



Paris local division

UPC_CFI_468/2023
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 26/11/2024

CLAIMANT

C-KORE SYSTEMS LIMITED
3 Bramley's Barn The Menagerie, Skipwith Road - YO19
6ET - Escrick - GB

Represented by Denis
Schertenleib

DEFENDANT

NOVAWELL
22 Allée des Caravelles - 34280 - Carnon-Plage – FR

Represented by Jérôme Ferrando

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor</i>
EP2265793	C-KORE SYSTEMS LIMITED

DECIDING JUDGE

Presiding judge and Judge-rapporteur Camille Lignieres

LANGUAGE OF PROCEEDINGS: English

ORDER

Pursuant to Rule 105.5 of the Rules of Procedure (RoP), following the interim conference, the judge-rapporteur shall issue an order setting out the decisions taken.

In the present case, an online interim conference was held via Webex at 10 a.m. Paris time on 22 November 2024 and was audio-recorded (Rule 106 RoP). All parties were duly represented by their representatives.

Pursuant to Rule 104(d) RoP, the judge-rapporteur asked the representatives whether they saw any possibility of settling the dispute at this stage of the proceedings. The representatives replied that they had received no instructions from their respective clients to settle the case.

Before the Interim procedure, NOVAWELL requested the Judge-rapporteur:

- to reject exhibit 57 of the unredacted version of C-KORE's last statement (R 175 RoP)
- In case the request for rejection is not allowed, request that Mr Sartorius and Me François LABADIE be heard as witnesses (R 177 RoP)
- Request for simultaneous interpretation and the FR. language of the pleadings at the oral hearing.

C-KORE replied that it contested all of NOVAWELL's requests.

The Court ruled, pursuant to R 196.4 RoP, in its Saisie Order that Lukasz Wlodarczyk, patent attorney and lawyer registered to the Paris Bar, was designated as the representative of the Applicant, to be present at the execution of these measures.

In conformity with the enforcement national law (i.e. French law in the present case) and the UPC specific rules of procedure concerning the Saisie, the measures of the seizure were carried out by one expert, appointed by the Court -Mr Sartorius- in order to proceed at the premises of the Defendant. This expert is registered in the list of patent experts who are used to cooperate with the national Courts, so that the choice guarantees expertise, independence and impartiality, as required by R. 196.5 RoP. The appointed expert will proceed assisted by the competent bailiff (Me Labadie), as it is appropriate and allowed under national law."

The Saisie operations were carried out by the Court's expert, i.e. Mr Sartorius, and the regularity of the operations was ensured by the bailiff, Me Labadie, who mentioned in his minutes the entire course of the operations. Mr Wlodarczyk was only present during the measures to represent the Saisie Applicant in the seizure. The representative is bound by the rules of the Code of conduct for UPC representatives (published in the UPC public website), which itself expressly refers to the rules of national professional conduct if relevant, i.e. the professional conduct for French lawyers, in this case (Règlement Intérieur National de la profession d'avocat – RIN).

The statements made by Mr Wlodarczyk in the affidavit in question do not fall within the scope of information that the lawyer might have had outside the operations to preserve evidence as referred to in the Code of Conduct for UPC representatives; the information given by Mr Wlodarczyk are related to how the seizure measures were carried out. The content of the affidavit is therefore not covered by professional secrecy as provided for within the UPC. The same applies to the national rules of professional conduct for French lawyers (RNI art.2): what is covered by professional secrecy for lawyers relates to their relationship with their client or their relationship with their contradictor's lawyers.

Finally, the information covered by the confidentiality order ruled by this Court in the present case (Order n° ORD_12088/2024-UPC number: UPC_CFI_397/2023) concern the content of some documents considered to protect trade secrets, which were collected during the seizure, and not the manner in which the seizure measures were carried out.

The Court, in its decision on the merits, will have to assess the probative value of this affidavit written by the representative of a party, then the Court will draw the conclusions it deems appropriate, given that the measures were recorded in the minutes of the bailiff- who is a ministerial officer- a document with the highest probative value.

Against this background, the Judge-Rapporteur considers that there are no grounds for disregarding the affidavit and that there are no grounds for granting the request to hear Mr Sartorius, the Court's expert on the seizure, as a witness at the oral hearing (his report submitted in the file is sufficient to inform the Court) and Me Labadie, the bailiff appointed for the seizure (his minutes submitted in the file is sufficient to inform the Court).

