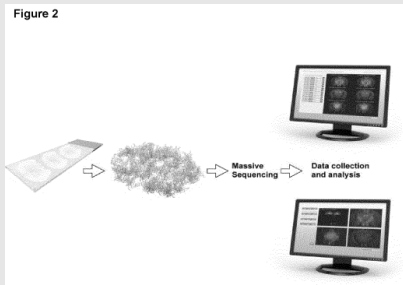


UPC Court of Appeal, 5 July 2024, 10x v Curio



PATENT LAW – PROCEDURAL LAW

Withdrawal of appeal from provisional measure with consent ([Rule 265 RoP](#), [Rule 151\(d\) RoP](#))

- The 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.
- 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
