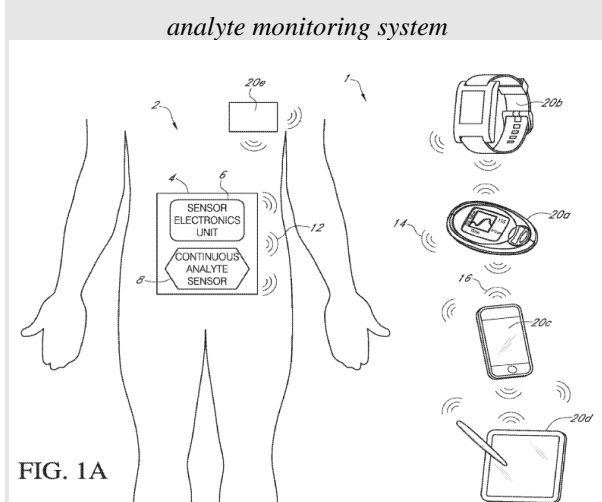


**UPC Court of Appeal, 14 March 2024, Abbott v Dexcom**



**PATENT LAW – PROCEDURAL LAW**

**Inadmissible appeal (Rule 220(2) RoP)**

- **Under Rule 220.2 RoP an appeal from an order without leave is inadmissible from the outset and, as such, cannot be withdrawn.**

Source: [Unified Patent Court](#)

**UPC Court of Appeal, 14 March 2024**

(Grabinski)

UPC Court of Appeal

UPC\_CoA\_5/2024

PR\_APL\_189/2024

**ORDER**

of the President of the Court of Appeal of the Unified Patent Court

issued on 14 March 2024 pursuant to [Rule 229.5 RoP](#)

**HEADNOTE**

Under [Rule 220.2 RoP](#) an appeal from an order without leave is inadmissible from the outset and, as such, cannot be withdrawn.

**KEYWORDS**

Inadmissibility, leave to appeal.

**APPLICANTS AND APPELLANTS**

- (1) Abbott Laboratories
- (2) Abbott Diabetes Care Inc.
- (3) Abbott France
- (4) Abbott (S.V./N.V.)
- (5) Abbott B.V.
- (6) Abbott S.r.l.
- (7) Abbott Scandinavia Aktiebolag
- (8) Abbott GmbH
- (9) Abbott Diagnostics GmbH
- (10) Abbott Logistics B.V

Represented by: Christian Dekoninck, Patricia Cappuyns, François Pochart, Wim Maas, Eelco Bergsma, Mag. Thomas Adocker, Dr. Dietrich Kamlah, Dr. Christian Lederer and Dr. Gisbert Hohagen

**RESPONDENT**

DexCom, Inc

Represented by: Anne-Charlotte Le Bihan and Laurent Labatte

**DECIDING JUDGE**

Klaus Grabinski, President of the Court of Appeal

**IMPUGNED ORDER**

[Order of the Court of First Instance \(Paris Local Division\) of 19/12/2023 – ORD 589749/2023 UPC CFI 230/2023 ACT 546446/2023](#)

**SUMMARY OF FACTS AND INDICATION OF PLEADINGS**

Respondent brought a claim for infringement of a European patent against Appellants in the Court of First Instance (Paris Local Division). Upon request of the Appellants, the [judge-rapporteur issued on 19 December 2023](#) a confidentiality order under [R. 262A RoP](#). In the order it was provided that in case of a breach of the order the Court, upon request of the Appellants, could impose a fine of up to 50.000 € for each single case of breach. In the order it was also mentioned that “the present Order may be appealable according to [R. 220.2 RoP](#) or may be reviewed by the panel according to [R. 333 RoP](#).”

On 3 January 2024 the Appellants filed an appeal under [Rule 220.2](#) Rules of Procedure (RoP) contesting the ceiling of the penalty amount as set by the judge-rapporteur in her order of [19 December 2023](#) as too low compared to the ceiling of a penalty amount set in another case but with similar background by the Munich Local Division and requesting that the ceiling of the penalty amount should be raised to 250.000 €.

On 10 January 2024 the Registry of the Court of Appeal enquired of the Appellants as to why, in their view, leave to an appeal has been granted.

On 12 January 2024 and referring to a communication received from the Judge-rapporteur of the Paris Local Division in which it was said that “leave to appeal under [R. 220.2 RoP](#) as requested is not granted at this stage of the proceedings”, Appellants withdrew the appeal.

The Registry informed the President of the Court of Appeal under [Rule 229.5 RoP](#) that Appellants have not met the requirements of [Rules 224.1\(b\), 220.2 RoP](#).

**REASONS FOR THE ORDER**

Pursuant to [Rule 220.2 RoP](#), orders other than those referred to in [Rules 220.1](#) and [97.5 RoP](#) may be appealed only if the Court of First instance has granted leave to appeal.

It does not appear from the submissions of Appellants that such leave has been granted by the Court of First Instance. Rather, the judge-rapporteur of the Court of First Instance stated in her communication that leave to appeal was not granted.

Without leave to appeal the appeal filed under [Rule 220.2 RoP](#) was inadmissible from the outset and, as such, could not be withdrawn. Appellants did not need to be heard again as they had already been heard by the Registry on whether leave to appeal has been granted by the Court of First Instance, [Rule 229.5 sentence 2 RoP](#).

**ORDER**

The appeal is rejected as inadmissible.

Issued on 14 March 2024

**SIGNATURES**

President of the Court of Appeal of the Unified Patent  
Court

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