

UPC_CFI_239/2023
R.9 Order on the Application of Art. 33(3) UPCA
of the Court of First Instance of the Unified Patent Court
delivered on 15 February 2024

CLAIMANTS

- 1) **Plant-e Knowledge B.V.** Represented by Oscar Lamme
Renkum – NL
- 2) **Plant-e B.V.** Represented by Oscar Lamme
Renkum – NL

DEFENDANT

Arkyne Technologies S.L. Represented by Joran Spauwen
Barcelona - ES

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP2137782	Plant-e Knowledge B.V.

PANEL/DECIDING JUDGES

FULL PANEL

Presiding judge	Edger Brinkman
Judge-rapporteur (“JR”)	Margot Kokke
Legally qualified judge	Samuel Granata

LANGUAGE OF PROCEEDINGS: English

POINTS AT ISSUE

In the infringement action UPC-CFI_239/2023 (ACT_549536/2023) pending before the Local Division The Hague, the defendant (“Bioo”) filed a counterclaim for revocation of the patent (CC_588768/2023). The panel therefore has to decide how to proceed with respect to the application of Art. 33(3) UPCA. For practical reasons, this decision is taken before the closure of the written procedure (R. 37.2 RoP).

With a procedural order of 17 January 2024 (ORD_2223/2024) the parties were invited to comment on the application of article 33(3) UPCA in line with R. 37.2 and R. 264 RoP. This order was given in a CMS-workflow with number 2223/2024.

Both parties request the court to proceed with both the action for infringement and with the counterclaim for revocation.

As it is not possible to upload another order in workflow 223/2024, this R.9 workflow/order number was created to take the R. 37.2 RoP decision.

GROUND FOR THE ORDER

In the present case, the panel of the Local Division The Hague decides to hear both the infringement action and the counterclaim for revocation (Art. 33(3)(a) UPCA).

Such a joint hearing of the infringement action and the counterclaim seems to be appropriate in particular for reasons of procedural expediency and avoids the risk of delay that might be involved with bifurcating. It is also preferable because it allows both issues – validity and infringement – to be decided on the basis of a uniform interpretation of the patent by the same panel composed of the same judges. This is also in conformity with the preference of both parties.

In view of the above, the allocation to the panel of a technically qualified judge has been requested (R. 37.3 RoP).

ORDER

For these grounds, having heard the parties, the panel allocated to case UPC-CFI_239/2023 of the Court of First Instance of the Unified Patent Court, Local Division in The Hague, orders that it shall proceed with both the action for infringement and the counterclaim for revocation.

ORDER DETAILS

Order no.: ORD_8243/2024

UPC case number: UPC_CFI_239/2023

Action type: Infringement Action (ACT_549536/2023) and counterclaim (CC_588768/2023)

Related action: ORD_2223/2024

Issued on 15 February 2024

Judges	signatures
Edger Brinkman	
Samuel Granata	
Margot Kokke	