



Local Division Munich
UPC_CFI_402/2023

Decision
of the Court of First Instance of the Unified Patent Court
issued on 10 January 2025

CLAIMANT

Abbott Diabetes Care Inc., 1360 South Loop Road, Alameda, CA 94502, USA, represented by CEO Robert Ford, at the same address,

represented by: Dietrich Burkhard Kamlah, Taylor Wessing, Munich, Germany.

DEFENDANTS

1. **Dexcom Inc.**, 6340 Sequence Drive, CA 92121 San Diego, USA, represented by CEO Kevin Sayer, at the same address,
2. **Dexcom Deutschland GmbH**, Haifa-Allee 2, 55128 Mainz, Germany, represented by the managing directors Michael Jon Brown, Alexander Frohlich and Jereme Michael Sylvain, at the same address,
3. **Dexcom International Limited**, 1 Lampousas Street, 1095 Nicosia, Cyprus, represented by director Jereme Michael Sylvain at the same address,

all represented by: Marcus Grosch, Quinn Emanuel, Munich, Germany.

PATENT AT ISSUE

European patent EP 4 087 195

PANEL/DIVISION

Panel 2 of the Local Division Munich

DECIDING JUDGE

This decision has been issued by Presiding Judge Ulrike Voß (Judge-Rapporteur), the Legally Qualified Judge Dr Daniel Voß, the Legally Qualified Judge Peter Agergaard and the Technical Qualified Judge Pascal Attali.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT OF THE PROCEEDINGS

Withdrawal Infringement action, counterclaim for revocation, application to amend the patent – Rule 265 RoP

SUMMARY OF THE FACTS

By statement of claim dated 31 Oktober 2023, the Claimant filed a patent infringement action against the Defendants. The Defendants have each filed a counterclaim for revocation on 26 February 2024. On 26 April 2024, the Claimant filed an application for amendment of the patent.

The oral hearing for the infringement action and the counterclaim for revocation has been scheduled for 24 January 2025.

By written submissions dated 27 December 2024, the Claimant declared the withdrawal of the infringement action and the withdrawal of the application to amend the patent. The Defendants also declared the withdrawal of their counterclaims for revocation by written submission dated 27 December 2024.

The Claimant requests,

to permit the withdrawal of the infringement action and to give a decision declaring the proceedings closed,

to permit the withdrawal of the application to amend the patent and to give a decision declaring the proceedings closed.

The Defendants request,

to permit the withdrawal of the counterclaims for revocation and to give a decision declaring the proceedings closed.

The parties have each declared their agreement with the withdrawal declared by the other party. Both parties stated that they would not request a decision on costs.

In its Order dated 3 January 2025, the Court pointed out that Rule 265.2 (c) RoP provides that the Court decides on costs mandatory if withdrawal is permitted. In view of this, the Court has indicated that it understands the parties' submission to mean that no costs are reimbursed

between the parties. Each party is to bear its own extrajudicial costs. In their comments, the parties stated that they would accept such a decision on costs.

REASONS FOR THE ORDER

I.

Pursuant to Rule 265.1, first sentence, RoP, a Claimant may, as long as there is no final decision in the action, request that the action be withdrawn. The application for withdrawal is not allowed, according to sentence 3, if the other party has a legitimate interest in the action being decided by the Court.

On this basis, the withdrawal of the action, including the application to amend the patent, shall be allowed. The same shall apply to the counterclaim for revocation. The parties have each requested the respective withdrawals before the issue of a (final) decision. They have not asserted any legitimate interests within the meaning of the aforementioned provision. Nor are any such legitimate interests recognisable in any other way.

II.

The consequence of admitting a withdrawal is, according to Rule 265.2 (a) and (b) RoP, to give a decision declaring the proceedings closed and to order the decision to be entered on the register.

According to Rule 265.2(c) RoP, when admitting the withdrawal, the Court issues a decision on costs in accordance with Part 1, Chapter 5. A request by a party is not required in this respect. The parties' mutual consent may be taken into account in the cost decision.

As a result of the withdrawal of the infringement action, the counterclaim for revocation and the application for amendment of the patent, an oral hearing and a decision by the Court on the merits of the case is no longer necessary. The oral hearing is therefore cancelled.

ORDER

1. The withdrawal of the action, including the applications for amendment of the patent, is allowed.
2. The withdrawal of the counterclaims for revocation is allowed.
3. The proceedings referred to in points 1 and 2 are declared closed.
4. This decision is to be entered on the register.
5. The parties shall bear their own extrajudicial costs. There will be no reimbursement of costs between the parties.
6. The oral hearing scheduled for 24 January 2025 is cancelled.

DETAILS OF THE ORDER

ACT_584295/2023

UPC_CFI_402/2023

CC_10126/2024, CC_10128/2024, CC_10129/2024

App_68356/2024 (Withdrawal action)

App_68367/2024 (Withdrawal application to amend the patent)

App_67738/2024 (Withdrawal counterclaim for revocation Defendant 1))

App_67339/2024 (Withdrawal counterclaim for revocation Defendant 2))

App_67741/2024 (Withdrawal counterclaim for revocation Defendant 3))

Ulrike Voß Presiding Judge	
Dr Daniel Voß Legal Qualified Judge	
Peter Agergaard Legal Qualified Judge	
Pascal Attali Technical Qualified Judge	
For the Sub-Registrar	