



UPC Court of Appeal
UPC_CoA_234/2024
APL_27805/2024
App_38102/2024

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 5 July 2024

APPELLANT (AND CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE CFI):

10x Genomics, Inc.

hereinafter also referred to as: '10x',

represented by attorney-at-law Prof. Dr. Tilman Müller-Stoy (Bardehle Pagenberg)

RESPONDENT (AND DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE CFI):

Curio Bioscience Inc.

hereinafter also referred to as: 'Curio',

represented by European patent attorney Cameron Marshall and attorney-at-law Agathe Michel-de Cazotte (Carpmaels & Ransford)

PATENT AT ISSUE

EP 2 697 391

PANEL AND DECIDING JUDGES:

This order was issued by Panel 2 of the Court of Appeal consisting of:

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

- ORD_23580/2024
- Case number of the Court of First Instance: UPC_CFI_463/2023; ACT_590953/2024 (application for preliminary measures)

POINT AT ISSUE

Request for withdrawal of the appeal

PROCEDURAL BACKGROUND AND PARTIES' REQUESTS

1. The parties were involved in proceedings before the Court of First Instance, Düsseldorf Local Division, where 10x filed an application for provisional measures against Curio. 10x's requests were partly dismissed by the Court of First Instance.
2. (Only) 10x appealed against the impugned order by Statement of appeal and Statement of Grounds of Appeal dated 15 May 2024.
3. Curio lodged a Statement of response on 10 June 2024, in which it, inter alia, raised the question of admissibility of the appeal lodged by 10x, and the question of the necessity of the appeal. Curio did not lodge a cross-appeal pursuant to R.237 RoP.
4. By management order of 25 June 2024, the judge-rapporteur allowed 10x to respond (only) to the paragraphs relating to the issues of admissibility and necessity of its appeal by 3 July 2024, prior to an interim conference to be held on 12 July 2024, where these issues would be discussed.
5. The next day, on 26 June 2024, 10x lodged a request to withdraw the appeal "given that the Defendant/Respondent did – according to its own declarations which we assume to be accurate – not file an own appeal or cross-appeal".
6. In its request for withdrawal, 10x argued that the question of cost reimbursement pursuant to R.265.2 RoP should be decided after a decision in the main action pursuant to R.118.5 RoP.
7. Curio responded to the request on 1 July 2024. It consents to the withdrawal of the appeal.
8. With reference to the order of the Court of Appeal (UPC CoA 101/2024 Curio Bioscience v 10x Genomics, 17 April 2024), in which it has stated that the reimbursement of legal costs is to be decided in a final order or decision, Curio does not request a costs decision, but does request that the Court of Appeal states in its order that the costs of this appeal should be reflected in Curio's favour in the costs decision to be made in the final order or decision.

GROUNDS FOR THE ORDER

9. Pursuant to R.265 RoP, as long as there is no final decision in an action, a claimant may apply to withdraw his action. This provision applies equally (*mutatis mutandis*) to an appellant who requests to withdraw its appeal.
10. The Court permits the withdrawal of the appeal, given 10x's request and the consent from Curio.
11. R.265.2 RoP provides that if the withdrawal is permitted, the Court shall issue a cost decision in accordance with Part 1, Chapter 5 (Rules 150 – 157 RoP).

12. The parties in this case both request that the cost reimbursement is decided after a decision in the proceedings on the merits between them, pending before the Court of First Instance. The Court of Appeal agrees that the determination of the amount to be reimbursed can properly be done at that stage.
13. The Court of Appeal is of the opinion that in case of a withdrawal of an appeal, the appellant shall be considered to be the unsuccessful party who shall bear the costs (as referred to in R.151(d) RoP) incurred in relation to the appeal proceedings. Curio's request (see par. 8 above) shall therefore be allowed.

ORDER

The Court of Appeal

1. permits the requested withdrawal of the appeal;
2. declares the proceedings under case number UPC_CoA_234/2024; APL_27805/2024 closed;
3. orders that this decision shall be entered on the register;
4. declares that the cost of the appeal incurred by Curio shall be borne by 10x, in an amount to be determined by the Court of First Instance.

Issued on 5 July 2024

Rian Kalden, Presiding judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Patricia Rombach, legally qualified judge