

UPC CFI, Local Division Munich, 12 December 2024,
Syngenta v Sumi Agro

Upheld in panel review:

**IPPT20250311, UPC CFI, LD Munich, Syngenta v
Sumi Agro**



PATENT LAW – PROCEDURAL LAW

Application to revoke provisional measures dismissed (**R. 213(1) RoP**, **R. 15(2) RoP**)

- As the respondents have started the main proceedings and paid the court fee in time the application is to be dismissed.

Neither the English nor the German nor the French version state that the fee "has been received by the court". The wording in all languages clearly state that it is sufficient that the court fees have been paid for the statement of claim to be deemed to have been lodged (per se and not when: **R. 15 (2) RoP** does not stipulate the date of filing).

Further **Rule 213 (1) RoP** states that applicant has "to start" proceedings on the merits. The wording of the rule unambiguously states that the "start" of the proceedings on the merits is sufficient. Starting something in other words means to begin with. Starting the proceedings on the merits means that the statement of claim is filed in the CMS. Nothing in **R. 213 (1) RoP** states or implies that for the start of the proceedings the court fees have to have been received by the Court.

Source: **Unified Patent Law**

UPC Court of First Instance
Local Division Munich, 12 December 2024
(Zigann)

UPC_CFI_201/2024

Order

of the Court of First Instance of the Unified Patent Court
Local Division Munich
issued on 12 December 2024

APPLICANT

Syngenta Limited, Jealott's Hill International Research Centre, RG42 6EY, Bracknell, Berkshire – GB
represented by: Dr. Jörn Peters (Fieldfisher) Prof. Dr. Aloys Hüttermann (Michalski, Hüttermann & Partner)
Dr. Filip Alois J. De Corte, Dr. Christopher Andrews (Syngenta Crop Protection AG)

RESPONDENTS

1) Sumi Agro Limited, Bürgermeister-Neumeyr-Str. 7 - 85391 - Allershausen – DE

2) Sumi Agro Europe Limited, Bürgermeister-Neumeyr-Str. 7 - 85391 - Allershausen – DE
represented by: Gareth Williams (Marks & Clerk)
Johannes Heselberger, Dr. Axel B. Berger, Dr. Kerstin Galler, Dr. Markus Ackermann (Bardehle Pagenberg)

PATENT AT ISSUE

European patent n° **EP 2 152 073**

PANEL/DIVISION

Panel 1 of the Local Division Munich

DECIDING JUDGES

This order has been issued by the presiding judge Dr. Matthias Zigann acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Application for provisional measures.

Request to revoke an Order for preliminary measures (**RoP 198** and **RoP 213**) App. 62613/2024

REQUESTS BY THE PARTIES

Applicant requests:

- Revoke Order No. ORD 47657/2024, without prejudice to the damages which may be claimed by the Defendants.
- Order the Claimant to pay the Defendants' costs of the proceedings, including the costs of this Application.

Respondents request:

- The Respondents' [= Applicants] Application to revoke provisional measures is dismissed.
- The Respondents [Applicant] bear the costs of the proceedings, including the costs of their Application to revoke provisional measures.

ARGUMENTS BY THE PARTIES

Applicant argues:

*"The 20 working day deadline expired on 24 September 2024, while the 31 calendar day deadline expired on 27 September 2024. Pursuant to **Rule 9.4 RoP**, the deadline set under **Rule 213.1** is non-extendable. It is a mandatory time limit which cannot be modified. The Claimant subsequently started proceedings on the merits on 30 September 2024 under ACT 53813/2024 (UPC CFI 566/2024). The date on which proceedings are started is determined by when (in this case) the Statement of claim is uploaded to the CMS and when the court fee is paid. Pursuant to **Rule 15.2 RoP**, the Statement of claim shall not be deemed to have been lodged until the applicable court fees have been paid. Accordingly, proceedings are not started until the court fees have been paid. On 21 November 2024, the Registry of the Court confirmed the following information to the Defendants' representatives concerning when the Claimant started proceedings on the merits (see the email exchange attached as Exhibit SA-18): a. The Statement of claim was uploaded to the CMS on 27 September 2024. b. The court fee was received by the Court on 30 September 2024. The Statement of Claim is therefore deemed to have been lodged and the proceedings started on 30 September 2024. This is after the non-extendable deadline of 27 September 2024. The Order must therefore be revoked under **Rule 213.1 RoP**. The rule does not permit the exercise of discretion."*

Respondents argue:

“The Respondents' request is based on a misrepresentation of the relevant provisions in the Rules of Procedure and, most importantly, ignores the main relevant Rule for the timely payment of court fees, [R. 371 \(1\) RoP](#), which clearly states that the payment should be made at the time of filing. None of these provisions demand that the monies paid upon filing need to have arrived at the UPC's bank account before the deadline's expiry. Requesting a party to make the payment so that it arrives before the end of the deadline would also not be consistent with how the Case Management System of the court is set up, would amount to a de facto shortening of said deadline by at least one day and lead to various impractical consequences for both the users of the UPC system and the Courts.”

GROUND FOR THE ORDER

The application is to be dismissed. The Applicant falsely apply [R. 15 \(2\) RoP](#) and additionally give it an improper meaning. [Rule 15 \(2\) RoP](#) states:

"The Statement of claim shall not be deemed to have been lodged until the fixed fee and, where applicable, the value based fee for the infringement action has been paid, unless otherwise provided."

In German:

“Soweit nichts anderes bestimmt ist, gilt die Klageschrift erst dann als eingereicht, wenn die Festgebühr und gegebenenfalls die streitwertabhängige Gebühr für die Verletzungsklage bezahlt wurde.“

In French:

“Le mémoire en demande n'est pas réputé avoir été déposé tant que le droit fixe et, le cas échéant, le droit fondé sur la valeur du litige pour l'action en contrefaçon n'a pas été payé, sauf disposition contraire”.

Neither the English nor the German nor the French version state that the fee *"has been received by the court"*. The wording in all languages clearly state that it is sufficient that the court fees have been paid for the statement of claim to be deemed to have been lodged (per se and not when: [R. 15 \(2\) RoP](#) does not stipulate the date of filing).

Further [Rule 213 \(1\) RoP](#) states that applicant has *"to start"* proceedings on the merits. The wording of the rule unambiguously states that the *"start"* of the proceedings on the merits is sufficient. Starting something in other words means to begin with. Starting the proceedings on the merits means that the statement of claim is filed in the CMS. Nothing in [R. 213 \(1\) RoP](#) states or implies that for the start of the proceedings the court fees have to have been received by the Court.

As the respondents have started the main proceedings and paid the court fee in time the application is to be dismissed.

ORDER

1. The application is dismissed.
2. The Applicant must bear the costs of this application.

INFORMATION ABOUT REVIEW BY PANEL

Any party may request that this Order be referred to the panel for a review pursuant to [R. 333 RoP](#). Pending review, the Order shall be effective ([R. 102.2 RoP](#))

DETAILS OF THE ORDER

Order no. ORD_65555/2024 in ACTION NUMBER:
Not provided
UPC number: UPC_CFI_201/2024
Action type: Not provided
Related proceeding no. Application No.: 23636/2024
Application Type: Application for provisional measures (RoP206)
Dr. Zigann Presiding Judge and Judge-rapporteur
