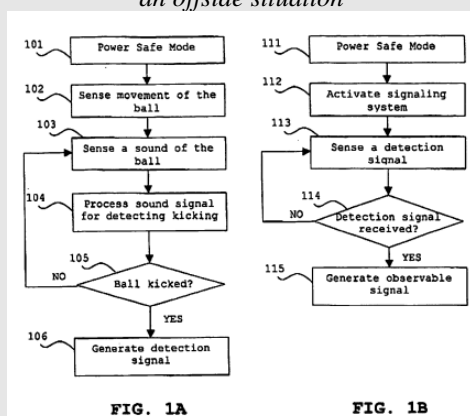


UPC CFI, Central Division Paris, 21 August 2024,  
Kinexon v Ballinno

*Method and system for detecting  
an offside situation*



PATENT LAW – PROCEDURAL LAW

Generally unjustified to stay revocation proceedings because of appeal against the denial of provisional measures ([Rule 295\(m\) RoP](#))

• [If the lodging of an appeal would suffice for a stay of proceedings, a party lodging an appeal against a decision rejecting provisional measures would have it in its hands to influence and alter the tight timeframe as provided for by the UPCA. Such a stay for an unpredictable time would be at odds with the aforementioned guideline of an oral hearing within one year and clashes with the Respondent's legitimate interest in obtaining a decision by the UPC to determine its freedom to operate as soon as possible.](#)

Source: [Unified Patent Court](#)

UPC Court of First Instance,  
Central Division, Paris Seat, 21 August 2024  
(Haedicke)

**Order**

of the Court of First Instance of the Unified Patent Court  
Central Division (Paris Seat)  
delivered on 21/08/2024  
lodged in the revocation action  
No. ACT\_27358/2024 / UPC-CFI 230/2024

**Headnotes:**

An appeal against the denial of provisional measures does generally not justify a stay of revocation proceedings pursuant to [Rule 295\(m\) RoP](#). [Rule 295\(m\) RoP](#) must be applied and interpreted in accordance with the principle according to which proceedings must be conducted in a way which will normally allow the final oral hearing at first instance to take place within one year.

**Keywords:**

stay of revocation proceedings pursuant to [Rule 295\(m\) RoP](#).

**Applicant, Defendant in the main action:**  
BALLINNO B.V.

Registered at (1713 BA) Obdam, De IJveldssloot 41  
Represented by: R. Broekstra Msc LLM, Attorney-at-law M.G.R. van Gardingen, Attorney-at-law Georg Rauh, Attorney-at-law M.W.L. Groeneveld, Attoreny-at-law

**Respondent, Plaintiff in the main action:**

**KINEXON SPORTS & MEDIA GMBH**

Schellingstraße 35, 80799 Munich, Germany

Represented by: Prof. Dr. Tilman Müller-Stoy,

**PANEL**

Presiding judge Francois Thomas

Legally qualified judge, judge rapporteur Maximilian Haedicke

Technically qualified judge Gérard Myon

**DECIDING JUDGE:**

This order has been issued by the judge-rapporteur Maximilian Haedicke

**LANGUAGE OF PROCEEDINGS:** English

**SUMMARY OF FACTS AND ARGUMENTS**

1. On 18 April 2024, Ballinno (Applicant, Defendant in the main action) filed for an application for provisional measures with the UPC Local Division Hamburg, against Kinexon (Respondent, Claimant in the main action) et al. for using a method and system at the European Championships Football (UEFA EURO 2024) in Germany which Applicant believes falls under the scope of protection of the patent in suit, [EP 1 944 067 B1](#). By [decision of 3 June 2024 \(UPC CFI 151/2024\)](#), the Local Division Hamburg denied Ballinno's application.

2. Applicant filed an appeal against the order of the Local Division Hamburg. The appeal is pending under number 36389/2024.

3. Ballinno – in its email of 18 July 2024 - proposed to jointly request the Central Division to stay the current revocation proceedings until four weeks after notification of the Court of Appeal's reasoned decision. Kinexon denied by email of 22 July 2024.

4. In its submission of 26. July 2024 (No. App\_43845/2024) Applicant states that only if the Court of Appeal provisionally rules that the method and system Kinexon provided to UEFA infringes a valid [EP 067](#), will Ballinno pursue its infringement case further. Only in that event will continuation of the current revocation proceedings be necessary.

5. With submission of 26 July 2024 (No. App\_43845/2024) Applicant requests that that the Court

- stays the revocation proceedings with number 27358/2024 until four weeks after the UPC Court of Appeal has given its judgment with grounds in appeal case 36389/2024; and

- orders Kinexon to compensate Applicant for the legal costs of this application

6. Applicant's arguments for the stay of the proceedings are:

- it is in the interest of all parties involved to not unnecessarily waste the parties' (and the UPC's) time and effort, and to stay the current revocation proceedings until the Court of Appeal has rendered its decision.

- Continuing the case now would only cause unnecessary, and therefore, unreasonable and disproportionate, costs.

- it would be reasonable and proportionate (cfm. [Art. 41\(1\) UPCA](#)) and proper administration of justice requires (cfm. [R. 295\(m\) RoP](#)), for the Court to use its discretionary power to stay the current proceedings until the Court of Appeal has decided.

