



Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 21 November 2024
concerning EP 4 026 488

CLAIMANT:

DexCom, Inc., 6340 Sequence Drive, San Diego, California 92121, USA, represented by its CEO Kevin Sayer,

represented by: Dr. Markus Grosch, Dr. Johannes Bukow, Dr. Jan Axtmann, Paul Lehmann, Quinn Emanuel Urquhart & Sullivan LLP, Mollstraße 42, 68165 Mannheim, Germany,

electronic address for service: marcusgrosch@quinnemanuel.com

DEFENDANTS:

1. **Abbott Laboratories**, 100 Abbott Park Road, Abbott Park, Illinois 60064-6400, USA, represented by its board of directors which is represented by the CEO Robert Ford,
2. **Abbott Diabetes Care Inc.**, 1360 South Loop Road, Alameda, California 94502, USA, represented by its president Jared Watkin,
3. **Abbott GmbH**, Max-Planck-Ring 2, 65205 Wiesbaden, Germany, represented by its managing director Konstantinos Varlas,
4. **Abbott Diagnostics GmbH**, Max-Planck-Ring 2, 65205 Wiesbaden, Germany, represented by its managing directors Philip Boudreau and Konstantinos Varlas,
5. **Abbott Laboratories GmbH**, Freundallee 9A, 30173 Han-over, Germany, represented by its managing directors Gregor Benning, Bradley Slater and Frank Weitekämper,
6. **Abbott Logistics B.V.**, Meeuwenlaan 4, 8011BZ Zwolle, The Netherlands, represented by its directors Hendrikus Lueb and Philip Boudreau,
7. **Abbott France (S.A.S.)**, 40/48 rue d'Arcueil, 94593 Rungis, France, represented by its president Philippe Emery,
8. **Abbott s.r.l.**, Viale Giorgio Ribotta 9, 00144 Rome, Italy, represented by the chairman of its boards of directors Massimiliano Bindi,

9. **Abbott Gesellschaft m.b.H**, Perfektastraße 84A, 1230 Vienna, Austria, represented by its directors Martin Hochstätter, Gerhard Wiesinger and Bradley Slater,
10. **Abbott B.V.**, Wegalaan 9, 2132JD Hoofddorp, The Netherlands, represented by its directors Hendrikus Lueb and Bradley Slater,
11. **Abbott (S.A./N.V.)**, Avenue Einstein 14, 1300 Wavre, Belgium, represented by its directors Hendrikus Lueb, Hasna Nadir and Bradley Slater
12. **Abbott Scandinavia Aktiebolag**, Hemvärnsgatan 9, 171 54 Solna, Sweden, represented by its board of directors which is represented by the chairman of the board Karl Almroth
13. **Abbott Oy**, Karvaamokuja 2 A, 00380 Helsinki, Finland, represented by its chairman of the board and chief executive officer Karl Almroth,

all Defendants represented by: Dr. Dietrich Kamlah, Dr. Christian Lederer, Dr. Gisbert Hohagen, Taylor Wessing Partnerschaftsgesellschaft mbB, Isartorplatz 8, 80331 München, Germany

electronic address for service: d.kamlah@taylorwessing.com

PATENT AT ISSUE:

European patent n° EP 4 026 488

PANEL/DIVISION:

Panel of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Presiding Judge Thomas acting as judge-rapporteur, legally qualified judge Dr. Thom and legally qualified judge Rinkinen.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: Patent infringement action – Rule 37.1 RoP, Article 33 (3) UPCA

FOUNDATIONS FOR THE ORDER:

Pursuant to Rule 37.2 RoP, the local division takes an earlier decision on the question of how to proceed with regard to Art. 33(3) UPCA within the meaning of Art. 33(3)(a) UPCA before the end of the written procedure.

According to Rule 37.2 RoP, the panel may take an earlier decision by order, provided that it takes into account the party's submissions and gives them the opportunity to be heard.

In the present case, the local division exercises its discretion to hear both the infringement action and the counterclaim for revocation (Art. 33(3)(a) UPCA). Such a joint hearing of the infringement action and the counterclaim seems to be appropriate in particular for reasons of efficiency. It is

also preferable because it allows both issues – validity and infringement – to be decided on the basis of a uniform interpretation of the patent by the same panel composed of the same judges.

In general, an earlier decision under Art. 33(3) UPCA seems justified in the current situation of the Court, which is still under construction. Since some members of the panel are currently only employed on a part-time or case-by-case basis, it seems appropriate for reasons of procedural efficiency to obtain the assignment of the technically qualified judge (TQJ) at an early stage. Then he/she can be involved in the case management as soon as possible. Otherwise, there would be a considerable risk of delay if the TQJ was not appointed before the interim procedure and therefore could not be included in the time schedule at an early stage. An early decision on the bifurcation issue will set the framework for possible issues. This will enable the parties and the Court to manage the case accordingly.

ORDER:

With the consent of the parties, the Düsseldorf Local Division will hear both the infringement action and the counterclaim for revocation.

INSTRUCTIONS TO THE JUDGE-RAPPORTEUR:

The judge-rapporteur shall request the President of the Court of First Instance to allocate a technically qualified judge to the Panel.

DETAILS OF THE ORDER:

ORD_59318/2024 related to the main proceeding ACT_596853/2023 and CC_33181/2024

UPC-Number: UPC_CFI_499/2023

Subject of the Proceedings: Patent infringement action and Counterclaim for revocation

Issued in Düsseldorf on 21 November 2024

Presiding Judge Thomas	
Legally Qualified Judge Dr Thom	

Legally Qualified Judge Rinkinen	
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