With regard to the request regarding the pleadings in French at the Oral hearing,

The Court notes that the language of the proceedings is English and this question has not been contested in a preliminary objection. Moreover, the defendants' representatives pleaded in English at the oral hearing to review the Saisie. Finally, whereas NOVAWELL is a small French enterprise, its managers are used to work in English with international partners (see the exchange of emails between the manager of NOVAWELL and C-KORE, in particular concerning the training provided by C-KORE entirely in English: Exhibits C-KORE 4, 16, 18, 20 in the Saisie Order). Therefore, the request for pleading in French in the present case is dismissed.

Regarding the need for simultaneous interpretation at the oral hearing (R. 109 RoP), the parties agreed at the Interim conference held on 22 November 2024, that this was not necessary for the reasons given above.

The Judge-Rapporteur noted that the parties had not made any requests for further documents, experts, inspections or witnesses, all of which are provided for in Rule 104(e).

Hence, the Interim Conference focused on the preparation of the upcoming oral hearing, which was scheduled for 17 December 2024 by the Procedural Order dated of 13/05/2024 (Rule 104 (f) RoP).

Pursuant to Rule 104 (a) RoP, the parties agreed on the main legal points of the case as identified by the judge-rapporteur in the brief already sent to them via an email of 20 November 2024, with slight modifications, as follows:

Claim construction (EP'793)

The parties are invited to focus their explanation on the following notions:

- "*test apparatus*",
- "*operable underwater*"

Validity of the patent at issue

Concerning the admissibility of the amendment request

- mention of the unconditional proposal (if the amendment request is not admissible, NOVAWELL requests the invalidity of the entire patent as granted on the grounds of novelty and lack of inventive step-admissibility of the CC (§115 C-KORE Statement 28 May 2024);
- requirement of art. 84 and 123 EPC (R. 30.1 b RoP);

Concerning the validity of the patent as amended (= a limitation of the claims)

- the Amended Claim 1 (1 to 12 and 14 to 18) on the grounds of
 - clarity (art.84)

- novelty, (over D2)
- inventive step (over D1, combined with D6 or D7- and D3 combined with D16 and D17)

-Other claims

Infringement (alleged infringing product "SICOM")

Direct Infringement (art.25 UPCA): "the ongoing offering and placing on the market of the patented invention as well as its importing and storing for those purposes" (§40 SoC)

The existence of the alleged infringement acts is denied by the Defendant

Concerning the new Claims 11 and 14 (of the patent as amended), according to the Defendant, a ruling on the infringement of these said claims must be rejected (claims being beyond the scope of the initial claim)

Injunction and measures requested

Value of the case / Damages

The amount of 1,588,111.00 EUR is the value of the case (mentioned in the CMS) estimated by the Claimant and contested by the Defendant who asks for a reduction to 205,606 EUR.

The Judge-rapporteur decides pursuant to R. 104 (i) the value of the action at this stage of the proceedings, in accordance with R 370 §6 RoP which states that "The assessment of shall reflect the objective interest pursued by the filing party at the time of filing the action."

NOVAWELL justifies its request to reduce the amount by reference to its turnover regarding the alleged infringing product (Exhibit 46 NOVAWELL).

The Court notes that the calculation of the damages caused by the infringement is based not only on the infringer's unfair profits, but also on the Claimant's lost profits due to the infringement, in accordance with Art. 68.3(a) UPCA.

In the present case, C-KORE provides confidential information in Exhibit 21 relating to the cost of renting its product embodying the patent at issue.

Having considered the information provided by the parties, the Court sets the value of the case at EUR 1 million.

According to the Claimants' request, damages will be determined in separate proceedings pursuant to Rule 125.

The timeframe for the coming Oral hearing was set as follows:

Preliminary introduction by the Presiding judge (10mns)

1. Validity of the patent at issue (3h)

1. 30 min for C-Kore's presentation and interpretation of the patent
2. 30 min for Novawell's presentation and interpretation of the patent
3. 1h for Novawell's argument regarding validity of the patent as amended (included the admissibility of the amendment)

4. 1h for C-Kore's response on validity
2. Alleged infringement (1h)
 1. 30 min for C-Kore's argument regarding infringement,
 2. 30 min for Novawell's response on infringement.
3. Requested measures and other legal points if needed (30mns)

Me Denis Schertenleib, Me Marc Lauzeral and Mr Scott Flecher will plead for C-KORE while Me Jérôme Ferrando, Mme Sophie Delaveau and Mr Sebastien Fache will plead for NOVAWELL.

In this context, the judge-rapporteur orders that the interim procedure is closed and that the oral procedure will begin on the date of delivery of the present order.

Delivered in Paris, on 26 November 2024.

Camille Lignieres, Judge-rapporteur.

ORDER DETAILS

Order no. ORD_598523/2023 in ACTION NUMBER: ACT_592899/2023

UPC number: UPC_CFI_468/2023

Action type: Infringement Action