



Reference numbers:

APL_14947/2025

UPC_CoA_286/2025

ORDER
of the Court of Appeal of the Unified Patent Court
concerning an application for the revocation of provisional
measures
issued on 23 June 2025

HEADNOTES

1. Art. 70(2) UPCA and R. 371.1 RoP must be interpreted such that court fees are considered paid on time if an order to transfer the due amount to the Court's bank account has been given to a bank at the time of lodging the relevant pleading or application, provided the payment is subsequently received in the Court's bank account.

KEYWORDS

Appeal; application for the revocation of provisional measures; time of payment of court fees

APPELLANTS (APPLICANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. SUMI AGRO LIMITED

Bürgermeister-Neumeyr-Str. 7 – 85391 Allershausen – Germany

2. SUMI AGRO EUROPE LIMITED

Bürgermeister-Neumeyr-Str. 7 – 85391 Allershausen – Germany

hereinafter: Sumi Agro,

represented by European patent attorney Gareth Williams, assisted by other representatives of Marks & Clerk LLP and Bardehle Pagenberg Partnerschaft mbB Patentanwälte Rechtsanwälte

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

SYNGENTA LIMITED

Jealott's Hill International Research Centre – RG42 6EY Bracknell, Berkshire – United Kingdom

hereinafter: Syngenta,

represented by attorney-at-law Jörn Peters, assisted by other representatives of Fieldfisher Partnerschaft von Rechtsanwälten mbB, Syngenta Crop Protection AG, and Michalski, Hüttermann & Partner Patentanwälte mbB

PANEL AND DECIDING JUDGES

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

PATENT AT ISSUE

EP 2 152 073

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Munich Local Division, dated 11 March 2025
- Reference numbers:
 - App_66415/2024
 - UPC_CFI_201/2024
 - ORD_11873/2025

FACTS AND REQUESTS OF THE PARTIES

1. Following an application by Syngenta, the Munich Local Division ordered provisional measures against Sumi Agro by order of 27 August 2024 (ORD_47657/2024 ACT_23636/2024 UPC_CFI_201/2024, hereinafter: the Provisional measures order). The relevant paragraph of the operative part of the order reads as follows:

VI. These provisional measures will be revoked or otherwise cease to have effect, upon request of the Respondents, without prejudice to the damages which may be claimed, if, within a time period not exceeding 31 calendar days or 20 working days, whichever is the longer, from 27 August 2024, the Applicant does not start proceedings on the merits of the case before the Court [...]
2. On 27 September 2024, Syngenta uploaded a Statement of claim in an infringement action via the Court's case management system (ACT_53813/2024 UPC_CFI_566/2024). On the same day, Syngenta ordered the transfer of the court fee to the Court's bank account. The Court received the court fee payment in its bank account on the next working day, which was Monday 30 September 2024.
3. On 25 November 2024, Sumi Agro lodged an application with the Munich Local Division (App_62613/2024 UPC_CFI_201/2024), requesting that the Court
 - a) revoke the provisional measures order, without prejudice to the damages which may be claimed by Sumi Agro; and
 - b) order Syngenta to pay the costs of the proceedings, including the costs of the application.

Sumi Agro submitted – in summary – that Syngenta failed to start proceedings on the merits within the time limit set in paragraph VI of the Provisional measures order, as the court fee was paid on 30 September 2024.

4. On 4 December 2024, Syngenta in addition lodged a precautionary application for re-establishment of rights with the Munich Local Division (App_64036/2024 UPC_CFI_201/2024).
5. By order of 12 December 2024, the judge-rapporteur of the Munich Local Division dismissed Sumi Agro's application for revocation of the Provisional measures order and declared that Sumi Agro must bear the costs of the application (ORD_65555/2024 App_62613/2024 UPC_CFI_201/2024, hereinafter: the Judge-rapporteur order). The reasoning can be summarized as follows. For the statement of claim to be deemed to have been lodged pursuant to R. 15.2 of the Rules of Procedure of the Unified Patent Court (hereinafter: RoP), it is sufficient that that Court fees have been paid. R. 15.2 RoP does not require that the fee has been received by the Court. Furthermore, R. 213.1 RoP merely requires that proceedings on the merits are started. Starting such proceedings means that the Statement of claim is filed in the case management system, not that the court fees have been received by the Court.
6. Sumi Agro filed an application under to R. 333.1 RoP for review of the Judge-rapporteur order by the panel of the Munich Local Division (App_66415/2024 UPC_CFI_201/2024).
7. By order of 11 March 2025, the panel of the Munich Local Division 1) upheld the Judge-rapporteur order of 25 November 2024, and 2) dismissed Syngenta's application for re-establishment of rights (ORD_65353/2024 App_64036/2024 UPC_CFI_201/2024, hereinafter: the impugned order). It granted leave to appeal. The reasoning of the panel on the application for revocation of the provisional measures is similar to the reasoning in the Judge-rapporteur order.
8. By order of 4 March 2025, the Court of Appeal dismissed the appeal of Sumi Agro against the Provisional measures order (APL_51115/2024 UPC_CoA_523/2024).
9. Sumi Agro lodged an appeal against the impugned order, requesting that the Court of Appeal
 - A. revoke part 1 of the impugned order of 11 March 2025 (the dismissal of the application for review) and replace it with its own order;
 - B. revoke the Judge-rapporteur order of 12 December 2024;
 - C. revoke the Provisional measures order of 27 August 2024, without prejudice to the damages which may be claimed by Sumi Agro;
 - D. order Syngenta to pay Sumi Agro's costs of the application for revocation of the Provisional measures order, the application for panel review, and the present appeal proceedings;
 - E. order Syngenta to pay Sumi Agro's costs of the provisional measures proceedings at first instance and on appeal.

