



UPC Court of Appeal
APL_68522/2024
UPC_CoA_844/2024
App_1387/2025

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 19 February 2025
Withdrawal pursuant to R. 265 RoP and
Application for reimbursement of Court fees (R. 370.9 RoP)

APPLICANT AND APPELLANT (DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE CFI)

Aarke AB, Stockholm, Sweden

hereinafter also referred to as “Aarke”

represented by: Jens Olsson, Magnus Dahlman and Emelie Rexelius, attorneys at law, Advokatbyrå Gulliksson AB, Malmö, Sweden, Christian Arkelius, European patent attorney, Arkelius, Ström & Gulliksson AB, Stockholm, Sweden

RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE CFI)

Sodastream Industries Ltd., Kfar Saba, Israel

hereinafter also referred to as “Sodastream”

represented by: Dr. Andreas von Falck, Dr. Alexander Klicznik, Diana Rodriguez, Lea Grobblinghoff, attorneys at law, Hogan Lovells International LLP, Düsseldorf, Germany

PATENT AT ISSUE

EP 1 793 917

LANGUAGE OF THE PROCEEDINGS

English

DECIDING JUDGES

This order was issued by Panel 2

Rian Kalden, presiding judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Patricia Rombach, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

□ Düsseldorf Local Division, Date: 31 October 2024; ORD_598499/2023 in the main proceedings concerning infringement action ACT_580849/2023 UPC_CFI_373/2023

SUMMARY OF FACTS AND INDICATION OF THE PARTIES' REQUESTS

1. Sodastream initiated infringement proceedings against Aarke before the Düsseldorf Local Division based on alleged infringement of the patent at issue.
2. The Düsseldorf Local Division declared that Aarke had infringed the patent at issue and issued an injunction and several other measures.
3. On 30 December 2024, Aarke lodged an appeal against the impugned order (APL_68522/2024 UPC_CoA_844/2024).
4. On 10 January 2025 Aarke filed an application to withdraw the appeal pursuant to R.265 RoP, an application for reimbursement of court fees pursuant to R. 370 RoP and requested a cost decision to be issued.
5. Sodastream was given the opportunity to comment on Aarke's requests and has not filed any comments in this regard.

GROUNDINGS

Conditions for permitting withdrawal

6. As long as there is no final decision in an action, a claimant may, pursuant to R. 265.1 RoP, apply to withdraw his action. The application to withdraw shall not be permitted if the other party has a legitimate interest in the action being decided by the Court. R. 265.1 RoP also applies mutatis mutandis to the withdrawal of an appeal.
7. Taking into consideration that Sodastream has not objected to Aarke's request it cannot be considered to have a legitimate interest in a decision by the Court. Thus, the application to withdraw the appeal can be permitted.

Costs

8. R. 265.2 (c) RoP provides that the Court shall issue a cost decision in accordance with Part 1, Chapter 5. Aarke only generally requests that a cost decision be issued, without any further guidance.
9. Since Aarke requested a withdrawal of its appeal, it must be considered as the unsuccessful party who should bear the reasonable and proportionate legal costs and other expenses incurred by the successful party pursuant to Art. 69(1) UPCA (see UPC Court of Appeal, 5 July 2023 UPC_CoA_234/2024; APL_27805/2024, App_38102/2024 para. 13).
10. Despite being given the opportunity to do so, Sodastream did not file any comments and thus has not requested to have any costs reimbursed. The Court of Appeal thus concludes that there is no need for a cost decision.

Reimbursement of Court fees

11. In case of the withdrawal of an action (R. 265 RoP), the party liable for the Court fees will be reimbursed by 60 % in accordance with R.370.9 (b) (i) RoP if the action is withdrawn before the written proceeding have been concluded. This reimbursement is to be ordered in accordance with the application.

ORDER

The Court of Appeal:

- permits the withdrawal of the appeal (APL_68522/2024, UPC_CoA_844/2024) and declares the proceedings closed;
- orders that this decision shall be entered on the Register;
- declares that there is no need for a cost decision;
- orders that 60 % of the appeal Court fees be reimbursed to Aarke.

Issued on 19 February 2025,

Rian Kalden, presiding judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Patricia Rombach, legally qualified judge