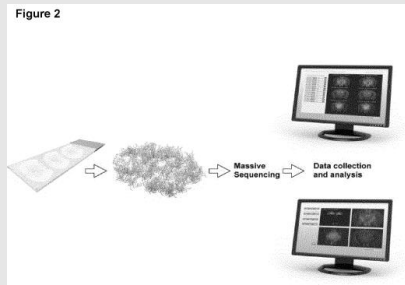


**UPC Court of Appeal, 5 July 2024, 10x v Curio****PATENT LAW – PROCEDURAL LAW****Withdrawal of appeal from provisional measure with consent ([Rule 265 RoP](#), [Rule 151\(d\) RoP](#))**

- **The cost of the appeal incurred by Curio shall be borne by 10x, in an amount to be determined by the Court of First Instance (as requested by both parties)**

Source: [Unified Patent Court](#)

**UPC Court of Appeal,  
7 July 2024**

(Kalden, Simonsson, Rombach)

UPC\_CoA\_234/2024

APL\_27805/2024

App\_38102/2024

**ORDER**

of the Court of Appeal of the Unified Patent Court issued on 5 July 2024

**APPLICANT (AND DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE CFI):**

**10x Genomics, Inc.**

hereinafter also referred to as: ‘10x’, represented by Attorney Prof. Dr. Tilman Müller-Stoy (Bardehle Pagenberg)

**RESPONDENT (AND CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE CFI):**

**Curio Bioscience Inc.**

hereinafter also referred to as: ‘Curio’, represented by European patent attorney Cameron Marshall and attorney Agathe Michel-de Cazotte (Carpmaels & Ransford)

**PATENT AT ISSUE**

**[EP 2 697 391](#)**

**PANEL AND DECIDING JUDGES:**

This order has been issued by the second panel of the Court of Appeal consisting of:

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**

□ ORD\_23580/2024

□ Case number of the Court of First Instance: UPC\_CFI\_463/2023; ACT\_590953/2024 (application for preliminary measures)

**POINT AT ISSUE**

Request for withdrawal of the appeal

**PROCEDURAL BACKGROUND AND PARTIES’ REQUESTS**

1. The parties were involved in proceedings before the Court of First Instance, Düsseldorf Local Division, where 10x filed an application for provisional measures against Curio. 10x’s requests were **partly dismissed by the Court of First Instance.**

2. (Only) 10x appealed against the impugned order by Statement of appeal and Statement of Grounds of Appeal dated 15 May 2024.

3. Curio lodged a Statement of response on 10 June 2024, in which it, inter alia, raised the question of admissibility of the appeal lodged by 10x, and the question of the necessity of the appeal. Curio did not lodge a cross-appeal pursuant to [R.237 RoP](#).

4. By management order of 25 June 2024, the judge-rapporteur allowed 10x to respond (only) to the paragraphs relating to the issues of admissibility and necessity of its appeal by 3 July 2024, prior to an interim conference to be held on 12 July 2024, where these issues would be discussed.

5. The next day, on 26 June 2024, 10x lodged a request to withdraw the appeal “given that the Defendant/Respondent did – according to its own declarations which we assume to be accurate – not file an own appeal or cross-appeal”.

6. In its request for withdrawal, 10x argued that the question of cost reimbursement pursuant to [R.265.2 RoP](#) should be decided after a decision in the main action pursuant to [R.118.5 RoP](#).

7. Curio responded to the request on 1 July 2024. It consents to the withdrawal of the appeal.

8. With reference to the order of the Court of Appeal ([UPC CoA 101/2024 Curio Bioscience v 10x Genomics, 17 April 2024](#)), in which it has stated that the reimbursement of legal costs is to be decided in a final order or decision, Curio does not request a costs decision, but does request that the Court of Appeal states in its order that the costs of this appeal should be reflected in Curio’s favour in the costs decision to be made in the final order or decision.

**GROUND FOR THE ORDER**

9. Pursuant to [R.265 RoP](#), as long as there is no final decision in an action, a claimant may apply to withdraw his action. This provision applies equally (mutatis mutandis) to an appellant who requests to withdraw its appeal.

10. The Court permits the withdrawal of the appeal, given 10x’s request and the consent from Curio.

11. [R.265.2 RoP](#) provides that if the withdrawal is permitted, the Court shall issue a cost decision in accordance with Part 1, Chapter 5 ([Rules 150 – 157 RoP](#)).

12. The parties in this case both request that the cost reimbursement is decided after a decision in the proceedings on the merits between them, pending before the Court of First Instance. The Court of Appeal agrees that the determination of the amount to be reimbursed can properly be done at that stage.

13. The Court of Appeal is of the opinion that in case of a withdrawal of an appeal, the appellant shall be considered to be the unsuccessful party who shall bear the costs (as referred to in **R.151(d) RoP**) incurred in relation to the appeal proceedings. Curio's request (see par. 8 above) shall therefore be allowed.

**ORDER**

The Court of Appeal

1. permits the requested withdrawal of the appeal;
2. declares the proceedings under case number UPC\_CoA\_234/2024; APL\_27805/2024 closed;
3. orders that this decision shall be entered on the register;
4. declares that the cost of the appeal incurred by Curio shall be borne by 10x, in an amount to be determined by the Court of First Instance.

Issued on 5 July 2024

Rian Kalden, Presiding judge and judge-rapporteur  
Ingeborg Simonsson, legally qualified judge  
Patricia Rombach, legally qualified judge

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