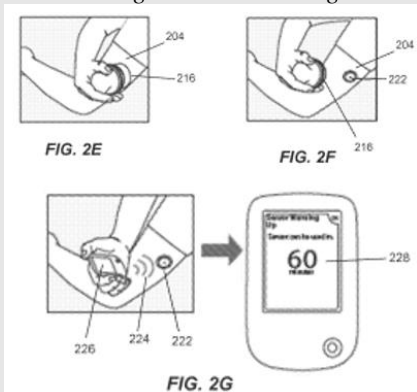


UPC Court of Appeal, 26 July 2024, Abbott v Sibio

continuous glucose monitoring device

PATENT LAW – PROCEDURAL LAW

Allowability of auxiliary requests shall be argued and decided at the oral hearing ([Rule 263 RoP](#)). In view thereof, time extension for Statement of response reasonable, also taking into account the summer holiday period ([Rule 9 RoP](#)).

a. [...]. This means that the parties shall be prepared to also argue their case on the basis of the auxiliary requests at the oral hearing in substance, should the Court of Appeal decide to allow the auxiliary requests.

b. In view of the foregoing, the Court of Appeal accepts that Respondents' request for an extension of the deadline for lodging the Statement of response is reasonable, also taking into account the summer holiday period.

[...]

6. The Court of Appeal notes that the allowability of auxiliary requests in preliminary injunction proceedings has not yet been decided by the Court of Appeal and merits a discussion during the oral hearing.

7. With the time extension, the Court has taken into account the interests of both parties, including the interest Abbott has of a quick oral hearing and decision in the case. This has been balanced against the interests of the Respondents to respond to the auxiliary requests also in substance, which were only introduced at the stage of the appeal proceedings, also taking into account the summer holiday period. By introducing the auxiliary requests Abbott should have anticipated that this could cause delay.

Source: [Unified Patent Court](#)

UPC Court of Appeal, 26 July 2024

(Kalden)

UPC Court of Appeal

UPC_CoA_382/2024

APL_39664/2024

App_43560/2024

ORDER

of the Court of Appeal of the Unified Patent Court

issued on 26 July 2024

concerning an application pursuant to [R.9 RoP](#)

Application to disregard the submitted auxiliary requests
 APPLICANT / APPELLANT / CLAIMANT IN THE
 MAIN PROCEEDINGS BEFORE THE COURT OF
 FIRST INSTANCE

Abbott Diabetes Care Inc., Alameda, California, USA,
 hereinafter also referred to as “Abbott”

represented by: Eelco Bergsma, Attorney at law, Taylor
 Wessing, Eindhoven, the Netherlands

RESPONDENTS / DEFENDANTS IN THE MAIN
 PROCEEDINGS BEFORE THE COURT OF FIRST
 INSTANCE

1. Sibio Technology Limited, Cambridge, United
 Kingdom

2. Umedwings Netherlands B.V., Cambridge, United
 Kingdom

hereinafter also referred to as “Respondents”

both represented by: Thomas Gniadek, Thomas
 Gniadek, Rechtsanwalt, Simmons & Simmons LLP,
 Munich, Germany

LANGUAGE OF THE PROCEEDINGS

English

PATENT AT ISSUE

[EP 3 831 283](#)

PANEL

Second Panel

DECIDING JUDGES

This order was adopted by Rian Kalden, Presiding judge
 and judge-rapporteur

**IMPUGNED ORDER OF THE COURT OF FIRST
 INSTANCE**

□ [Date: 19 June 2024; ORD 30431/2024 in the main
 proceedings concerning provisional measures](#)

ACT_14945/2024

□ Action number attributed by the Court of First
 Instance, Local Division The Hague:
 UPC_CFI_131/2024

POINTS AT ISSUE

Application for leave to change the claim pursuant to
[R.263 RoP](#); Allowability of auxiliary requests

PROCEDURAL BACKGROUND

1. On 20 March 2024, Abbott filed the Application for a
 preliminary injunction and other provisional measures
 (ACT_14945/2024) with the UPC Local Division The
 Hague. The Court of First Instance denied that
 Application by [Order no. ORD 30431/2024](#).
 Subsequently, Abbott lodged an appeal against this
 Order on 3 July 2024.

2. In the Statement of appeal and grounds of appeal,
 Abbott requests that the impugned order is set aside and
 that the requests as stated in the Application for
 provisional measures of 20 March 2024, submitted at the
 Court of First Instance, is granted or, alternatively,
 granted as amended in the Application for leave to
 change the claim of 3 July 2024.

3. In its Statement of appeal and grounds of appeal,
 Abbott relies on four auxiliary requests. Respondents
 requested that the Court of Appeal disregards these
 requests pursuant to [R.222.2 RoP](#) or, if admitted, would
 grant Respondents an extension of deadline for the
 Statement of response of at least four weeks.

4. The Court of Appeal issued an order to the effect that:
 - a. It shall decide on the allowability of the auxiliary requests after having heard the parties at the oral hearing. This means that the parties shall be prepared to also argue their case on the basis of the auxiliary requests at the oral hearing in substance, should the Court of Appeal decide to allow the auxiliary requests.
 - b. In view of the foregoing, the Court of Appeal accepts that Respondents' request for an extension of the deadline for lodging the Statement of response is reasonable, also taking into account the summer holiday period.

INDICATION OF PARTIES' REQUESTS

In its uninvited response to the Respondents' requests to disregard Abbott's auxiliary request and to grant an extension of time to lodge the Statement of response, filed in a **R.9 RoP** application, Abbott requests that both requests shall be refused.

GROUND FOR THE ORDER

5. The Court of Appeal has decided upon Respondents' request by order issued on 23 July 2024 (ORD_43134/2024 App_42682/2024), as stated above. The arguments brought forward by Abbott in its response do not lead to another evaluation.
6. The Court of Appeal notes that the allowability of auxiliary requests in preliminary injunction proceedings has not yet been decided by the Court of Appeal and merits a discussion during the oral hearing.
7. With the time extension, the Court has taken into account the interests of both parties, including the interest Abbott has of a quick oral hearing and decision in the case. This has been balanced against the interests of the Respondents to respond to the auxiliary requests also in substance, which were only introduced at the stage of the appeal proceedings, also taking into account the summer holiday period. By introducing the auxiliary requests Abbott should have anticipated that this could cause delay.

ORDER

Abbott's requests are rejected.
Issued on 26 July 2024,
Rian Kalden, Presiding judge and judge-rapporteur
