Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC_CoA_222/2024
APL_25928/2024
App_28997/2024

ORDER

of the Court of Appeal of the Unified Patent Court
issued on 22 May 2024
concerning a request for expedition of the appeal
pursuant to R.225(e), R.9.3(b) Rules of Procedure

HEADNOTES:
In the appeal against an order in which an application for security for costs was dismissed, a request by the Appellant to expedite the appeal and shorten any deadlines where possible in accordance with R.9.3 (b) RoP is denied for being too unspecified and insufficiently substantiated.

KEYWORDS:
Expedition of the appeal, R.225 (e), R.9.3 (b) RoP

APPLICANT / APPELLANT / DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE:
Volkswagen AG, Wolfsburg, Germany
Hereinafter also referred to as: 'Volkswagen'
represented by: Dr. Jan Bösing, Rechtsanwalt, Bardehle Pagenberg, Munich, Germany

RESPONDENT / CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE
Network System Technologies LLC., Portland, ME, Unites States of America
Hereinafter also referred to as 'NST',
represented by: Dr Thomas Gniadek, Simmons&Simmons, Munich, Germany

LANGUAGE OF THE PROCEEDINGS:
English

PATENT AT ISSUE
EP 1 552 669

PANEL
Second Panel

DECIDING JUDGES:

This order has been adopted by

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: 23 April 2024 (signed 25 April 2024); ORD_12483/2024 in related proceedings (requests for security for costs) App_11431/2024, App_11444/2024 and App_11835/2024 in the main infringement action ACT_597691/2023)
- Action number attributed by the Court of First Instance Local Division Munich): UPC_CFI_513/2023

SUMMARY OF FACTS

On 1 March 2024 Volkswagen filed an application under Art. 69.4 UPCA and R.158.1 RoP (App. 11431/2024), requesting the Court to order NST to provide adequate security for legal costs and other expenses incurred by Volkswagen. The Court of First Instance denied the Application. Leave to appeal was granted in the Order.

INDICATION OF PARTIES' REQUESTS

In the appeal proceedings, Volkswagen requests that the impugned order shall be set aside. It argues that the Court of First Instance applied legally erroneous standards of examination and of burden of proof for the decision on the provision of security for costs. The Court of First Instance furthermore misapplied the undisputed facts of the case at hand, Volkswagen contends.

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In the request for expedition of the appeal, Volkswagen requests the Court of Appeal pursuant to R.225(e) and R.9.3 RoP to expedite the appeal and shorten any deadlines where possible. Volkswagen argues that it already incurred significant legal costs for the filing of the statement of defence in the main infringement proceedings on the merits without any security that such costs will be reimbursed by NST. These legal costs continue to increase and thus need to be secured as soon as possible.

POINTS AT ISSUE

Request for expedition of the appeal, R.225 (e), R.9.3 (b) RoP

GROUNDS FOR THE ORDER

1. The request for expedition is admissible.

2. There is no need to consult NST about this request.

3. Pursuant to R.235 and R.224.2(b) RoP a respondent has 15 days from service of the Statement of grounds of appeal to lodge a Statement of response.

4. R.9.3(b) RoP empowers the Court to shorten any time period on a reasoned request by a party.

5. Volkswagen filed the request for expedition of the appeal, at the same time as it lodged the Statement of appeal, containing the grounds of appeal, 15 days after the signature date of the impugned order.

6. Volkswagen has not explained that and why it would have a particular interest in the Statement of response being filed before any particular date, prior to the end of the time period of 15 days as provided for in R.224.2(b) RoP. Failing such a reason, the Court of Appeal cannot, in view of the interests of NST and the principles of proportionality, fairness and equity, also taking into account the time period Volkswagen has taken to lodge its Statement of grounds of appeal, see any reason to shorten the time period within which NST is to lodge its Statement of response.

7. Insofar as the further appeal proceedings are concerned, the request is too unspecified and insufficiently substantiated to justify the shortening of any of the future time periods at this stage of the proceedings.

ORDER

The request for expedition of the appeal is rejected.

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY CONCERNING THE NEXT STEPS

This order closes App_28997/2024.

Issued on 22 May 2024

NAMES AND SIGNATURES

Judges

Rian Kalden

Date: 2024.05.22 18:37:43 +02'00'

Rian Kalden, Presiding judge and judge-rapporteur

Åsa Ingeborg Simonsson

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Ingeborg Simonsson, legally qualified judge

Patricia Ursula Rombach

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