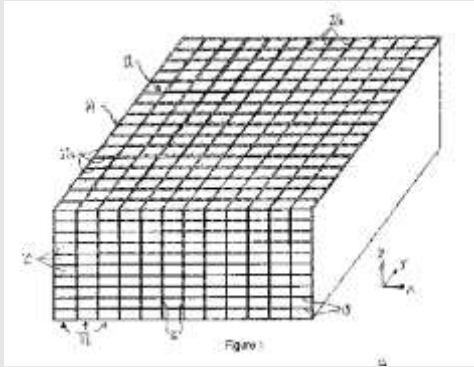


UPC CFI, Regional Division Nordic-Baltic, 8 September 2023, Ocado v Autostore



PATENT LAW – PROCEDURAL LAW

Withdrawal of action prior to final decision because of settlement ([Rule 265 RoP](#))

- Since the action has been withdrawn even before all defendants formally have been served the statement of claim, the Claimant shall be reimbursed court fees by 60 % of EUR 31.000, which is EUR 18.600 ([Rule 370\(9\) RoP](#))

Source: [Unified Patent Court](#)

**UPC Court of First Instance,
Regional Division Nordic-Baltic, 8 September 2023**
(Stefan Johansson, Kai Härmand and Petri Rinkinen)
UPC_CFI_11/2023

DECISION

of the Court of First Instance of the Unified Patent Court delivered on 8 September 2023

CLAIMANT:

Ocado Innovation Limited, Buildings One & Two Trident Place, Mosquito Way, AL10 9UL Hatfield, United Kingdom

Representative authorised to accept service: Anna Bladh Redzic, Sandart & Partners Advokatbyrå KB, Kungsgatan 28A, 111 35 Stockholm, Sweden

Other representatives: Simon Ayrton, Tom Oliver & Joel Coles, Powell Gilbert (Europe) LLP, Pembroke House, 28-32 Pembroke Street Upper, Dublin 2, D02 EK84, Ireland

DEFENDANTS:

1. Autostore AS, Stokkastrandvegen 85, 5578 Nedre Vats, Norway
2. Autostore Sp. z o.o., ul. Ignacego Łukasiewicza 4, 75-202 Koszalin, Poland
3. Autostore System AB, c/o Hannes Snellman Advokatbyrå AB, Box 7801, 103 96 Stockholm, Sweden
4. Autostore S.A.S., 55 Ter Avenue René Cassin, 69009 Lyon, France
5. Autostore System GmbH, IM Striep 10, 41069 Monchengladbach, Germany
6. Autostore System AT GmbH, St. Peter Gürtel 4, 8042 Graz, Austria
7. Autostore System Srl, Via Agnello, 8, 20121 Milano, Italy

8. Autostore System S.L, Edificio Coronales, Bahía de Pollensa 12, 2nd floor, 28042 Madrid, Spain

Representatives for the defendants: Laura Ramsay & Annabel Beacham, DEHNS, St Bride's House, 10 Salisbury Square, London, EC4Y 8JD, United Kingdom

PATENT AT ISSUE

European patent n° [EP3653540](#)

DIVISION

Nordic-Baltic Regional Division

LANGUAGE

English

DECIDING JUDGES

This decision has been delivered by the presiding judge Stefan Johansson (judge rapporteur) and the legally qualified judges Kai Härmand and Petri Rinkinen.

SUMMARY OF FACTS

In June 2023, the Claimant brought an infringement action against the Defendants, requesting the Court to declare that European Patent No. EP 3 653 540 had been infringed in certain European States, and to issue orders (including permanent injunctions) based on those alleged infringements.

Even before all Defendants formally have been served the statement of claim, the Claimant has informed the Court that the parties and their affiliates have concluded a settlement and that the settlement agreement provides that the Claimant shall withdraw this infringement action. This has been confirmed by the Defendants.

INDICATION OF THE PARTIES' REQUESTS

The Claimant has requested the Court to:

- a) declare the proceedings closed;
- b) order the decision to be entered on the register; and
- c) if the Court finds it necessary to make an order as to costs, order that each party shall bear its own costs.

Furthermore, the Claimant has requested the Court to reimburse the Claimant EUR 18 600, being 60 % of the total Court fees paid by the Claimant in these proceedings.

The Defendants have confirmed the settlement and their agreement to the withdrawal of the action. The Defendants have also confirmed that they will not seek reimbursement of costs and that they agree that the Court issues no order as to the costs. To the extent that the Court deems it necessary to make such an order, they have agreed to an order imposing their own costs on each Party.

GROUNDS FOR THE DECISION

According to Rule 265 of the Rules of Procedure (RoP), a Claimant may apply to withdraw its action as long as there is no final decision. The Court shall decide on such an application to withdraw the action after hearing the other party. The application to withdraw shall not be permitted if the other party has a legitimate interest in the action being decided by the Court.

If withdrawal is permitted, the Court shall:

- a) give a decision declaring the proceedings closed;
- b) order the decision to be entered on the register; and
- c) issue a cost decision in accordance with Part 1, Chapter 5.

If an action is withdrawn before the closure of the written procedure, the party liable for the Court fees

shall – after a reasoned application – normally be reimbursed by 60 % of the fixed and valuebased Court fees (**Rule 370.9** and 370.11 RoP). The value-based fee depends on the value of the infringement action, which shall be determined during the interim procedure.

In these proceedings, the Claimant has withdrawn its action before the closure of the written procedure and the Defendants have confirmed the settlement and their agreement to the withdrawal of the action. Therefore, the proceedings shall be declared closed and the decision shall be entered on the register. Since the parties have agreed to and prefer that the Court does not issue an order as to their costs in these proceedings, the Court will refrain from issuing such an order.

In its statement of claim, the Claimant has estimated the value of the dispute and the requested relief at EUR 3 000 000, and therefore paid a total fee to the Court of EUR 31 000. The estimation of the value has not been challenged by the Defendants and is accepted by the Court.

Since the action has been withdrawn even before all defendants formally have been served the statement of claim, the Claimant shall be reimbursed by 60 % of EUR 31 000, which is EUR 18 600.

DECISION

- The Court declares these proceedings closed.
- The decision on the closure of the proceedings to be entered on the register.
- The value of the infringement action is EUR 3 000 000.
- The Court shall reimburse the Claimant EUR 18 600, which is 60 % of the Court fees paid by the Claimant in these proceedings.

DECISION DETAILS

Decision on application 559475/2023

Application type: Application on withdrawal (RoP 265) and reimbursement (Rule 370.9)

Main proceeding: ACT_459791/2023 UPC number: UPC_CFI_11/2023

Action type: Infringement Action

Done and delivered in Stockholm on 8 September 2023.
