



Decision
of the Court of First Instance of the Unified Patent Court
issued on 3 July 2024
concerning EP 2 393 417 B1

APPLICANT:

Abbott Diabetes Care Inc. of 1360 South Loop Road, Alameda, CA 94502, United States of America,

Represented by: Attorney at Law Roland Küppers, Attorney at Law Dr. Alexander Rubusch, Benrather Str. 15, 40213 Düsseldorf, Germany,

Electronic address for service: r.kueppers@taylorwessing.com

DEFENDANTS:

1. SIBIO TECHNOLOGY LIMITED of 6/F., Manulife Place, 348 Kwun Tong Road, Kowloon, Hong Kong, Special Administrative Region of the People's Republic of China,

2. UMEDWINGS NETHERLANDS B.V. of Treubstraat, 1, 2288EG, Rijswijk, The Netherlands,

Represented by: Attorney at Law Thomas Gniadek, Thierschplatz 6, 80538 Munich, Germany,

Electronic address for service: thomas.gniadek@simmons-simmons.com

PATENT IN SUIT:

EUROPEAN PATENT NO. EP 2 393 417 B1

PANEL/DIVISION:

Panel of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Presiding Judge Thomas acting as judge-rapporteur, the legally qualified judge Dr Thom, the legally qualified judge Bessaud and the technically qualified judge Dr Fulconis.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: R. 365.1 S. 2 RoP – Confirmation by the Court of a settlement

GROUNDS OF THE ORDER:

Confirmation of the settlement reached between the parties is in accordance with R. 365.1 S. 2 RoP.

If the parties have terminated the proceedings by settlement, the party liable to pay the court fees shall, upon reasoned Application, be reimbursed the court fees (R. 370. 9 (c) (iii) RoP in conjunction with R. 370.11 RoP). Such reimbursement is not precluded by the fact that the present proceedings concern an Application for provisional measures. Although the wording of the English version of Rule 370.9 (c) RoP speaks of an “action”, the German version is more sophisticated (“Verfahren”). The same applies to the French version (“affaire”). In addition, the possibility of partial reimbursement of court fees is intended to motivate the parties to end the proceedings as early as possible by concluding a settlement. This intention is present not only in proceedings on the merits but also in an Application for provisional measures. The fact that R. 370.9 (c) (ii) RoP also provides for an amount for the interim procedure does not justify a different assessment. Since the procedure for the grant of provisional measures does not recognise interim proceedings, this amount is meaningless in such proceedings.

The amount of the reimbursement depends on the stage of the proceedings at which the settlement was reached. In the present case, the settlement was reached during the oral hearing. Therefore, the Düsseldorf Local Division ordered the Registrar to refund 20 % of the court fees paid in connection with the Application for provisional measures.

ORDER:

- I. At the request of the parties, the Court confirms, in accordance with R. 365.1 S. 1 RoP, that the parties have reached the following settlement:

Settlement Agreement

With regard to the proceedings for an application for provisional measures based on EP 2 393 417 (hereinafter: “the Patent”) pending before the Düsseldorf Local Division (ACT_15000/2024; UPC_CFI_133/2024) the parties, Abbott Diabetes Care Inc. (hereinafter: “Applicant”) on the one hand and Sibionics Technology Ltd. and Umedwings Netherlands B.V. (hereinafter: “Defendants”) on the other hand agree as follows:

1.1 Defendants undertake towards Applicant to refrain from offering, placing on the market, importing or possessing for the aforementioned purposes in the contracting member states of the Federal Republic of Germany, France, and the Netherlands

analyte sensors comprising:

a body having a proximal section, a distal section longitudinally aligned with the proximal section, an intermediate section and a contact portion, wherein the intermediate section is laterally displaced from the distal section and the proximal section, and a notch is defined between the laterally displaced intermediate section and the proximal section, wherein a plurality of conductive traces connect a plurality of electrodes on the distal section with a plurality of conductive contacts on the contact portion, and wherein the contact portion is in a plane different than the distal and proximal sections, and wherein the intermediate section includes a bendable portion that allows the contact portion to be in the plane different than the distal and proximal sections (Claim 1 of EP 2 393 417);

in particular the GS1 device as depicted below:

