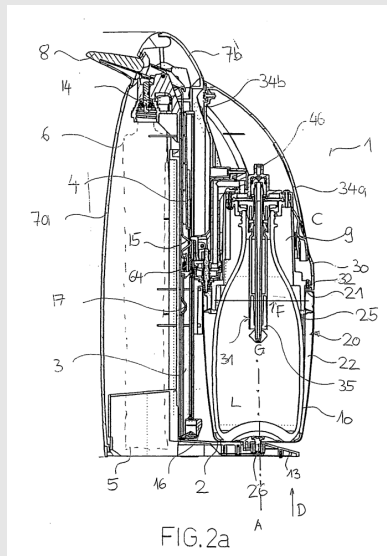


UPC Court of Appeal, 19 February 2025, Aarke v SodaStream



PATENT LAW – PROCEDURAL LAW

Withdrawal of appeal without objection – no cost decision requested – reimbursement of costs

- **R. 265.1 RoP also applies mutatis mutandis to the withdrawal of an appeal.**

Source: [Unified Patent Court](#)

UPC Court of Appeal, 19 February 2025

(Kalden, Simonsson, Rombach)

APL_68522/2024

UPC_CoA_844/2024

App_1387/2025

ORDER

of the Court of Appeal of the Unified Patent Court
issued on 19 February 2025

Withdrawal pursuant to [R. 265 RoP](#) and

Application for reimbursement of Court fees ([R. 370.9 RoP](#))

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

Aarke AB, Stockholm, Sweden hereinafter also referred
to as “Aarke”

represented by: Jens Olsson, Magnus Dahlman and
Emelie Rexelius, attorneys at law, Advokatbyrån
Gulliksson AB, Malmö, Sweden, Christian Arkelius,
European patent attorney, Arkelius, Ström & Gulliksson
AB, Stockholm, Sweden

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

Sodastream Industries Ltd., Kfar Saba, Israel
hereinafter also referred to as “Sodastream”

represented by: Dr. Andreas von Falck, Dr. Alexander
Klicznik, Diana Rodriguez, Lea Groblichhoff, attorneys
at law, Hogan Lovells International LLP, Düsseldorf,
Germany

PATENT AT ISSUE:

European patent [n° 1793917](#)

LANGUAGE OF THE PROCEEDINGS

English

DECIDING JUDGES

This order was issued by Panel 2

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**

□ [Düsseldorf Local Division, Date: 31 October 2024;](#)
ORD_598499/2023 in the main proceedings concerning
infringement action ACT_580849/2023
UPC_CFI_373/2023

**SUMMARY OF FACTS AND INDICATION OF
THE PARTIES’ REQUESTS**

1. Sodastream initiated infringement proceedings
against Aarke before the Düsseldorf Local Division
based on alleged infringement of the patent at issue.

2. The Düsseldorf Local Division declared that Aarke
had infringed the patent at issue and issued an injunction
and several other measures.

3. On 30 December 2024, Aarke lodged an appeal
against the [impugned order \(APL 68522/2024
UPC CoA 844/2024\)](#).

4. On 10 January 2025 Aarke filed an application to
withdraw the appeal pursuant to [R.265 RoP](#), an
application for reimbursement of court fees pursuant to
[R. 370 RoP](#) and requested a cost decision to be issued.

5. Sodastream was given the opportunity to comment on
Aarke’s requests and has not filed any comments in this
regard.

GROUND

Conditions for permitting withdrawal

6. As long as there is no final decision in an action, a
claimant may, pursuant to [R. 265.1 RoP](#), apply to
withdraw his action. The application to withdraw shall
not be permitted if the other party has a legitimate
interest in the action being decided by the Court. [R.
265.1 RoP](#) also applies mutatis mutandis to the
withdrawal of an appeal.

7. Taking into consideration that Sodastream has not
objected to Aarke’s request it cannot be considered to
have a legitimate interest in a decision by the Court.
Thus, the application to withdraw the appeal can be
permitted.

Costs

8. [R. 265.2 \(c\) RoP](#) provides that the Court shall issue a
cost decision in accordance with Part 1, Chapter 5.
Aarke only generally requests that a cost decision be
issued, without any further guidance.

9. Since Aarke requested a withdrawal of its appeal, it must be considered as the unsuccessful party who should bear the reasonable and proportionate legal costs and other expenses incurred by the successful party pursuant to [Art. 69\(1\) UPCA](#) (see [UPC Court of Appeal, 5 July 2023](#) [UPC CoA 234/2024](#); [APL_27805/2024](#), App_38102/2024 para. 13).

10. Despite being given the opportunity to do so, Sodastream did not file any comments and thus has not requested to have any costs reimbursed. The Court of Appeal thus concludes that there is no need for a cost decision.

Reimbursement of Court fees

11. In case of the withdrawal of an action ([R. 265 RoP](#)), the party liable for the Court fees will be reimbursed by 60 % in accordance with [R.370.9 \(b\) \(i\) RoP](#) if the action is withdrawn before the written proceeding have been concluded. This reimbursement is to be ordered in accordance with the application.

ORDER

The Court of Appeal:

- permits the withdrawal of the appeal (APL_68522/2024, UPC_CoA_844/2024) and declares the proceedings closed;
- orders that this decision shall be entered on the Register;
- declares that there is no need for a cost decision;
- orders that 60 % of the appeal Court fees be reimbursed to Aarke.

Issued on 19 February 2025,

Rian Kalden, presiding judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Patricia Rombach, legally qualified judge
