

ORDER
of the Court of Appeal of the United Patent Court
issued on 20 January 2025
application for staying the proceedings for cost decision,
alternatively extension request
(R. 151 RoP, R. 295(d) RoP, R. 9.3(a) RoP)

HEADNOTE:

- The one month period for lodging an Application for a cost decision pursuant to R. 151.1 RoP begins with the service of the decision in the proceedings on the merits, not with the service of an order on provisional measures.
- If the applicant does not start proceedings on the merits of the case pursuant to R. 213 RoP, for example, if the application for provisional measures was unsuccessful, R. 150 and 151 RoP apply mutatis mutandis.

KEYWORDS:

Application for a cost decision (R. 150.1 RoP, R. 151.1 RoP)

APPLICANTS

1. **SharkNinja Europe Limited**, Leeds, UK
2. **SharkNinja Germany GmbH**, Frankfurt am Main, Germany
(hereinafter jointly referred to as SharkNinja)

both represented by: attorneys-at-law Wolrad Prinz zu Waldeck und Pyrmont and Kilian Seidel
(Freshfields Bruckhaus Deringer, Düsseldorf, Germany)

RESPONDENT

Dyson Technology Limited, Malmesbury, Wiltshire, UK
(hereinafter: Dyson)

Represented by: attorneys-at-law Dr. Constanze Krenz, David Kleß and Joshua Fiedler
(DLA Piper, Munich, Germany)

LANGUAGE OF PROCEEDINGS

German

PANEL AND DECIDING JUDGES:

Second Panel:

Rian Kalden, Presiding judge and legally qualified judge
Ingeborg Simonsson, legally qualified judge and judge-rapporteur
Patricia Rombach, legally qualified judge
Graham Ashley, technically qualified judge
Max Tilmann, technically qualified judge

POINTS AT ISSUE

Application for a cost decision, Application for staying the proceedings for cost decision, auxiliary extension request (R. 151 RoP, R. 295(d) RoP, R. 9.3(a) RoP)

PATENT AT ISSUE

EP 2 043 492

SUMMARY OF FACTS

1. Dyson lodged an application for provisional measures against SharkNinja with the Local Division Munich. The Local Division Munich issued an interim injunction against SharkNinja. SharkNinja appealed. On 3 December 2024, the Court of Appeal set aside the impugned order, denied the application for provisional measures and ordered Dyson to bear SharkNinja's costs for the proceedings on provisional measures in both instances.
2. Meanwhile, Dyson has lodged proceedings on the merits against SharkNinja before the Local Division Munich (ACT_35930/2024, UPC_CFI_322/2024) and SharkNinja has lodged a counterclaim for revocation (CC_54802/2024, UPC_CFI_588/2024). The proceedings on the merits are pending.

INDICATION OF THE PARTIES' REQUESTS

3. SharkNinja requests the Court of Appeal to stay the cost assessment proceedings pursuant to R. 295(d) RoP, with the consequence that the time limit for submitting an Application for a cost decision pursuant to R. 151 RoP shall cease to run for the purposes of procedural periods pursuant to R. 296(3) RoP. Should the Court of Appeal consider a stay under R. 295(d) RoP to be inadmissible at this stage of the proceedings, it is requested in the alternative that the time limit for filing an Application for a cost decision under R. 151 RoP be extended by three months, i.e. until 3 April 2025, pursuant to R. 9(3)(a) RoP.
4. Dyson agrees to the stay and, in the alternative, the extension of the time period.

GROUNDS FOR THE ORDER

5. A cost decision may be the subject of separate proceedings following a decision on the merits and, if applicable, a decision for the determination of damages (R. 150.1 RoP). Where the successful party wishes to seek a cost decision, it shall within one month of service of the decision lodge an Application for a cost decision (R. 151 RoP).

6. This one month period begins with the service of the decision on the merits.
7. By consequence, SharkNinja's requests are filed too early and are inadmissible.
8. The following can be added: If the applicant does not start proceedings on the merits of the case pursuant to R. 213 RoP, for example, if the application for provisional measures was unsuccessful, R. 150 and 151 RoP do not appear to be applicable, at least on a strict literal reading. However, to fulfil the objectives of Art. 69(1-3) UPCA that the successful party can have its reasonable and proportionate legal costs and other expenses compensated by the unsuccessful party, an application of R. 150 and .151 RoP mutatis mutandis would be justified in that situation.

ORDER

SharkNinja's requests are dismissed without being tried in substance.

Issued on 20 January 2025

Rian Kalden, Presiding judge and legally qualified judge

Ingeborg Simonsson, legally qualified judge and judge-rapporteur

Patricia Rombach, legally qualified judge

Graham Ashley, technically qualified judge

Max Tilmann, technically qualified judge