Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Local Division Munich
UPC_CFI_396/2023

Decision

of the Court of First Instance of the Unified Patent Court issued on 8 January 2025

CLAIMANT

Dexcom Inc., 6340 Sequence Drive, CA 92121 San Diego, USA, represented by CEO Kevin Sayer, at the same address,

represented by: Dr Marcus Grosch, Quinn Emanuel, Hermann-Sack-Straße 3, 80331 Munich, Germany.

DEFENDANTS

1. **Abbott Laboratories**, 100 Abbott Park Road, Abbott Park, Illinois 60064-6400, USA, represented by its board of directors which is represented by the CEO Robert Ford;

2. **Abbott Diabetes Care Inc.**, 1360 South Loop Road, Alameda, California 94502, USA, represented by its president Jared Watkin;

3. **Abbott GmbH, Max-Planck-Ring 2**, 65205 Wiesbaden, Germany, represented by its managing directors Robert Funck, Konstantinos Varlas and Christian Grapow;

4. **Abbott Diagnostics GmbH**, Max-Planck-Ring 2, 65205 Wiesbaden, Germany, represented by its managing directors Robert Funck, Konstantinos Varlas and Christian Grapow;

5. **Abbott Laboratories GmbH**, Freundallee 9A, 30173 Hannover, Germany, represented by its managing directors Gregor Benning, Bradley Slater and Frank Weitekämpfer;

6. **Abbott Logistics B.V.**, Meeuwenlaan 4, 8011BZ Zwolle, The Netherlands, represented by its directors Hendrikus Lueb, Hasna Nadir, and Bradley Slater;

7. **Abbott France (S.A.S.)**, 40/48 rue d'Arcueil, 94593 Rungis, France, represented by its president Philippe Emery;

8. **Abbott s.r.l.**, Viale Giorgio Ribotta 9, 00144 Rome, Italy, represented by the chairman of its boards of directors Massimiliano Bindi;

9. **Abbott Gesellschaft m.b.H.**, Perfektastraße 84A, 1230 Vienna, Austria, represented by its directors Martin Hochstöger, Gerhard Wiesinger and Benjamin Oosterbaan;

10. **Abbott B.V.**, Wegalaan 9, 2132 JD Hoofddorp, The Netherlands, represented by its directors Hendrikus Lueb and Bradley Slater;

11. **Abbott (S.A./N.V.)**, Avenue Einstein 14, 1300 Wavre, Belgium, represented by its directors Hendrikus Lueb, Hasna Nadir, and Bradley Slater;

12. **Abbott Scandinavia Aktiebolag**, Hemvärnsgatan 9, 171 54 Solna, Sweden, represented by its board of directors which is represented by the chair of the board Karl Almroth;

13. **Abbott Oy**, Karvaamokuja 2 A, 00380 Helsinki, Finland, represented by the chair of the board Karl Almroth;

represented by: Dr Dietrich Burkhard Kamlah, Taylor Wessing, Isartorplatz 8, 80331 Munich, Germany.

PATENT AT ISSUE

European patent n° EP 4 111 949

PANEL/DIVISION

Panel 2 of the Local Division Munich

DECIDING JUDGES

This decision has been issued by Presiding Judge Ulrike Voß (Judge-Rapporteur), the Legally Qualified Judge Dr Daniel Voß, the Legally Qualified Judge Petri Rinkinen and the Technical Qualified Judge Claus Elmeros.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT OF THE PROCEEDINGS

Withdrawal infringement action, counterclaim for revocation, application to amend the patent – Rule 265 RoP

SUMMARY OF THE FACTS

By statement of claim dated 2 November 2023, the Claimant filed a patent infringement action against the Defendants. The Defendants filed a counterclaim for revocation on 23 February 2024. On 26 April 2024, the Claimant filed an application for amendment of the patent.

On 10 December 2024, the oral hearing on the action and the counterclaim for revocation was held. At the end of the hearing, a date for the pronouncement of a decision was set for 17 January 2025.

