UPC CFI, Local Division Paris, 25 November 2024, Dexcom v Abbott
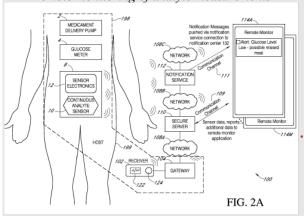
remote monitoring of analyte measurements

FIG. 2A

PATENT LAW – PROCEDURAL LAW

No justification to reopen the debate after the oral hearing because of decision of Munich Regional Court of 11 November 2024 (R. 334 and 336 RoP)
• This request made at a very late stage of the proceedings is not justified, since the decision in question does not concern the patent at issue in the present case, but its parent patent, which discloses another invention with similar but also different features. Moreover, the Regional Court of Munich, seized by an infringement action, did not examine the validity issue on the merits but in a context of a request for a stay with regard to the pending nullity proceedings before the Federal Patent Court.
It follows that there is no justification in the present case for an order authorizing the reopening of the debate after the Oral hearing.

Even after the oral hearing since the case is pending the presiding judge remains in charge of the case management as foreseen in **Art. 43 UPCA** and **Chapter 8 of the RoP** on Case management.
Therefore, the DEXCOM's application based on **R 334** and **R 336 RoP** is admissible.

Source: **Unified Patent Court**

UPC Court of First Instance,
Local Division Paris, 25 November 2024
(Lignières)
Paris Local Division
UPC_CFI_395/2023
Procedural Order
of the Court of First Instance of the Unified Patent Court delivered on 25/11/2024
APPLICANT
DexCom, Inc. 6340 Sequence Drive 92121 - San Diego, CA - US
Represented by Anne-Charlotte Le Bihan
RESPIONDENTS

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Represented by Christian Dekoninck
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Represented by Christian Dekoninck
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Represented by François POCHART
4) **Abbott Oy** Karvaamokuja 2 A 00380 Helsinki - FI
Represented by Christian Dekoninck
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Represented by Christian Dekoninck
PATENT AT ISSUE
Patent no.   Proprietor
EP3831282   DexCom, Inc.
DECIDING JUDGE
Presiding judge & Judge-rapporteur Camille Lignières
LANGUAGE OF PROCEEDINGS: English
ORDER
Facts and procedure
The oral hearing in the infringement action based on DEXCOM's patent EP'282 was held on October 30, 2024, the debates were closed on that date and the final decision was announced to be issued on December 11, 2024.
On 12 November 2024, DEXCOM submitted an application pursuant to **R. 334.e)** and **336 RoP** for the Court to communicate with the parties to instruct them about its wishes to comment on the decision rendered by the Regional Court of Munich on November 6, 2024 relating to the validity and infringement of the German part of EP 2,939,158 by Defendants 1 and 11.
In support of its application, DEXCOM argues that:

- the Munich Regional Court rendered, on 6 November 2024, a decision whereby it ruled that claims 1 and 12 of the German part of European patent **EP 2 939 158** (hereinafter "*EP'158*") are indirectly infringed by Defendants 1 and 11 and that the proceedings should not be stayed because the patent is likely to be valid;
- EP'158 is the parent patent of EP'282 and its independent method claim 1 closely resembles claim 1 of EP'282.
- the subject matter of claim 1 of EP'158 is very similar to the subject matter of claim 1 of Auxiliary Request 2 of EP'282.

DEXCOM concludes that the Munich ruling is of relevance to the present proceedings because Defendants had adopted the same misconstruction strategy, which was entirely dismissed by the Munich Regional Court.

In its comments in reply, ABBOTT requests the Court to:
- 1) declare DEXCOM's Application inadmissible arguing that

DEXCOM's application refers to **Chapter 8 of the RoP** regarding case management and has no legal basis because the rules of **Chapter 8** relate to the case management up to the stage after the closure of the interim conference but before the oral hearing.
- 2) receive ABBOTT's comments on DEXCOM's Application and on the decision rendered by the Munich Regional Court on November 26, 2024, arguing that:
-the Regional Civil Courts does not address the validity of the patent in suit;
-EP'282 is related to another invention with specific features (invitation), such as the invitation scheme which is not comprised in Claim 1 of EP'158;
-it follows that the subject matter of claim 1 as granted of EP'282 is different from the one of EP 158 and shows that the German decision regarding the EP'158 case has no relevance regarding the ongoing EP'282 case.

Legal framework

Rule 334 – Case management powers:
Except where the Agreement, the Statute or these Rules provide otherwise, the judge-rapporteur, the presiding judge or the panel may:
(…)
(c) communicate with the parties to instruct them about wishes or requirements of the Court;

Rule 336 – Exercise of case management powers:
The Court may exercise its case management powers on the application by a party or of its own motion, unless otherwise provided.

Grounds

In the UPC Rules of Procedure (RoP), case management powers are not limited to the stage of the proceedings that ends with the closure of the interim procedure, until when the Judge-Rapporteur is in charge of it.
On the contrary, the Court, and in particular the Presiding Judge, could exercise his/her case management powers after the closure of the interim procedure. (ref. Book "*Unified Patent Protection in Europe*", W. Tillmann and C. Plassmann, 1st edition, Oxford University Press, pages 2332 to 2334)

Even after the oral hearing since the case is pending the presiding judge remains in charge of the case management as foreseen in **Art. 43 UPCA** and **Chapter 8 of the RoP** on Case management.
Therefore, the DEXCOM's application based on **R 334** and **R 336 RoP** is admissible.
However, the Court considers that this request made at a very late stage of the proceedings is not justified, since the decision in question does not concern the patent at issue in the present case, but its parent patent, which discloses another invention with similar but also different features. Moreover, the Regional Court of Munich, seized by an infringement action, did not examine the validity issue on the merits but in a context of a request for a stay with regard to the pending nullity proceedings before the Federal Patent Court.
It follows that there is no justification in the present case for an order authorizing the reopening of the debate after the Oral hearing.

Therefore, the Court orders that:
The DEXCOM application is admissible but not well grounded and is dismissed.
This order may be reviewed pursuant to **R. 333 RoP**.
Issued in Paris, on 25 November 2024.
Camille Lignières, Presiding judge.

ORDER DETAILS
Order no. ORD_62696/2024 in ACTION NUMBER: ACT_583778/2023
UPC number: UPC_CFI_395/2023
Action type: Infringement Action
Related proceeding no. Application No.: 60804/2024
Application Type: Application pursuant to **R. 334.e**) and **336 RoP**