Sumi Agro submits – in summary – that the Munich Local Division adopted an incorrect interpretation of R. 15.2 RoP and R. 213.1 RoP, referring also to Art. 60(8) and Art. 70(2) UPCA and R. 371 RoP.

10. Syngenta responded to the appeal, requesting that the Court of Appeal dismiss the appeal, disregard facts and evidence submitted by Sumi Agro in relation to Exhibit SA-20, and declare that Sumi Agro has to bear the legal costs of the proceedings in the first and second instance. Syngenta submits – in summary – that the Munich Local Division adopted a correct interpretation of R. 15.2 RoP and R. 213.1 RoP, also in the light of R. 371 RoP. It argues that Exhibit SA-20 and the request for reimbursement of costs of the provisional measures proceedings (request E) must be disregarded, because Sumi Agro could and should have submitted this exhibit and request in the first instance proceedings.

GROUND FOR THE ORDER

Time of payment of court fees

11. Under Art. 70(2) of the Agreement on a Unified Patent Court (hereinafter: UPCA), Court fees shall be paid in advance, unless the Rules of Procedure provide otherwise. R. 371.1 RoP specifies that fixed fees shall be paid at the time of lodging the relevant pleading or application and that the payment shall be made to one of the bank accounts indicated by the Court. The same rule applies to the payment of value-based fees (R. 371.4 RoP).
12. These provisions must be interpreted such that court fees are considered paid on time if an order to transfer the due amount to the Court's bank account has been given to a bank at the time of lodging the relevant pleading or application, provided the payment is subsequently received in the Court's bank account.
13. This interpretation ensures that the lodging party can fully control and easily verify the timely payment of the court fees. This is important since, in general, a pleading or application will not be deemed lodged until the court fees have been paid (R. 15.2 RoP). The time of payment may therefore determine whether the relevant pleading or application has been lodged within an applicable time limit. The lodging party should be able to control and easily verify the timely lodging of a pleading or application. This would not be possible if the timing of payment of court fees were dependent on factors outside the lodging party's control, such as the time it takes the bank to process a transfer.
14. This interpretation is confirmed by R. 371.2 RoP, which provides that proof of payment of court fees must be provided together with the relevant pleading or application. This Rule presupposes that the transfer order rather than the receipt is decisive for the payment. If the receipt were decisive, no proof of payment would be necessary, since the Court is in a better position to determine the receipt in its own bank account than the lodging party.

15. In addition, this interpretation ensures that, where there is a time limit for lodging the relevant pleading or application, the lodging party can use the full time limit to decide whether or not to lodge. A party can lodge the relevant pleading or application at the last day of the time limit, either through the case management system or, if this is not possible, in hard-copy at the Registry. However, payment orders might not be executed on the same day, in particular in the international environment in which the Court operates.
16. At the same time, it must be ensured that only fees that are received by the Court are considered paid. A lodging party is therefore considered not to have paid the court fee if the payment is not received in the Court's bank account. In such a case, the lodging party must be deemed not to have made the necessary arrangements for the fee payment. If the due amount is received, the payment is considered to have been made at the time the transfer order was given to the bank (cf. Art. 7.3 of the Rules relating to fees of the European Patent Office).

Time of payment of court fees in this case

17. Applying the standards set out above, it is clear that Syngenta paid the court fee for the infringement action on 27 September 2024. It is not in dispute that Syngenta ordered the transfer to the Court's bank account on that date and that the amount was received in the Court's bank account on the next working day, 30 September 2024.
18. It follows that Sumi Agro's argument that Syngenta failed to start proceedings on the merits within the time limit set in the provisional measures order, cannot succeed. This argument is based entirely on the incorrect assumption that Syngenta paid the fee on 30 September 2024.
19. The Court of Appeal can leave open the question of whether the print-out of the Court's case management system indicating 30 September 2024 as the "date of receipt/effective lodging" (Exhibit SA-20), could and should have been submitted in the first instance. The information provided by the case management system is not decisive in establishing the date of effective lodging.
20. For these reasons, the Court of Appeal will dismiss the appeal. Pursuant to Art. 69(1) UPCA, Sumi Agro will have to bear the reasonable and proportionate legal costs and other expenses of the proceedings. However, the Court of Appeal's cost decision will not concern the costs of the first instance proceedings, as the impugned order, upholding the cost decision in the Judge-rapporteur order, is confirmed.

ORDER

- I. The appeal is dismissed;
- II. Sumi Agro shall bear the costs of the appeal proceedings.

This order was issued on 23 June 2025.

Klaus Grabinski
President of the Court of Appeal

Peter Blok
Legally qualified judge and judge-rapporteur

Emanuela Germano
Legally qualified judge