

UPC CFI, Local Division Munich, 11 March 2025,
Syngenta v Sumi Agro



PATENT LAW – PROCEDURAL LAW

Panel review: order of judge-rapporteur to dismiss application to revoke provisional measures upheld (R. 333 RoP, R. 15 RoP, R. 213(1) RoP)

- Nothing in R. 213 (1) RoP states or implies that the court fees have to be received by the court in order to start the proceedings. As Syngenta has started the main proceedings and has paid the court fee in due time, the application must be dismissed.

Source: Unified Patent Law

UPC Court of First Instance

Local Division Munich, 11 March 2025

(Zigann, Schober, Pichlmaier, Dorland-Galliot)

UPC_CFI_201/2024

Order

of the Court of First Instance of the Unified Patent Court
Local Division Munich

issued on 11 March 2025

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 Heselerberger, 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, the legally qualified judges Dr. Walter Schober and Tobias Pichlmaier, and the technically qualified judge Xavier Dorland-Galliot.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Application for provisional measures -
ORD_47657/2024 in ACT_23636/2024;
Request to revoke an Order for preliminary measures -
App_62613/2024 and
ORD_5034/2025, ORD_65555/2024;
Application to review a case management Order -
App_66415/2024 and APP_68407/2024,
APP_2747/2025, ORD_5034/2025, APP_8433/2025;
Application for re-establishments of rights -
App_64036/2024

PROCEDURAL HISTORY AND REQUESTS BY THE PARTIES

With order dated 27 August 2024 (ORD_47657/2024 in ACT_23636/2024) the Local Division Munich ordered provisional measures against Sumi Agro, as follows:

“...VI. These provisional measures will be revoked or otherwise cease to have effect, upon request of the Respondents, without prejudice to the damages which may be claimed, if, within a time period not exceeding 31 calendar days or 20 working days, whichever is the longer, from 27 August 2024, the Applicant does not start proceedings on the merits of the case before the Court...”

With application dated 25 November 2024 (App_62613/2024) Sumi Agro requested:

a. Revoke Order No. ORD_47657/2024, without prejudice to the damages which may be claimed by the Defendants.

b. Order the Claimant to pay the Defendants' costs of the proceedings, including the costs of this Application.
Syngenta requested:

I. The Respondents' [= Sumi Agro] Application to revoke provisional measures is dismissed.

II. The Respondents [= Sumi Agro] bear the costs of the proceedings, including the costs of their Application to revoke provisional measures.

Sumi Agro argued:

“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."

Syngenta argued:

"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."

Syngenta filed a precautionary application for re-establishment of rights on 4 December 2025 (App_64036/2024).

With [order dated 12 December 2024 \(ORD 65555/2024\)](#) the judge-rapporteur dismissed Sumi Agro's application:

"1. The application is dismissed.

2. The Applicant [= Sumi Agro] must bear the costs of this application."

On 16 December 2024 Sumi Agro filed an application for a panel review (App_66415/2024) and requests:

a. Order No. ORD 65555/2024 of the presiding judge in the proceedings [UPC CFI 201/2024 of 12 December 2024](#) be reviewed by the panel and revoked.

b. Revoke Order No. ORD 47657/2024, without prejudice to the damages which may be claimed by Defendants.

c. Order Claimant to pay Defendants' costs of the proceedings, including the costs of Defendants' application to revoke provisional measures and Defendant's application for review.

d. In the alternative, leave to appeal be granted.

Syngenta filed observations (App_2747/2025) and requests:

I. The Respondents' Application for panel review of the order number ORD 65555/2024 is dismissed.

II. The Respondents bear the costs of the proceedings, including the costs of their Application to revoke provisional measures and their Application for panel review.

III. Under the condition precedent that the Court revokes ORD 47657/2024, grant leave to appeal.

GROUNDINGS FOR THE ORDER

The Judge-Rapporteur rightly dismissed Sumi Agro's application. Sumi Agro misapplies [Rule 15 \(2\) RoP](#) and

also gives 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 have 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, German nor the French version states that the fee "has been received by the court". The wording in all languages clearly states 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 specify the date of filing). Furthermore, [Rule 213 \(1\) RoP](#) states that the applicant must "start proceedings on the merits". The wording of the rule clearly states that it is sufficient to "start" the proceedings on the merits. In other words, to start something means to begin with it. The start of 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 the court fees have to be received by the court in order to start the proceedings. As Syngenta has started the main proceedings and has paid the court fee in due time, the application must be dismissed. Leave to appeal is granted as the present application concerns fundamental questions of interpretation of the requirements to be met in order to satisfy the requirement of payment under [Rule 15\(2\)](#) of the Rules of Procedure and what is required to start or commence proceedings before the UPC. As the payment was made in due time, the application for re-establishment of rights is unfounded and must be dismissed.

ORDER

1. The order of the judge-rapporteur dated 12 December 2024 (ORD_65555/2024) is upheld.

2. Syngenta's application for re-establishment of rights (APP_64036/2024) is dismissed.

3. Leave to appeal is granted.

INFORMATION ABOUT APPEAL IN CASE OF AN ORDER FALLING UNDER ART. 73(2)(B) UPCA:

The present order may either - be the subject of an appeal by any party which has been unsuccessful, in whole or in part, in its submissions together with the appeal against the final decision of the Court of First Instance in the main proceedings, or - be appealed by any party which has been unsuccessful, in whole or in part, in its submissions at the Court of Appeal with the leave of the Court of First Instance within 15 days of service of the Court of First Instance's decision to that effect ([Art. 73\(2\)\(b\) UPCA](#), [R. 220.2](#), [224.1\(b\) RoP](#))

DETAILS OF THE ORDER

Order no. ORD_11873/2025 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)

Order no. ORD_65353/2024 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)

Order no. ORD_11874/2025 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

Dr. Schober

Legally Qualified Judge

Pichlmaier

Legally Qualified Judge

Dorland-Galliot

Technically Qualified Judge
