



Reference numbers:

App_22758/2025

APL_66414/2024

UPC_CoA_808/2024

Decision
of the Court of Appeal of the Unified Patent Court
concerning the withdrawal of the action
issued on 28 May 2025

APPELLANT (DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

17 Quincy Street – 02138 Cambridge, MA – USA

hereinafter: Harvard,

represented by attorney-at-law Axel Berger, assisted by other representatives of Bardehle Pagenberg Partnerschaft mbB Patentanwälte Rechtsanwälte

RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

NANOSTRING TECHNOLOGIES EUROPE LIMITED

Suite 2, First Floor, 10 Temple Back – BS1 6FL Bristol – United Kingdom

hereinafter: NanoString,

represented by attorney-at-law Daniela Kinkeldey, assisted by other representatives of Bird & Bird LLP

PANEL AND DECIDING JUDGES

First panel

Klaus Grabinski, presiding Judge

Peter Blok, legally qualified judge and judge-rapporteur

Emmanuel Gougé, legally qualified judge

Rainer Friedrich, technically qualified judge

Cornelis Schüller, technically qualified judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Decision of the Central Division, Munich Section, dated 17 October 2024
- Reference numbers:
ACT_551180/2023
UPC_CFI_252/2023
ORD_598480/2023

FACTS AND REQUESTS OF THE PARTIES

1. On 27 July 2023, NanoString brought an action for revocation of European Patent 2 794 928 (hereinafter: the patent at issue) against Harvard before the Munich Section of the Central Division of the Court of First Instance.
2. By order of 30 October 2023, the Central Division ordered NanoString to provide security for legal costs and other expenses to the amount of € 300,000 by way of deposit on the Court's bank account (ORD_574057/2023 ACT_551180/2023 UPC_CFI_252/2023). In compliance with this order, NanoString transferred an amount of € 300,000 to the Court's bank account on 28 November 2023 (hereinafter: the security deposit).
3. By decision of 17 October 2024 (hereinafter: the impugned decision), the Central Division revoked the patent at issue entirely and ordered Harvard to bear the legal costs incurred by NanoString.
4. Harvard lodged an appeal against the impugned decision.
5. On 14 May 2025, NanoString filed an application to withdraw the action, to refrain from a cost decision and to release the security deposit. The representative of NanoString assured that Harvard agreed to the withdrawal and the refraining from a cost order.
6. By preliminary order of 15 May 2025, the Court of Appeal informed the parties that it assumed that the assurance given by NanoString's representative accurately reflected Harvard's position. Harvard was given the opportunity to rebut this assumption if necessary. Harvard did not file a response.

GROUNDINGS FOR THE DECISION

7. As long as there is no final decision in an action, a claimant may, pursuant to Rule 265.1 of the Rules of Procedure of the Unified Patent Court (hereinafter: 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.

8. The application to withdraw the appeals will be permitted and the proceedings will be closed. Harvard can be assumed not to have a legitimate interest in the appeal being decided by the Court, given that it has not used the opportunity to respond to the preliminary order of 15 May 2025.
9. With the closure of the proceedings, the impugned decision will become ineffective.
10. Although R. 265.2(c) RoP provides that a decision on costs is to be taken in accordance with Part 1, Chapter 5, no decision on costs is required here, since NanoString expressly refrained from a cost decision and Harvard can be assumed to refrain from such a decision, since it did not respond to the preliminary order of 15 May 2025.
11. As the withdrawal of the action is permitted and the proceedings will be closed without a cost decision, the security provided by NanoString pursuant to the order of the Munich Central Division of 30 October 2023 has become devoid of purpose. The Court of Appeal will therefore order the release of the security deposit, as requested by NanoString.

DECISION

The Court of Appeal

- I. permits the withdrawal of the action and declares the proceedings closed;
- II. orders that this decision shall be entered on the register;
- III. declares that there is no need for a cost decision;
- IV. orders to release the security deposit in the amount of € 300,000 transferred by NanoString to the Court's bank account as a security for costs.

This decision was issued on 28 May 2025.

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| Klaus Grabinski President of the Court of Appeal | |
| Peter Blok Legally qualified judge and judge- rapporteur | |
| Emmanuel Gougé Legally qualified judge | |

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| Rainer Friedrich Technically qualified judge | |
| Cornelis Schüller Technically qualified judge | |