



Local division Munich
UPC_CFI_181/2023

Order
of the Court of First Instance of the Unified Patent Court in
the main proceedings concerning
European patent 3 221 117 granted on:
11/07/2024

KLÄGERIN

1) **KraussMaffei Extrusion GmbH** Represented by:
Krauss-Maffei-Strasse 1 - 30880 - zenDaniel Seitz
Laat
- EN

DEFENDANTS

1) **TROESTER GmbH & Co KG** Represented by:
Am Brabrinke 1 - 4 - 30519 - Hannover -Alexander Wiese
EN

PATENT IN DISPUTE

<i>Patent no.</i>	<i>Owner</i>
EP3221117	KraussMaffei Extrusion GmbH

DECIDING JUDGES

COMPOSITION OF THE PANEL - COMPLETE COMPOSITION

Presiding judge and judge-rapporteur	Matthias Zigann
Legally qualified judge	Mojca Mlakar
Legally qualified judge	Tobias Pichlmaier
Technically qualified judge	Beate Schenk

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT OF THE CASE:

Patent infringement;
here: Withdrawal of action and reimbursement of court fees

FACTS AND APPLICATIONS OF THE PARTIES

The plaintiff filed a claim against the defendant for infringement of European patent 3 221 117. The main hearing took place on 16/04/2024.

The panel made the following Orders at the end of the hearing:

1. The plaintiff's application to reject the defendant's oral argument concerning the drives as belated is dismissed because that argument was made in response to a question from the court.
2. The plaintiff is granted leave to comment in writing on this oral submission and on new factual submissions in the defendant's document dated 08/03/2024 by 30/04/2024.
3. The applicant is requested to indicate by 30/05/2024 whether a contested decision is still required.
4. The applicant is requested to communicate in writing the outcome of the oral proceedings of the Board of Appeal of the European Patent Office of 23/07/2024 (T1570/23) by 25/07/2024.
5. The date for the announcement of a decision is set for Tuesday, 03/09/2024, 9.00 a.m., Room 212, Denisstr. 3 in Munich.

In a document dated 09/07/2024, the plaintiff stated that the parties had reached an out-of-court settlement and withdrew the action. According to the attached document dated the same day, the defendant has already agreed to the withdrawal.

The applicant claims that the Court should:

- 1. allow the withdrawal of the action and declare the proceedings terminated.*
- 2. order a refund of the court fee paid in the amount of 20% pursuant to Rule 370.9(b)(iii) RoP because the withdrawal of the action took place before the conclusion of the oral proceedings.*

REASONS

As the defendant has already agreed to the withdrawal of the action, no further hearing is necessary. The withdrawal must be authorised and the proceedings declared terminated.

Pursuant to Rule 370.9(b)(iii) RoP, 20 per cent of the court fees paid are to be refunded to the plaintiff. The oral proceedings were not yet concluded even after the oral hearing on 16/04/2024. In particular, the Board pointed out at the oral hearing that it was still unclear whether an expert opinion would have to be obtained and what effects the decision of the Board of Appeal in the parallel opposition proceedings would have on the further course of the proceedings. In addition, following the oral hearing, the local division set further deadlines for written submissions and set the date for the announcement of a decision for 3 September 2024. This shows that the proceedings were not yet ready for a decision. An Order that the oral proceedings have been concluded has also not yet been issued.

ORDER

1. The date for the pronouncement of a decision of 03/09/2024 is cancelled.
2. The withdrawal of the claim is authorised.
3. The proceedings are declared closed.
4. The decision is entered in the register.
5. The plaintiff is to be reimbursed 20 per cent of the court fees paid.

INSTRUCTIONS TO THE DEPUTY CHANCELLOR

1. The decision must be entered in the register.
2. The plaintiff is to be reimbursed 20 per cent of the court fees paid.

<p>DR ZIGANN PRESIDING JUDGE AND JUDGE-RAPPORTEUR</p>	<p>Matthias ZIGANN  Digitally signed by Matthias ZIGANN Date: 2024.07.11 13:12:45 +02'00'</p>
<p>PICHLMAIER LEGALLY QUALIFIED JUDGE</p>	<p>Tobias Günther Pichlmaier  Digitally signed by Tobias Günther Pichlmaier Date: 2024.07.12 14:10:14 +02'00'</p>
<p>MLAKAR LEGALLY QUALIFIED JUDGE</p>	<p>Mojca Mlakar  Digitalno podpisal Mojca Mlakar Date: 2024.07.15 17:36:07 +02'00'</p>
<p>SCHENK TECHNICALLY QUALIFIED JUDGE</p>	<p>Beate Schenk  DN: cn=Beate Schenk, c=DE, Digitally signed by Beate Schenk email=beate.schenk@bpatg.bund.de Date: 2024.07.15 21:18:10</p>
<p>FOR THE DEPUTY CHANCELLOR</p>	<p>Anja Mittermeier  Digitally signed by Anja Mittermeier Date: 2024.07.16 09:47:50 +02'00'</p>

ORDER DETAILS

Order No. ORD_41109/2024 in PROCEDURE NUMBER: ACT_528357/2023
 UPC number: UPC_CFI_181/2023
 Nature of the action: Action for infringement
 No. of the associated procedure Application No.:
 40022/2024Type of application:
 Template for procedural application

Order No. ORD_598303/2023 in PROCEDURE NUMBER: ACT_528357/2023
 UPC number: UPC_CFI_181/2023
 Nature of the action: Action for infringement