Packing list



- 1.2 Defendants agree jointly and severally to pay an immediately payable contractual penalty to Applicant for each case of violation of the obligation pursuant to Section 1.1 above. The specific amount for each violation is to be determined by Applicant at its sole discretion and can be reviewed by the competent court upon Defendants' request.
- 1.3 Defendants will provide Applicant within one (1) week after signing of this agreement the following information in a written statement substantiated with appropriate documentation of:
- (a) the origin and commercial distribution channels of the products according to Section 1.1 above since August 26, 2017, for the contracting member states of the Federal Republic of Germany, France, and the Netherlands including the full names and addresses of the legal entities that are involved;
 - (b) the quantities delivered, received or ordered, as well as the prices obtained for the products according to Section 1.1 above distributed since August 26, 2017, in the contracting member states of the Federal Republic of Germany, France, and the Netherlands; and
 - (c) the identity of any third party involved in the production or commercial distribution of the products according to Section 1.1 above distributed since August 26, 2017, in the contracting member states of the Federal Republic of Germany, France, and the Netherlands including the full names and addresses of the legal entities that are involved.
- 1.4 Defendants will destroy the products according to Section 1.1 above which are in stock and/or otherwise held, owned or in the direct or indirect possession of Defendants in the contracting member states of the Federal Republic of Germany, France, and the Netherlands within four (4) weeks after signing of this agreement and to provide Applicant with proper evidence (e.g. destruction report and photos) of the full and timely compliance with this obligation within the same deadline.
- 1.5 Defendants will recall all stocks of the products according to Section 1.1 above from the commercial distribution channels in the contracting member states of the Federal Republic of Germany, France, and the Netherlands within one (1) week after signing this agreement and send Applicant a copy of each of the recall letters within the same deadline.
- 1.6 Defendants will jointly and severally compensate Applicant for all damages on the merits which Applicant has suffered and will suffer as a result of the acts referred to in Section 1.1 above committed since August 26, 2017.

- 1.7 In accordance with Rule 365 and Rule 11(2) RoP both Applicant and Defendants will jointly request the court (Düsseldorf Local Division) in the pending proceedings for an application for provisional measures to confirm this agreement in a decision which shall be enforceable as a final decision of the court. This request shall be filed immediately upon signing this settlement agreement.
- 1.8 Defendants and Applicant agree that each party to the proceedings shall bear its own costs. The court fees will be shared by the Defendants and the Applicant.
- 1.9 Both Applicant and Defendants will voluntarily submit to the exclusive jurisdiction of the UPC in the Düsseldorf Local Division as court of first instance with regard to all disputes out of or in connection with this settlement agreement. The procedural language shall be English, if applicable.

Düsseldorf, 3 July 2024

Roland Küppers on behalf of
Abbott Diabetes Care Inc.

DocuSigned by:

Thomas Gniadek

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Dr. Thomas Gniadek on behalf of
Sibio Technology Limited

DocuSigned by:

Thomas Gniadek

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Dr. Thomas Gniadek on behalf of
Umedwings Netherlands B.V.

- II. This decision shall be entered on the register.
- III. A decision on costs is not required once the parties have finally settled their costs.
- IV. The Registrar is directed to refund the Applicant, as soon as practicable, 20 % of the Court fees paid by the Applicant, making a total of 2.200,- EUR.
- V. The value of the Application for provisional measures is set at 4.000.000,- EUR.

Issued in Düsseldorf on 3 July 2024

NAMES AND SIGNATURES

Presiding Judge Thomas

Legally qualified Judge Dr Thom

Legally qualified Judge Bessaud

Technically qualified Judge Dr Fulconis

For the Sub-Registrar Boudra-Seddiki

DETAILS OF THE ORDER:

App_39459/2024 related to the main file reference ACT_15000/2024

UPC number: UPC_CFI_133/2024

Type of procedure: Application for provisional measures