

**UPC Court of Appeal, 17 June 2024, Volkswagen v NST**



**PATENT LAW – SUBSTANTIVE LAW**

**Further exchange of written pleadings in appeal proceedings allowed ([Rule 36 RoP](#))**

• [The Court of Appeal considers the request by Volkswagen to be sufficiently reasoned. It wants to correct some facts submitted by NST in relation to its behavior in the market, together with written evidence. The Court of Appeal considers that Volkswagen has a sufficient interest to do so and that the written procedure is the most convenient phase to do so. The Court of Appeal therefore allows the request.](#)

2. There is no need to consult NST about this request  
7. NST will be given the opportunity to respond to the additional statement lodged by Volkswagen within 14 days after the day on which this order is issued.

Source: [Unified Patent Court](#)

Similar orders at the same date between the same parties in [UPC COA 218/2024](#) and [UPC COA 220/2024](#)

**UPC Court of Appeal,  
17 June 2024**

(Kalden)

UPC Court of Appeal

UPC\_CoA\_222/2024

APL\_25928/2024

App\_34219/2024

**Order**

of the Court of Appeal of the Unified Patent Court

issued on 17 June 2024

concerning a request to be allowed to lodge additional written pleadings

**HEADNOTES:**

In accordance with [R.239.1 RoP](#), [Rules 101-110 RoP](#) (on the interim procedure) apply mutatis mutandis to the appeal proceedings. In view thereof, [Rules 35](#) and [36 RoP](#) must be held to be applicable mutatis mutandis in the appeal proceedings as well.

**KEYWORDS:**

Lodging additional written pleadings, [R.36 RoP](#)  
**APPLICANT / APPELLANT / DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE:**

**Volkswagen AG**, Wolfsburg, Germany hereinafter also referred to as: ‘Volkswagen’

represented by: Dr. Jan Bösing, Rechtsanwalt, Bardehle Pagenberg, Munich, Germany

**RESPONDENT / CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE**

**Network System Technologies LLC.**, Portland, ME, Unites States of America hereinafter also referred to as ‘NST’,

represented by: Dr Thomas Gniadek, Simmons&Simmons, Munich, Germany

**LANGUAGE OF THE PROCEEDINGS:**

English

**PATENT AT ISSUE**

[EP 1 552 669](#)

**PANEL**

Second Panel

**DECIDING JUDGES:**

This order has been adopted by

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**

□ Date: 23 April 2024 (signed 25 April 2024); ORD\_12483/2024 in related proceedings (requests for security for costs) App\_11431/2024, App\_11444/2024 and App\_11835/2024 in the main infringement action ACT\_597691/2023)

□ Action number attributed by the Court of First Instance Local Division Munich): UPC\_CFI\_513/2023

**SUMMARY OF FACTS**

On 1 March 2024 Volkswagen filed an application under [Art. 69.4 UPCA](#) and [R.158.1 RoP](#) (App. 11431/2024), requesting the Court to order NST to provide adequate security for legal costs and other expenses incurred by Volkswagen. The Court of First Instance denied the Application. Leave to appeal was granted in the Order.

**INDICATION OF PARTIES’ REQUESTS**

In the appeal proceedings (APL\_25926/2024), Volkswagen requests that the impugned order shall be set aside. It argues that the Court of First Instance applied legally erroneous standards of examination and of burden of proof for the decision on the provision of security for costs. The Court of First Instance furthermore misapplied the undisputed facts of the case at hand, Volkswagen contends.

NST lodged its Statement of response on 31 May 2024, requesting (in short) to reject the appeal.

In the application dated 10 June 2024, Volkswagen responded to NST’s Statement of response and requests the Court of Appeal pursuant to [R.9.3 RoP](#) to allow this response, in order to correct certain facts submitted by NST in its Statement of response.

**POINTS AT ISSUE**

Request for lodging additional written pleadings, [R.36, R.9.3 \(b\) RoP](#)

**GROUNDNS FOR THE ORDER**

1. The request is admissible.
2. There is no need to consult NST about this request.
3. Pursuant to [R.36 RoP](#), without prejudice to the powers of the judge-rapporteur pursuant to [R.110.1](#)

RoP, a party may lodge before the date on which the judge-rapporteur intends to close the written procedure, a reasoned request that further written pleadings may be exchanged.

4. In accordance with R.239.1 RoP, Rules 101-110 RoP (on the interim procedure) apply mutatis mutandis to the appeal proceedings. In view thereof, Rules 35 and 36 RoP must be held to be applicable mutatis mutandis in the appeal proceedings as well.

5. The application must be understood as a reasoned request under R.36 RoP.

6. The Court of Appeal considers the request by Volkswagen to be sufficiently reasoned. It wants to correct some facts submitted by NST in relation to its behavior in the market, together with written evidence. The Court of Appeal considers that Volkswagen has a sufficient interest to do so and that the written procedure is the most convenient phase to do so. The Court of Appeal therefore allows the request.

7. NST will be given the opportunity to respond to the additional statement lodged by Volkswagen within 14 days after the day on which this order is issued.

#### **ORDER**

The request for filing an addition statement is allowed. NST may file a response to the additional statement lodged by Volkswagen within 14 days after the day on which this order is issued, i.e. by 1 July 2024.

The written procedure shall be deemed closed after expiry of this time-period.

Issued on 17 June 2024 Rian

Kalden, Presiding judge and judge-rapporteur.

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