

**UPC Court of Appeal, 8 August 2024, Alexion Pharmaceuticals v Amgen**



**PATENT LAW – SUBSTANTIVE LAW**

Service of written pleadings via other electronic systems than the CMS cannot be considered effective service under [Rule 278\(1\) RoP](#)

- [It follows from Rule 278.1 and 2 RoP that written pleadings, like the Statement of grounds of appeal in the case-at-hand, are served by the Registry in the electronic CMS of the Court unless service cannot be effected by means of electronic communication.](#)

Prior communication between the parties themselves of the written pleading via another electronic system like the German special electronic lawyer's mailbox (besonderes elektronisches Anwaltspostfach, (beA)) cannot be considered as effective service under [Rule 278.1 RoP](#).

Source: [Unified Patent Court](#)

**UPC Court of Appeal,  
8 August 2024**

(Grabinski)

Appeal n°:

UPC\_CoA\_405/2024

APL\_40553/2024

App\_44530/2024

**PROCEDURAL ORDER**

of the Court of Appeal of the Unified Patent Court  
issued on 8 August 2024

**HEADNOTES**

- It follows from [Rule 278.1 and 2 RoP](#) that written pleadings, like the Statement of grounds of appeal in the case-at-hand, are served by the Registry in the electronic CMS of the Court unless service cannot be effected by means of electronic communication.

- Prior communication between the parties themselves of the written pleading via another electronic system like the German special electronic lawyer's mailbox (besonderes elektronisches Anwaltspostfach, (beA)) cannot be considered as effective service under [Rule 278.1 RoP](#).

**KEYWORD**

- Service

**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)

**RESPONDENTS (DEFENDANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)**

**1. Amgen Technology (Ireland) Unlimited Company**  
Pottery Road, A96 F2A8, Dun Laoghaire, Dublin,  
Ireland

**2. Amgen N.V.** Telecomlaan 5-7, 1831 Machelen,  
Belgium

**3. Amgen GmbH** Riesstraße 24, 80992 Munich,  
Germany

**4. Amgen GmbH** Franz-Josefs-Kai 47, 1010 Vienna,  
Austria

**5. Amgen AB** Gustav IIIs Blvd 54, 16974 Solna,  
Sweden

**6. Amgen S.A.S.** 18-20 Quai du Point du Jour, 92100  
Boulogne-Billancourt, France

**7. Amgen s.r.l.** Via Enrico Tazzoli 6, 20154 Milan, Italy

**8. Amgen Biofarmacêutica Lda.** Avenida José Malhoa,  
19, 1070- 157 Lisboa, Portugal

**9. Amgen Zdravila D.O.O.** Šmartinska cesta 140, 1000  
Ljubljana, Slovenia

represented by attorney-at-law Prof. Dr. Tilman Müller-

Stoy (Bardehle Pagenberg)

**PATENT AT ISSUE**

[EP 3167888](#)

**DECIDING JUDGE**

Klaus Grabinski, President of the Court of Appeal and  
filling in as Judge-rapporteur

**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 2024

□ Numbers attributed by the Court of First Instance:

UPC\_CFI\_124/2024

ACT\_13886/2024

ORD\_38032/2024

**FACTS AND REQUEST OF RESPONDENTS**

The Hamburg Local Division of the Court of First  
Instance dismissed Appellant's and Applicant's  
(hereafter "Appellant") request for provisional measures  
by order of 26 June 2024 without reasons and gave  
reasons for its decision by order of 17 July 2024.

Appellant lodged a Statement of appeal on 11 July 2024  
and a Statement of grounds of appeal on 27 July 2024 (a  
Saturday) in the Court's Case Management System  
(hereafter: CMS).

Respondents were notified by the Court in the CMS on  
29 July 2024 that the Statement of grounds of appeal had  
been lodged.

On 27 July 2024 Appellant's also uploaded the  
Statement of grounds to the representative of the  
Respondents in his "beA" ("besonderes elektronisches  
Anwaltspostfach" which is a special electronic mailbox  
for German lawyers to communicate with the German  
judiciary and with each other electronically).

Respondents request the Court to clarify that 29 July  
2024 shall be considered as the date of service of  
Appellant's Statement of appeal.

Appellant was given an opportunity to comment.

**GROUND FOR THE ORDER**

It follows from [Rule 278.1 and 2 RoP](#) that written pleadings, like the Statement of grounds of appeal in the case-at-hand, are served by the Registry in the electronic CMS of the Court unless service cannot be effected by means of electronic communication.

Prior communication between the parties themselves of the written pleading via another electronic system like the German special electronic lawyer's mailbox (besonderes elektronisches Anwaltspostfach, (beA)) cannot be considered as effective service under [Rule 278.1 RoP](#).

**ORDER**

In the case-at-hand service of the statement of ground of appeal has been effected on 29 July 2024.

This order was issued on 8 August 2024.

Klaus Grabinski: President of the Court of Appeal and filling in as Judge-rapporteur

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