



Reference no.:
UPC_CoA_810/2024
App_66516/2024

Order
of the Court of Appeal of the Unified Patent Court
issued on 17 December 2024
concerning an application for suspensive effect (Rule 223.4 RoP)

HEADNOTES:

The requirement of an extreme urgency under R 223 RoP has to be established by the applicant. In the present case, the applicant has not evidenced the existence of an extreme urgency.

KEYWORDS:

Suspensive effect of the appeal, R 223 RoP.

APPELLANT AND DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Curio Bioscience Inc., 4030 Fabian Way, Palo Alto, CA 94303, USA (hereafter referred to as “**Curio**” or “**applicant**”)
represented by Cameron Marshall and Agathe Michel-de Cazotte, UPC representatives, Carpmaels & Ransford LLP

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

10x Genomics, Inc., 6230 Stoneridge Mall Road, 94588-3260 Pleasanton, CA, USA (hereafter referred to as “**10x**”)
represented by Professor Dr. Tilman Mueller-Stoy and Dr. Axel Berger, UPC representative, Bardehle Pagenberg

PATENT AT ISSUE

European patent 2 697 391 B1

LANGUAGE OF THE PROCEEDINGS

English

DECIDING JUDGE

Emmanuel Gougé, Legally qualified judge and Standing judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Court of First Instance of the Unified Patent Court, Düsseldorf Local division, dated 03 December 2024

□ Reference numbers:

App_48598/2024
ORD 48718/2024
ACT 15774/2024
UPC_CFI_140/2024

SUMMARY OF THE FACTS AND REQUESTS

1. On 03 December 2024, the Düsseldorf local division ordered Curio, inter alia, to provide security for legal costs and other expenses to the Claimant in an amount of EUR 200,000 within four weeks from the date of service of the order and granted leave to appeal (see impugned order for further details).
2. On 16 December 2024, Curio filed an appeal under Rule 220.2 RoP (PR_APL_65956/2024 UPC_CoA_805/2024) against said order.
3. Curio filed a separate R 223.4 RoP application for suspensive effect in which it requests the impugned order be given suspensive effect and the application for suspensive effect be decided by the standing judge given the extreme urgency of the application pursuant to R 223.4 RoP.
4. According to Curio, the impugned order is manifestly wrong to the extent it has granted a security for costs to the claimant in the main action because it is contrary to Art. 41(1) UPCA and considers that there is extreme urgency which justifies an order from the standing judge under R 223.4 RoP.

REASONS FOR THE ORDER

5. The application for suspensive effect must be dismissed for the following reasons.
6. A dismissal of the application without hearing the respondent is possible within the scope of the discretion of the standing judge under R 223.4 RoP.
7. An appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties (Article 74.1 UPCA).
8. In cases of extreme urgency the applicant may apply at any time without formality for an order for suspensive effect to the standing judge (R 223 RoP, first sentence), notwithstanding the provisions of R 223.5 RoP. Suspensive effect, however, shall only be given under exceptional circumstances, especially if the appealed order concerns an order as meant in R 220.2 RoP (see CoA order in ICPillar v ARM, 19 June 2024, ORD_36664/2024, App_35055/2024).
9. The requirement of an extreme urgency has to be established by the applicant. In the present case, Curio has not evidenced the existence of an extreme urgency.
10. Instead, Curio has merely claimed that, if the application for suspensive effect is not treated with extreme urgency, Curio will either be forced to comply with a manifestly wrong order or face the risk of an order for a decision by default on the basis of a manifestly wrong order.
11. Although the criteria of extreme urgency under R 223.4 RoP is clearly distinct from, and does not require, the assessment as to whether the impugned order is “manifestly wrong”, Curio has not convinced the Court that the CFI was *manifestly* wrong considering the wording of R 158 RoP. Whether the CFI has given a correct interpretation of R 158 RoP regarding Art. 69(4) UPCA will have to be decided by the Court of Appeal at the end of the appeal proceedings.

12. In addition, the Court does not consider the circumstances of the present case to be of such an exceptional nature that the interests of Curio outweigh the interest of 10x and the principles of due process.

ORDER

The application for suspensive effect is rejected.

This order is issued on 17 December 2024.

Emmanuel Gougé
Legally qualified judge and standing judge