7. Respondent requests that

- Applicant's request to stay the revocation proceedings until four weeks after the UPC Court of Appeal has given its judgment with grounds in appeal case no. 36389/2024 pursuant to [R. 295\(m\) RoP](#) is being dismissed.

- Applicant's request to order Claimant to compensate Defendant for the legal costs of the application to stay the revocation proceedings is being dismissed.

8. Respondent's arguments are:

- A stay would impair Respondent's right to effective legal protection. A delay in the revocation proceedings would unduly disadvantage Respondent particularly if the Court of Appeal rules in favor of Applicant. Applicant has explicitly stated in its e-mail of July 18, 2024 (Exhibit VB01) that it will further pursue the infringement case in the main proceedings in this scenario and that it will defend the validity if the Court of Appeal provisionally finds the Patent to be valid and infringed.

- The requested stay would lead to a significant delay of the revocation proceedings of probably several months, thereby affecting Respondent's right to effective legal protection.

- Applicant's "commitment" to accepting the Court of Appeal's decision and not further pursuing the infringement case in the main proceeding in the event that the Court of Appeal rules in favor of Respondent denying an infringement of the patent-in-suit, as set forth in its e-mail of July 18, 2024 (Exhibit VB01), does not constitute a binding waiver of Applicant's rights to further pursue the infringement case.

- When determining whether litigation is carried out in a proportionate way, as set forth in [Art. 42\(1\) UPCA](#) cited by Applicant as a potential ground for staying the proceedings, the interests of both parties must be taken into account, including Respondent's right to effective legal protection.

- [R. 295\(m\) RoP](#) is not applicable, because the proper administration of justice does not require a stay which would affect Respondent's right to effective legal protection significantly.

#### **Grounds for the order**

##### ***Applicant's request to stay the revocation proceedings***

1. Applicant's request to stay the revocation proceedings before the Central Division until the Court of Appeal has given its judgment in appeal case 36389/2024 is dismissed.

2. Pursuant to [Rule 295\(m\) RoP](#), the Court may stay proceedings where the proper administration of justice so requires. [Rule 295\(m\) RoP](#) must be applied and interpreted in accordance with the fundamental right to an effective legal remedy and a fair and public hearing

within a reasonable time as guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and, to the extent that European Union Law is concerned, Article 47 of the Charter (see [CoA UPC CoA 22/2024 APL 3507/2024 App 24693/2024 App 21545/2024 mn 22 with regard to Rule 295\(a\) RoP](#))

3. These provisions must also be applied and interpreted in accordance with [Articles 41\(3\), 42](#) and [52\(1\) UPCA](#) on the basis of the principles of proportionality, flexibility, fairness and equity (point 2 of the Preamble of the RoP). (see [CoA UPC CoA 22/2024 APL 3507/2024 App 24693/2024 App 21545/2024 mn 22 with regard to Article 33\(10\) UPCA and Rule 295\(a\) RoP](#) ; see also [CoA APL 26889/2024 UPC CoA 227/2024](#) with regard to the stay of 1st instance proceedings during the appeal against a rejection of a preliminary objection).

4. The CoA further stated that in accordance with these principles, proceedings must be conducted in a way which will normally allow the final oral hearing at first instance to take place within one year ([point 7 of the Preamble of the RoP](#)). It follows that, as a general principle, the Court will not stay proceedings. Otherwise, the Court cannot ensure that the final oral hearing will normally take place within one year. (see [CoA UPC CoA 22/2024 APL 3507/2024 App 24693/2024 App 21545/2024 mn 23 with regard to Article 33\(10\) UPCA](#)).

5. These principles are applicable to a stay in the case of an appeal against the denial of provisional measures. Such an appeal against the denial of provisional measures does generally not justify a stay of revocation proceedings. If the lodging of an appeal would suffice for a stay of proceedings, a party lodging an appeal against a decision rejecting provisional measures would have it in its hands to influence and alter the tight timeframe as provided for by the UPCA. Such a stay for an unpredictable time would be at odds with the aforementioned guideline of an oral hearing within one year and clashes with the Respondent's legitimate interest in obtaining a decision by the UPC to determine its freedom to operate as soon as possible.

##### ***Applicant's request to compensate for the legal costs of this application***

6. As Applicant's request for the stay of proceedings is rejected, there is also no basis for Applicant's request to compensate for the legal costs of this application. It can be left open whether a claim for the compensation of legal costs for applications within revocation proceedings is encompassed by the provisions concerning the costs of the revocation proceedings in [Art. 69 UPCA](#).

#### **ORDER**

For these grounds, having heard the parties on all aspects of relevance for the following order, the Court

Rejects the request to stay the proceedings

Rejects the request to order Respondent to compensate Applicant for the legal costs of this application

Issued on 21. August 2024

Judge Rapporteur

**ORDER DETAILS**

Order no. ORD\_43896/2024 in ACTION NUMBER:

ACT\_27358/2024

UPC number: UPC\_CFI\_230/2024

Action type: Revocation Action

Related proceeding no. Application No.: 43845/2024

Application Type: Generic procedural Application

**INFORMATION ABOUT REVIEW BY THE  
PANEL**

Any party may request that this Order be referred to the panel for a review pursuant to Rule 333 RoP

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