



Local division Munich

UPC_CFI_98/2024

Decision

**of the Court of First Instance of the Unified Patent Court issued on
24 October 2024**

Guiding principles:

1. There is no legitimate interest in a decision on an application for interim measures if the application has been withdrawn. This also applies in the event of withdrawal after the oral hearing.
2. There is no legal basis for the defendant to provisionally bear its own costs in the event of a withdrawal of the application.

UPC_CFI_98/2024

Applicant

Tiroler Rohre GmbH

represented by: Florian Robl (Torggler & Hofmann Patentanwälte GmbH & Co KG)

- hereinafter referred to as the "Applicant" -

DEFENDANTS AND COUNTERCLAIMANTS

1. SSAB Swedish Steel GmbH

2. SSAB Europe Oy

represented by: Christian Meyer (Maiwald GmbH)

- hereinafter referred to as the "Respondents" -

PATENT IN SUIT

Patent no. *Patent holder*

EP 2 839 083 Tiroler Rohre GmbH

JUDGE

Presiding judge	Dr Matthias Zigann
Legally qualified judge	Margot Kokke
Technically qualified judge	Dennis Kretschmann
judge-rapporteur	Tobias Pichlmaier

LANGUAGE OF THE PROCEEDINGS: GERMAN

HEARING: 6 MAY 2024

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Facts of the case

The applicant applied for the adoption of provisional measures on 5 March 2024; a protective letter was submitted.

The oral hearing on the application for interim measures took place on 6 May 2024. At the hearing, the local division indicated that it had reservations about issuing the requested order.

On 3 June 2024, the applicant withdrew the application. The applicant has **applied**,

order the parties to bear their own costs for the time being.

The defendants objected to the withdrawal and argued that they had a legitimate interest in a decision. This existed because the defendants had incurred not inconsiderable costs and effort in defending against the application for an injunction. A legitimate interest also arises from the fact that the applicant has announced that it will soon file a main action on the same subject matter of the dispute. Even if the limited legal force of a decision in the preliminary injunction proceedings does not prevent new proceedings in the main action, the defendants nevertheless have an interest in the decision rejecting the injunction application and the reasons given by the court in this regard.

The defendants **filed a motion**,

order the applicant to pay the entire costs of the proceedings, including the costs of filing the protective letter (Article 69(1) UPCA).

Reasons

1. The defendant has no legitimate interest in the court deciding on the application for interim measures despite the withdrawal of the application after the oral hearing. The reason for this is that a decision on the application cannot prevent new proceedings, as the decision has no legal force in this respect. The withdrawal of the application for interim measures was therefore to be allowed.
2. The fact that the respondents have incurred costs for the defence against the application for an injunction is the subject of the decision on costs, but also does not constitute a legitimate interest within the meaning of Rule 265 (1) sentence 3 UPC RoP. Nor can a legitimate interest in a decision on the merits arise from the fact that the applicant has now brought an action on the merits on the same subject matter (ACT_36096/2024; UPC_CFI_324/2024). A negative decision on an application for interim measures has no influence on the main action.
3. By withdrawing her application, the applicant has assumed the role of the losing party. It must therefore bear the costs of the proceedings pursuant to Art. 69 (1) UPCA.
4. In accordance with the request, the applicant must also reimburse the costs of filing the protective letter; these are costs for an anticipated defence and thus costs of the proceedings within the meaning of Art. 69 UPCA.
5. There is no legal basis for the respondent to *provisionally* bear its own costs in the event of a withdrawal of the application, neither under the UPCA nor under the Rules of Procedure of the UPC Agreement. The applicant must definitively bear the costs of the proceedings, as the proceedings are definitively terminated by the admission of the withdrawal of the application.

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Decision

1. The withdrawal of the application for the adoption of provisional measures is authorised.
2. The proceedings are declared closed.
3. It is ordered that the decision be entered in the register.
4. The costs of the proceedings, including the costs of filing the protective letter, shall be borne by the applicant.

INFORMATION ON THE APPOINTMENT

An appeal against this decision may be lodged with the Court of Appeal by any party whose applications have been wholly or partially unsuccessful within two months of notification of the decision (Art. 73(1) UPCA, R. 220.1(a)).

Munich, 24 October 2024

Dr Zigann Presiding judge	Matthias ZIGANN  Digitally signed by Matthias ZIGANN Date: 2024.10.24 15:44:28 +02'00'
Coke Legally qualified judge	Margot Elsa KOKKE  Digitally signed by Margot Elsa KOKKE Date: 2024.10.24 16:00:11 +02'00'
Pichlmaier judge-rapporteur	Tobias Günther Pichlmaier  Digitally signed by Tobias Günther Pichlmaier Date: 2024.10.24 15:20:48 +02'00'
Kretschmann Technically qualified judge	Dennis Kretschmann  Digitally signed by Dennis Kretschmann Date: 2024.10.24 23:16:44 +02'00'