



Appeal n°:
UPC_CoA_402/2024
APL_40470/2024
App_43817/2024

PROCEDURAL ORDER
of the Court of Appeal of the Unified Patent Court
issued on 30 July 2024

APPELLANT (APPLICANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Alexion Pharmaceuticals, Inc.

121 Seaport Blvd, 02210 Boston (MA), United States

represented by attorney-at-law Elena Hennecke (Freshfield Bruckhaus Deringer)

RESPONDENT (DEFENDANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Samsung Bioepis NL B.V.

Olof Palmestraat 10, 2616 LR, Delft, The Netherlands

represented by attorney-at-law Andrea Ritter (Simmons & Simmons)

PATENT AT ISSUE

EP 3167888

PANEL AND DECIDING JUDGES

Panel 1c:

Klaus Grabinski, President of the Court of Appeal

Peter Blok, Legally qualified judge and judge-rapporteur

Emanuela Germano, Legally qualified judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Orders of the Court of First Instance of the Unified Patent Court, Local Division Hamburg dated 26 June 2024 and 17 July

- Numbers attributed by the Court of First Instance:
 - UPC_CFI_123/2024
 - ACT_13849/2024
 - ORD_38509/2024

FACTS AND REQUESTS OF THE PARTIES

1. The appellant lodged an application for provisional measures against the respondent with the Hamburg Local Division of the Court of First Instance.
2. In the impugned order the Court of First Instance dismissed the application, ordered the appellant to pay the costs of the proceedings and set the value of the dispute at € 100,000,000.00.
3. The appellant lodged an appeal against the impugned order. In its amended statement of appeal and statement of grounds of appeal, the appellant submitted a number of requests, including the request sub C.I for expedition of the appeal pursuant to Rule 9.3(b) of the Rules of Procedure of the Unified Patent Court (hereinafter: RoP).

GROUND FOR THE ORDER

4. The request for expedition of the appeal is rejected.
5. Under R. 9.3(b) RoP the Court may shorten any time period on a reasoned request by a party. When considering such a request, the Court has to balance the interests of both parties, whereby due account must be given to the principles of due process, among which equality of arms (CoA 19 June 2024, UPC_CoA_301/2024 APL_33746/2024 App_35055/2024).
6. The Court of Appeal does not consider that the circumstances of the present case are so urgent that the interests of the appellant outweigh those of the respondent. The appellant's arguments that it is seeking patent protection as soon as possible and that the appeal concerns a purely legal issue, are not sufficient to shorten the time limit for lodging the statement of response. This time period is already relatively short for appeals against orders referred to in R. 220.1(c) RoP, such as the present appeal, namely only 15 days. The fact that the appellant did not make use of the entire time period within which it could have lodged its statement of grounds of appeal, does not lead to a different assessment.
7. As the decision on the request has no adverse effect on the respondent and in view of the urgency of a decision on the request, it was not necessary to hear the respondents before issuing this order.

PROCEDURAL ORDER

- The request for expedition is rejected.

This procedural order was issued on 30 July 2024.

Klaus Grabinski President of the Court of Appeal	
Peter Blok Legally qualified judge and judge-rapporteur	
Emanuela Germano Legally qualified judge	