedings has been rendered, but is of the opinion that under the circumstances at hand – in particular the fact that the term for lodging the statement of defence in respect of the extended claim has been set at three months after the request for claim extension was allowed by the judge rapporteur – the interests of Huawei and the principles of due process outweigh the interests of Netgear.
7. The request for a shortening of the time period for a Statement of response shall be rejected.

ORDER

The request for a shortening of a time period is rejected.

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY CONCERNING THE NEXT STEPS

This order closes APP_7573/2024.

NAMES AND SIGNATURES
<p data-bbox="167 338 256 371">Judges</p> <p data-bbox="167 611 823 645">Rian Kalden, Presiding judge and judge-rapporteur</p> <p data-bbox="167 884 727 918">Ingeborg Simonsson, legally qualified judge</p> <p data-bbox="167 1158 692 1191">Patricia Rombach, legally qualified judge</p>