

UPC Court of Appeal, 30 July 2024, Alexion Pharmaceuticals v Samsung Bioepis



PATENT LAW – SUBSTANTIVE LAW

No expedition of the appeal ([Rule 9\(3\) RoP](#), [Rule 220\(1\) RoP](#))([Rule 235 RoP](#))

- [Due account must be given to the principles of due process, among which equality of arms. The Court of Appeal does not consider that the circumstances of the present case are so urgent that the interests of the appellant outweigh those of the respondent. The appellant's arguments that it is seeking patent protection as soon as possible and that the appeal concerns a purely legal issue, are not sufficient to shorten the time limit for lodging the statement of response. This time period is already relatively short for appeals against orders referred to in R. 220.1\(c\) RoP, such as the present appeal, namely only 15 days. The fact that the appellant did not make use of the entire time period within which it could have lodged its statement of grounds of appeal, does not lead to a different assessment.](#)

Source: [Unified Patent Court](#)

UPC Court of Appeal,
30 July 2024

(Grabinski, Blok, Germano)

Appeal n°:

UPC_CoA_402/2024

APL_40470/2024

App_43817/2024

PROCEDURAL ORDER

of the Court of Appeal of the Unified Patent Court
issued on 30 July 2024

APPELLANT (APPLICANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Alexion Pharmaceuticals, Inc. 121 Seaport Blvd,
02210 Boston (MA), United States

represented by attorney-at-law Elena Hennecke
(Freshfield Bruckhaus Deringer)

RESPONDENT (DEFENDANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Samsung Bioepis NL B.V. Olof Palmestraat 10, 2616
LR, Delft, The Netherlands

represented by attorney-at-law Andrea Ritter (Simmons
& Simmons)

PATENT AT ISSUE

[EP 3167888](#)

PANEL AND DECIDING JUDGES

Panel 1c:

Klaus Grabinski, President of the Court of Appeal

Peter Blok, Legally qualified judge and judge-rapporteur

Emanuela Germano, Legally qualified judge
LANGUAGE OF THE PROCEEDINGS
English

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

□ Orders of the Court of First Instance of the Unified Patent Court, Local Division Hamburg dated 26 June 2024 and 17 July

□ Numbers attributed by the Court of First Instance:

UPC_CFI_123/2024

ACT_13849/2024

ORD_38509/2024

FACTS AND REQUESTS OF THE PARTIES

1. The appellant lodged an application for provisional measures against the respondent with the Hamburg Local Division of the Court of First Instance.

2. In the impugned order the Court of First Instance dismissed the application, ordered the appellant to pay the costs of the proceedings and set the value of the dispute at € 100,000,000.00.

3. The appellant lodged an appeal against the impugned order. In its amended statement of appeal and statement of grounds of appeal, the appellant submitted a number of requests, including the request sub C.I for expedition of the appeal pursuant to [Rule 9.3\(b\)](#) of the Rules of Procedure of the Unified Patent Court (hereinafter: RoP).

GROUND FOR THE ORDER

4. The request for expedition of the appeal is rejected.

5. Under [R. 9.3\(b\) RoP](#) the Court may shorten any time period on a reasoned request by a party. When considering such a request, the Court has to balance the interests of both parties, whereby due account must be given to the principles of due process, among which equality of arms ([CoA 19 June 2024, UPC CoA 301/2024](#) [APL 33746/2024 App 35055/2024](#)).

6. The Court of Appeal does not consider that the circumstances of the present case are so urgent that the interests of the appellant outweigh those of the respondent. The appellant's arguments that it is seeking patent protection as soon as possible and that the appeal concerns a purely legal issue, are not sufficient to shorten the time limit for lodging the statement of response. This time period is already relatively short for appeals against orders referred to in [R. 220.1\(c\) RoP](#), such as the present appeal, namely only 15 days. The fact that the appellant did not make use of the entire time period within which it could have lodged its statement of grounds of appeal, does not lead to a different assessment.

7. As the decision on the request has no adverse effect on the respondent and in view of the urgency of a decision on the request, it was not necessary to hear the respondents before issuing this order.

PROCEDURAL ORDER

- The request for expedition is rejected.

This procedural order was issued on 30 July 2024.

Klaus Grabinski President of the Court of Appeal

Peter Blok Legally qualified judge and judge-rapporteur
Emanuela Germano Legally qualified judge
