



Appeal n°:
UPC_CoA_405/2024
APL_40553/2024
App_44530/2024

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 8 August 2024

HEADNOTES

- It follows from Rule 278.1 and 2 RoP that written pleadings, like the Statement of grounds of appeal in the case-at-hand, are served by the Registry in the electronic CMS of the Court unless service cannot be effected by means of electronic communication.
- Prior communication between the parties themselves of the written pleading via another electronic system like the German special electronic lawyer's mailbox (besonderes elektronisches Anwaltspostfach, (beA)) cannot be considered as effective service under Rule 278.1 RoP.

KEYWORD

- Service

APPELLANT (APPLICANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Alexion Pharmaceuticals, Inc.

121 Seaport Blvd, 02210 Boston (MA), United States

represented by attorney-at-law Elena Hennecke (Freshfield Bruckhaus Deringer)

RESPONDENTS (DEFENDANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. Amgen Technology (Ireland) Unlimited Company

Pottery Road, A96 F2A8, Dun Laoghaire, Dublin, Ireland

2. Amgen N.V.

Telecomlaan 5-7, 1831 Machelen, Belgium

3. Amgen GmbH

Riesstraße 24, 80992 Munich, Germany

4. Amgen GmbH

Franz-Josefs-Kai 47, 1010 Vienna, Austria

5. Amgen AB

Gustav IIIs Blvd 54, 16974 Solna, Sweden

6. Amgen S.A.S.

18-20 Quai du Point du Jour, 92100 Boulogne-Billancourt, France

7. Amgen s.r.l.

Via Enrico Tazzoli 6, 20154 Milan, Italy

8. Amgen Biofarmacêutica Lda.

Avenida José Malhoa, 19, 1070- 157 Lisboa, Portugal

9. Amgen Zdravila D.O.O.

Šmartinska cesta 140, 1000 Ljubljana, Slovenia

represented by attorney-at-law Prof. Dr. Tilman Müller-Stoy (Bardehle Pagenberg)

PATENT AT ISSUE

EP 3167888

DECIDING JUDGE

Klaus Grabinski, President of the Court of Appeal and filling in as Judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Orders of the Court of First Instance of the Unified Patent Court, Local Division Hamburg dated 26 June 2024 and 17 July 2024
- Numbers attributed by the Court of First Instance:
 - UPC_CFI_124/2024
 - ACT_13886/2024
 - ORD_38032/2024

FACTS AND REQUEST OF RESPONDENTS

The Hamburg Local Division of the Court of First Instance dismissed Appellant's and Applicant's (hereafter "Appellant") request for provisional measures by order of 26 June 2024 without reasons and gave reasons for its decision by order of 17 July 2024.

Appellant lodged a Statement of appeal on 11 July 2024 and a Statement of grounds of appeal on 27 July 2024 (a Saturday) in the Court's Case Management System (hereafter: CMS).

Respondents were notified by the Court in the CMS on 29 July 2024 that the Statement of grounds of appeal had been lodged.

On 27 July 2024 Appellant's also uploaded the Statement of grounds to the representative of the Respondents in his "beA" ("besonderes elektronisches Anwaltspostfach" which is a special electronic mailbox for German lawyers to communicate with the German judiciary and with each other electronically).

Respondents request the Court to clarify that 29 July 2024 shall be considered as the date of service of Appellant's Statement of appeal.

Appellant was given an opportunity to comment.

GROUND FOR THE ORDER

It follows from Rule 278.1 and 2 RoP that written pleadings, like the Statement of grounds of appeal in the case-at-hand, are served by the Registry in the electronic CMS of the Court unless service cannot be effected by means of electronic communication.

Prior communication between the parties themselves of the written pleading via another electronic system like the German special electronic lawyer's mailbox (besonderes elektronisches Anwaltspostfach, (beA)) cannot be considered as effective service under Rule 278.1 RoP.

ORDER

In the case-at-hand service of the statement of ground of appeal has been effected on 29 July 2024.

This order was issued on 8 August 2024.

Judge

Klaus Grabinski: President of the Court of Appeal and filling in as Judge-rapporteur