By written submissions dated 27 December 2024, the Claimant declared the withdrawal of the infringement action and the withdrawal of the application to amend the patent. The Defendants also declared the withdrawal of the counterclaim for revocation by written submission dated 27 December 2024.

The Claimant requests,

> to permit the withdrawal of the infringement action and to give a decision declaring the proceedings closed,
>
> to permit the withdrawal of the application to amend the patent and to give a decision declaring the proceedings closed.

The Defendants request,

> to permit the withdrawal of the counterclaim for revocation and to give a decision declaring the proceedings closed.

The parties have each declared their agreement with the withdrawal declared by the other party. Both parties stated that they would not request a decision on costs.

In its Order dated 3 January 2025, the Court pointed out that Rule 265.2 (c) RoP provides that the Court decides on costs mandatory if withdrawal is permitted. In view of this, the Court has indicated that it understands the parties´ submission to mean that no costs are reimbursed between the parties. Each party is to bear its own extrajudicial costs. In their comments, the parties stated that they would accept such a decision on costs.

REASONS FOR THE ORDER

I.

Pursuant to Rule 265.1, first sentence, RoP, a Claimant may, as long as there is no final decision in the action, request that the action be withdrawn. The application for withdrawal is not allowed, according to sentence 3, if the other party has a legitimate interest in the action being decided by the Court.

On this basis, the withdrawal of the action, including the application to amendment the patent, shall be allowed. The same shall apply to the counterclaim for revocation. The parties have each requested the respective withdrawals before the issue of a (final) decision. They have not asserted any legitimate interests within the meaning of the aforementioned provision. Nor are any such legitimate interests recognisable in any other way.

II.

The consequence of admitting a withdrawal is, according to Rule 265.2 (a) and (b) RoP, to give a decision declaring the proceedings closed and to order the decision to be entered on the register.

According to Rule 265.2(c) RoP, when admitting the withdrawal, the Court issues a decision on costs in accordance with Part 1, Chapter 5. A request by a party is not required in this respect. The parties' mutual consent may be taken into account in the cost decision.

As a result of the withdrawal of the infringement action, the counterclaim for revocation and the application for amendment of the patent, a decision by the Court on the merits of the case is no longer necessary. The date for pronouncing or delivering a decision is therefore cancelled.

ORDER

1. The withdrawal of the action, including the applications for amendment of the patent, is allowed.
2. The withdrawal of the counterclaim for revocation is allowed.
3. The proceedings referred to in points 1 and 2 are declared closed.
4. This decision is to be entered on the register.
5. The parties shall bear their own extrajudicial costs. There will be no reimbursement of costs between the parties.
6. The date for delivery of a decision on 17 January 2025 is cancelled.

DETAILS OF THE ORDER

ACT_583791/2023
UPC Nr.: UPC_CFI_396/2023
CC_9804/2024, App_68359/2024
App_67763/2024 (Withdrawal Infringement action)
App_67767/2024 (Withdrawal Application to amend)
App_68359/2024 (Withdrawal Counterclaim for revocation)

Ulrike Voß Presiding Judge	Ulrike Voß Digital unterschrieben von Ulrike Voß Datum: 2025.01.08 18:30:38 +01'00'
Dr Daniel Voß Legal Qualified Judge	Daniel Voß Digital unterschrieben von Daniel Voß Datum: 2025.01.08 18:50:22 +01'00'
Petri Rinkinen Legal Qualified Judge	Petri Rinkinen Allekirjoittaja Petri Olavi Rinkinen Päivämäärä: 1/8/25 8:36:28 PM
Claus Elmeros Technical Qualified Judge	Claus Elmeros Digitalt signeret af Claus Elmeros Dato: 2025.01.08 19:50:38 +01'00'
For the Sub-Registrar	Anja Mittermeier Digital unterschrieben von Anja Mittermeier Datum: 2025.01.09 13:16:44 +01'00'