



UPC_CFI_379/2023 ACT_ 581723/2023
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**DECISION  
of the Court of First Instance of the  
Unified Patent Court Local Division  
The Hague  
dated 1 May 2024  
regarding R.265 and R.370.11**

APPLICANT/PETITIONER IN THE MAIN PROCEEDINGS

1) <b>Keestrack N.V.</b> - Taunusweg 2 - 3740 - Munsterbilzen - BE	Represented by Michael Beck
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DEFENDANT IN THE MAIN PROCEEDINGS

1) <b>Geha Laverman B.V.</b> - Grote Tocht 27 - 1507 CG - Zaandam - NL	Represented by Hans Dhondt
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OCTROOI

<i>no.</i>	Patent holder
<b>EP3713672</b>	Keestrack N.V.

## JUDGE MAKING THE DECISION

### COMPOSITION OF THE FULL PANEL

Chairman	<b>Edger Brinkman</b>
Judge/Judge Rapporteur ("JR")	<b>Margot Kokke</b>
Judge (LQJ)	<b>Samuel Granata</b>

This decision was taken by the full panel.

LANGUAGE OF PROCEDURE: Dutch

### REQUEST AND BACKGROUND

1. On 5 March 2024, the applicant's representative filed an application to withdraw proceedings under Rule 265 of the Unified Patent Court's Rules of Procedure (hereinafter "RoP" and "UPC" respectively). This application, hereinafter "the application", contained the following:
  - Plaintiff respectfully requests permission from the Unified Patent Court to withdraw the action identified above in full.
  - In accordance with Rule 265 of the Rules of Procedure, the claimant specifically requests the Unified Patent Court to:
    - issue a decision declaring the proceedings closed;
    - order that this decision be entered in the Register;
    - order that each party shall bear its own costs, without prejudice to the application of Rule 270.9(b) of the Rules of Procedure.
  - This withdrawal is done with the consent of the defendant.
  - A return of 60% of the fixed fee under Rule 270.9(b) of the Rules of Procedure will be deemed applicable as the action is withdrawn before the end of the written proceedings.
2. By interim decision dated 18 March 2024, under rule 265.1 RoP, the defendant was given the opportunity to respond to the withdrawal application and to the application for a decision on costs of proceedings by Friday 22 March 2024, with each party bearing its own costs.
3. Due to apparent problems with the digital 'case management system' ("CMS"), the defendant did not respond until 22 April 2024 in the workflow provided for that purpose in the CMS. In it, she reported, inter alia, the following:
  - The defendant agrees to the withdrawal request submitted by the claimant.
  - The defendant consented to the application for a decision on costs, ordering each party to bear its own costs.
  - The defendant made several attempts to deposit this response to the withdrawal application with the Unified Patent Court through the Unified Patent Court website.
  - Due to technical problems, this was not possible. On the one hand, the defendant could not save the document as a PDF/A document due to various problems with Adobe. On the other hand, the defendant could not access the Unified Patent Court's case management system.
4. The attached attachment shows that the defendant sent the response to the withdrawal request on March 22, 2024 via email to the UPC to the email address upc-cms-sa@unifiedpatentcourt.org, stating that it was unable to upload the message

and displaying screenshots of the error messages it received in the process. This message did not reach the JR until 23 April 2024, attached to this request.

