



UPC Court of Appeal
UPC_CoA_5/2024
PR_APL_189/2024

ORDER
of the President of the Court of Appeal of the Unified Patent Court
issued on 14 March 2024 pursuant to Rule 229.5 RoP

HAEDNOTE

Under Rule 220.2 RoP an appeal from an order without leave is inadmissible from the outset and, as such, cannot be withdrawn.

KEYWORDS

Inadmissibility, leave to appeal.

APPLICANTS AND APPELLANTS

- (1) Abbott Laboratories**
- (2) Abbott Diabetes Care Inc.**
- (3) Abbott France**
- (4) Abbott (S.V./N.V.)**
- (5) Abbott B.V.**
- (6) Abbott S.r.l.**
- (7) Abbott Scandinavia Aktiebolag**
- (8) Abbott GmbH**
- (9) Abbott Diagnostics GmbH**
- (10) Abbott Logistics B.V.**

Represented by: Christian Dekoninck, Patricia Cappuyns, François Pochart, Wim Maas, Eelco Bergsma, Mag. Thomas Adocker, Dr. Dietrich Kamlah, Dr. Christian Lederer and Dr. Gisbert Hohagen

RESPONDENT

DexCom, Inc

Represented by: Anne-Charlotte Le Bihan and Laurent Labatte

DECIDING JUDGE

Klaus Grabinski, President of the Court of Appeal

IMPUGNED ORDER

Order of the Court of First Instance (Paris Local Division) of 19/12/2023 – ORD_589749/2023
UPC_CFI_230/2023 ACT_546446/2023

SUMMARY OF FACTS AND INDICATION OF PLEADINGS

Respondent brought a claim for infringement of a European patent against Appellants in the Court of First Instance (Paris Local Division). Upon request of the Appellants, the judge-rapporteur issued on 19 December 2023 a confidentiality order under R. 262A RoP. In the order it was provided that in case of a breach of the order the Court, upon request of the Appellants, could impose a fine of up to 50.000 € for each single case of breach. In the order it was also mentioned that “the present Order may be appealable according to R. 220.2 RoP or may be reviewed by the panel according to R. 333 RoP.

On 3 January 2024 the Appellants filed an appeal under Rule 220.2 Rules of Procedure (RoP) contesting the ceiling of the penalty amount as set by the judge-rapporteur in her order of 19 December 2023 as too low compared to the ceiling of a penalty amount set in another case but with similar background by the Munich Local Division and requesting that the ceiling of the penalty amount should be raised to 250.000 €.

On 10 January 2024 the Registry of the Court of Appeal enquired of the Appellants as to why, in their view, leave to an appeal has been granted.

On 12 January 2024 and referring to a communication received from the Judge-rapporteur of the Paris Local Division in which it was said that “leave to appeal under R. 220.2 RoP as requested is not granted at this stage of the proceedings”, Appellants withdrew the appeal.

The Registry informed the President of the Court of Appeal under Rule 229.5 RoP that Appellants have not met the requirements of Rules 224.1(b), 220.2 RoP.

REASONS FOR THE ORDER

Pursuant to Rule 220.2 RoP, orders other than those referred to in Rules 220.1 and 97.5 RoP may be appealed only if the Court of First instance has granted leave to appeal.

It does not appear from the submissions of Appellants that such leave has been granted by the Court of First Instance. Rather, the judge-rapporteur of the Court of First Instance stated in her communication that leave to appeal was not granted.

