Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC_CoA_301/2024
APL_33746/2024
App_40131/2024

ORDER

of the Court of Appeal of the Unified Patent Court
issued on 7 July 2024
concerning a procedural application
pursuant to R.9 RoP

APPLICANTS / RESPONDENTS IN THE APPEAL PROCEEDINGS / DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

1. ARM Limited, Cambridge, United Kingdom
3. Apical Limited, Cambridge, United Kingdom
4. Arm France SAS, Biot, France
5. Arm Germany GmbH, Grasbrunn, Germany
6. Arm Germany d.o.o, Sentjernej, Slovenia
7. Arm Ireland Limited, Galway, Ireland
8. Arm Poland Sp. z.o.o, Katowice, Poland
9. Arm Sweden AB, Lund, Sweden
10. Simulity Labs Limited, Cambridge, United Kingdom
12. SVF Holdco (UK) Limited, London, United Kingdom
hereinafter also jointly referred to (in singular) as 'ARM',
represented by: Christoph Crützen, Rechtsanwalt, Mayer Brown LLP, Düsseldorf, Germany

RESPONDENT / APPELLANT IN THE APPEAL PROCEEDINGS/ CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE:

ICPillar LLC, Houston, Texas, USA,
hereinafter also referred to as: 'ICPillar',
represented by: Lionel Martin, Attorney at law and European patent attorney, August Debouzy, Paris, France

LANGUAGE OF THE PROCEEDINGS:

English

PATENT AT ISSUE

EP 3000239

DECIDING PANEL AND JUDGES:

This order was adopted by the second panel of the Court of Appeal, consisting of

Rian Kalden, Presiding judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Patricia Rombach, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Date: 21 May 2024; ORD_23494/2024 in related proceedings (application for security for costs) App_22767/2024, in the main infringement action ACT_596432/2023
- Action number attributed by the Court of First Instance, Local Division Paris: UPC_CFI_495/2023

PROCEDURAL HISTORY

1. In the infringement proceedings before the Court of First Instance, ARM filed an application under R.158.1 RoP (App. 22767/2024) on 26 April, requesting the Court of First Instance to order ICPillar to provide adequate security for legal costs and other expenses incurred by ARM. The Court of First Instance allowed the Application by order of 21 May 2024.
2. Leave to appeal was requested by ICPillar on 28 May and granted by the Court of First Instance by order dated 30 May 2024 (App_31590/2024).
3. ICPillar lodged a Statement of appeal and grounds of appeal on 5 June 2024. On 11 June 2024 the formal checks were finalized and according to the activities log of the Court's case management system (CMS), ARM was notified through the CMS of the Statement of appeal and grounds of appeal on that same day.
4. The Court of Appeal on 20 June 2024 issued a preliminary order, requesting ARM to comment on ICPillar's request pursuant to R.262A RoP. When the Registry contacted both parties by e-mail about this order, as there was a technical problem with the CMS, ARM responded that it had not received any notification on 11 June 2024 and was unable to access the case. On 21 June 2024, the Registry at ARM's request forwarded to ARM the access code that, according to its provider, had been sent to ARM. ARM accessed the case file in CMS that same day.
5. On 25 June 2024, ARM commented on the request for protection of confidential information (App_37946/2024).
6. By e-mail of 4 July, the Registry informed the representative of ARM that the Court of Appeal considered 21 June 2024 as the date of notice of the Statement of appeal and grounds of appeal, so that the time period for lodging the Statement of response would end on 8 July 2024.

INDICATION OF PARTIES' REQUESTS

7. In the main appeal proceedings, ICPillar requests that the impugned order shall be set aside.
8. In its request for confidentiality pursuant to R.262A RoP, ICPillar requests the Court of Appeal to order that certain parts of Exhibit 4 to its Statement of appeal and grounds of appeal be kept confidential in relation to members of the public and will only be fully disclosed to the representatives of ARM and not more than two of all the ARM companies who are respondents in these proceedings.
9. On 5 July 2024, ARM lodged a request pursuant to R.9 RoP, requesting (as a main request) a declaration that the Statement of grounds of appeal has not been served on ARM, or (in the alternative) that the deadline for lodging the Statement of response is extended to a date that is 15 days from the date the unredacted version of Exhibit 4 of ICPillar's Statement of appeal and grounds of appeal (hereinafter in short: Exhibit 4) is made available to ARM's respondents pursuant to the Court of Appeal's preliminary order in the R.262A workflow (App_33764/2024).

POINTS AT ISSUE

Extension of the time period for lodging the Statement of response.

GROUNDS FOR THE ORDER

10. The main request must be rejected. As stated in the e-mail of 4 July, the Statement of appeal and grounds of appeal must be considered served on ARM on 21 June 2024 when it – uncontested – received the access code and accessed the case file in the CMS.
11. It appears that, as ICPillar had not uploaded the redacted and unredacted version of Exhibit 4 in the R.262A RoP workflow, but instead in the workflow for the main appeal proceedings, the unredacted version of Exhibit 4 could not be made available to ARM together with the preliminary order in the R.262A RoP workflow, as it should have. Pending the outcome of ICPillar's R.262A RoP request, the unredacted version of Exhibit 4 as uploaded in the main appeal proceedings, was not visible for ARM either.
12. In the main appeal proceedings, ICPillar argues (in summary) that the Court of First Instance should not have allowed ARM's request for security for costs, because it has taken out insurance with the aim to be able to comply with a possible order to compensate ARM's legal costs and expenses.
13. Under these circumstances, the Court of Appeal agrees with ARM that due process requires that at least the representative of ARM has access to the unredacted version of Exhibit 4, which is a copy of the insurance policy that ICPillar relies on in the main appeal proceedings.
14. As the representatives have not yet received the unredacted version of Exhibit 4 due to technical issues in relation to the CMS, the Court of Appeal allows the alternative request and orders that the time period for lodging the Statement of response by ARM shall end on the 15th day after the unredacted version of Exhibit 4 is made available to ARM's representative. The Court of Appeal shall see to it that this is done as soon as possible.

ORDER

The Court of Appeal orders that the time period for lodging a Statement of response by ARM shall end on the 15th day after the unredacted version of ICPillar's Exhibit 4 to the Statement of appeal and grounds of appeal is made available to the representative of ARM.

Issued on 7 July 2024,

Rian Kalden

Date: 2024.07.07 17:28:02 +02'00'

Rian Kalden, Presiding judge and judge-rapporteur

Åsa Ingeborg Simonsson

Digitally signed by Åsa Ingeborg Simonsson
Date: 2024.07.07 17:47:11 +02'00'

Ingeborg Simonsson, legally qualified judge

Patricia Ursula Rombach

Digitally signed by Patricia Ursula Rombach
Date: 2024.07.07 21:34:00 +02'00'

Patricia Rombach, legally qualified judge