#### CONSIDERATIONS

5. The delay in the respondent's response is apparently due to problems with CMS, and does not affect the applicant's legal position (other than delay). The response is therefore considered timely filed in this case, also considering the timely submission by email.
6. The parties' unanimous withdrawal request is granted and the infringement proceedings UPC\_CFI\_379/2023 ACT\_581723/2023 are thereby terminated (rule 265.2(a) RoP). The application to order that that decision be entered in the Register of the Unified Patent Court is also granted pursuant to rule 265.2(b) RoP.
7. The unanimous request to order that each party bear its own costs is also admissible.
8. The court further understands the application to mean that, in addition to the order referred to in the previous paragraph, by referring to the application of 'Rule 270.9(b)', the applicant intends to apply for partial refund of court fees paid by her to the UPC under rule 370.9 and 11 RoP. Since rule 270.9(b) RoP does not exist, apparently 370.9(b) RoP is meant in the application; that section governs refund of court fees. The court will consider this application, even if it is not filed through a separate workflow, to avoid further litigation.
9. Rule 370 RoP reads, as far as relevant here:
  - (...)
  9. Fixed and value-based fees may be reimbursed as follows:
    - (a) (...)
    - (b) In case of the withdrawal of an action [Rule 265] the party liable for the Court fees will be reimbursed by:
      - (i) 60 % if the action is withdrawn before the closure of the written procedure
      - (ii) 40 % if the action is withdrawn before the closure of the interim procedure
      - (iii) 20 % if the action is withdrawn before the closure of the oral procedure
    - (c) If the parties have concluded their action by way of settlement the party liable for the Court fees will be reimbursed by:
      - (i) 60 % if the action is settled before the closure of the written procedure
      - (ii) 40 % if the action is settled before the closure of the interim procedure
      - (iii) 20 % if the action is settled before the closure of the oral procedure
    - (d) Only one of the reimbursements referred to in paragraph 9 (a), (b) and (c) will apply per action and party. Where more than one reimbursement is applicable, the larger will be applied for each party.
    - (e) In exceptional cases, having regard, in particular, to the stage of the proceedings and the procedural behaviour of the party, the Court may deny or decrease the reimbursement payable according to paragraph 9 (b) and (c) of the aforementioned provisions.
  - 10.(...)
  11. The party seeking reimbursement under paragraphs 9 and 10 shall lodge a reasoned Application for reimbursement to the Court. The Court shall deal with the application without delay and if satisfied that the reimbursement is appropriate shall direct the Registrar to make the payment as soon as practicable.

10. In this case, the proceedings are terminated by decision on the applicant's 'withdrawal' request within the meaning of rule 265 RoP. That request stems from a settlement reached between the parties. The panel considers the restitution of part of the court fee appropriate in this case within the meaning of rule 370.11 RoP. Accordingly, the refund request will be granted. With the case being terminated at an early stage, that is, after the issuance of the summons and before the filing of a reply by the respondent, and therefore before the 'written proceedings' are concluded, 60% of the court fees paid will be refunded. This follows from rule 370.9(b) RoP, relied upon by the applicant.

DECISION

1. Declares case UPC\_CFI\_379/2023, with CMS number ACT\_ 581723/2023, terminated pursuant to rule 265.2(a) RoP;
2. Orders that this decision be entered in the register of the UPC in accordance with rule 265.2(b) RoP;
3. Recommends that each party bear its own costs;
4. Orders the registry to refund 60% of the court fee paid to the plaintiff under rule 370.9 and 11 RoP.

Edger Brinkman	<b>Edger Frank BRINKMAN</b>  Digitally signed by Edger Frank BRINKMAN Date: 2024.05.01 09:58:29 +02'00'
Samuel Granata	<b>Samuel Rocco M Granata</b>  Digitally signed by Samuel Rocco M Granata Date: 2024.05.01 09:21:58 +02'00'
Margot Kokke	<b>Margot Elsa KOKKE</b>  Digitally signed by Margot Elsa KOKKE Date: 2024.05.01 09:08:42 +02'00'
On behalf of the Registry: Nikki Swinkels	<b>Nikki Swinkels</b>  Digitally signed by Nikki Swinkels Date: 2024.05.01 11:29:54 +02'00'

DATA RELEVANT TO THIS DECISION

CMS number request: App\_12133/2024  
 UPC case number: UPC\_CFI\_379/2023  
 CMS case number: ACT\_ 581723/2023  
 Type of case: Infringement case