

UPC CFI, Local Division The Hague, 19 December 2024, Amycel

Amycel's patented brown hybrid strain



PATENT LAW – PROCEDURAL LAW

Steps already taken constitute good service of Statement of claim in proceedings on the merits ([R. 275.2 RoP](#))

- [Statement of claim is deemed served on 25 November 024, order to send a copy of this order to former representative, assuming he is still in touch with defendant](#)

Source: [Unified Patent Court](#)

**UPC Court of First Instance,
Local Division The Hague, 19 December 2024**

(Brinkman, Lopes, Wadsov-Hansen, Kokke)

UPC_CFI_499/2024

Procedural Order

of the Court of First Instance of the Unified Patent Court delivered on 19/12/2024

regarding [R.275 RoP](#)

Order

of the Court of First Instance of the Unified Patent Court Local Division The Hague

issued on 31/07/2024

regarding provisional measures

APPLICANT

Amycel LLC

(Applicant) - 260 Westgate Drive - 95076 - Watsonville, California – US

Represented by Hendrik Wilm Jarl Lambers

RELEVANT OTHER PARTIES

[...] Hereinafter: “Defendant”

PATENT AT ISSUE

Patent no.

Proprietor/s

[EP 1 993 350 B2](#)

Amycel LLC

DECIDING JUDGE

Judge-rapporteur: Margot Kokke

LANGUAGE OF PROCEEDINGS:

English

BACKGROUND AND GROUNDS FOR THE ORDER

1. On 13 December 2024 the Applicant (hereinafter “Amycel”) lodged an application requesting that the court:

(1) order that the two methods mentioned in the application to bring the Statement of Claim (“SoC”) to the attention of Defendant are good service, in particular Amycel’s use of a Dutch bailiff using a well-established private carrier for in person delivery against acknowledgement of receipt;

(2) specify that Amycel’s SoC is deemed served on Defendant, and service has thus been effected, on 18 November 2024;

(3) specify the period for Defendant to lodge a Statement of Defense (“SoD”), which period Amycel requests to start at 18 November 2024 and end on 18 February 2025;

(4) to give a decision by default against Defendant in case Defendant does not lodge a SoD within the time period to be set by the Court and grant the relief Amycel has claimed, including the award of the requested costs;

(5) or, alternatively make any other order in good justice - determining the (alternative) method of good service;

- specifying when Amycel’s SoC is deemed served on Defendant, and the service thus effected;

- would specifying the period for filing Defendant’s SoD, and

- determining that and when a default decision against Defendant would be given in case Defendant does not lodge a SoD within the time period to be set by the Court, while deciding in such default decision conform Amycel’s claims, including on the award of Amycel’s costs.

2. The request concerns [...]. Defendant, who is the sole defendant named in the SoC uploaded by Amycel on 30 August 2024 (ACT_48877/2024). This action on the merits follows provisional measures proceedings that Amycel initiated against Defendant before the Local Division The Hague (UPC_CFI_195/2024, ACT_23163/2024) and were started by Amycel within the time period set by the Local Division in the [order of 31 July 2024 granting provisional measures](#).

3. Defendant’s representative in the provisional measures proceedings was asked to indicate whether he was authorized to accept service of the Statement of Claim, but he informed the registry that Defendant had not appointed him in these proceedings on the merits. Service by electronic means can therefore not be effected.

4. As Defendant is located in Poland, an EU country that is not a Contracting Member State, [R. 274.1\(a\)\(i\) RoP](#) applies to service. Accordingly, service was effected by the court by sending a registered letter with acknowledgement of receipt. This letter was returned to the registry. Subsequently this was tried again and the letter was again returned unopened.

5. At the same time, Amycel, after deliberations with the registry, initiated two alternative methods of service namely:

a. service through a Dutch bailiff acting as transmitting agency and using the local official receiving agency in Poland;

b. service through a Dutch bailiff using a well-established private carrier for in person delivery against acknowledgement of receipt, including the

acknowledgment of receipt with the use of the tracking tools of this private carrier.

6. By both routes the following documents were contained in the writ of service of the bailiff (each document accompanied by a Polish translation):

- Amycel's SoC;
- the Local Division's service letter dated 17 September 2024;
- the Local Division's wit CMS access codes dated 17 September 2024;
- the so-called L-form according to the EU Service Regulation.

7. Via method of service b. (private carrier) the documents were delivered to Defendant with acknowledgement of receipt on 18 November 2024, evidenced by the private carrier's proof of delivery submitted by Amycel with the application. From a further report of the private carrier it is apparent that Defendant subsequently refused the package and returned it to the carrier for return to the sender, or when this is not possible by [274.1\(b\) RoP](#).

8. Service via method a. mentioned above was also not successful. The package with the documents was delivered to Defendant's address on 19 November 2024 but was subsequently returned to the Dutch bailiff unopened. Defendant did not make a written declaration of refusal, e.g. by using the L-form (cf. [Article 12.3 EU Service Regulation](#)).

9. The Court considers that the steps already taken to bring the SoC to the defendant's attention by an alternative method, as described above, respect the rights of the defendant. The legal documents were received by and/or delivered to his address, but he chose not to accept or open the documents. Therefore, the alternative method followed by Amycel is in accordance with the UPC principles of efficiency and fairness ([RoP Preamble, points 4 and 5](#)) and is a "good service" pursuant to [R. 275.2 RoP](#).

10. The date on which the SoC is deemed served on Defendant is 25 November 2024. Pursuant to [R.23 RoP](#) the Defendant can lodge a SoD within three months from this date of service.

11. Amycel used the same representative in the provisional measure proceedings (at the local division and in appeal APL 47391/2024, UPC CoA 490/2024) and in the revocation action (PR_ACT_40493/2024 UPC_CFI_403/2024). Although this representative indicated that he has not been engaged by Defendant for these proceedings, the court assumes that he is in touch with the Defendant. Amycel is therefore ordered to send a copy of this order by email to the former representative, requesting him (i) to forward the order to the Defendant or otherwise bring it to his attention and (ii) to inform the Defendant that a decision by default shall be issued in case he does not appear in these proceedings by filing a statement of defense within three months from 25 November 2024.

ORDER

I. The date on which the Statement of Claim is deemed to be served on Defendant is 25 November 2024;

II. Amycel is ordered to send a copy of this order to Defendant's former representative with the requests set out in II above.

ORDER DETAILS

Application No.: App_ 65966/2024 in ACTION: ACT_48877/2024

UPC number: UPC_CFI_499/2024

Action type: Infringement Action

Application Type: R. 275 Generic procedural Application
