

JUDGE MAKING THE DECISION

COMPOSITION OF THE FULL PANEL

President	Edger Brinkman
Judge/Judge Rapporteur ("JR").	Margot Kokke
Judge (LQJ)	Samuel Granata

This decision was made by the full panel.

LANGUAGE OF PROCEDURE: Dutch

REQUEST AND BACKGROUND

1. On March 5, 2024, the applicant's representative filed an application for withdrawal of proceedings under Rule 265 of the Rules of Procedure of the Unified Patent Court (hereinafter "RoP" and "UPC" respectively). This application, hereinafter "the application," contained the following:
 - Plaintiff respectfully requests permission from the Unified Patent Court to withdraw the above identified action in its entirety.
 - Pursuant to Rule 265 of the Rules of Procedure, Plaintiff specifically requests that the Unified Patent Court:
 - issue a decision declaring the proceedings closed;
 - Order that this decision be entered in the Register;
 - order that each party shall bear its own costs, without prejudice to the application of Rule 270.9(b) of the Rules of Procedure.
 - This withdrawal is done with the consent of the defendant.
 - A return of 60% of the fixed fee under Rule 270.9(b) of the Rules of Appellate Procedure shall be deemed applicable as the action is withdrawn before the end of the written proceedings.
2. By interim decision dated March 18, 2024, pursuant to rule 265.1 RoP, the defendant was given the opportunity to respond to the withdrawal request and to the request for a decision on litigation costs by Friday, March 22, 2024, with each party bearing its own costs.
3. Due to apparent problems with the digital "case management system" ("CMS"), the defendant did not respond until April 22, 2024, in the workflow provided for that purpose in the CMS. In it, she reported, among other things, the following:
 - The defendant agrees with the withdrawal request submitted by the plaintiff.
 - The defendant agrees to the request for a ruling on the costs of litigation, ordering that each party bear its own costs.
 - The defendant made several attempts to file this response to the withdrawal petition with the Unified Patent Court through the Unified Patent Court website.
 - Due to technical problems, this was not possible. On the one hand, the defendant could not save the document as a PDF/A document due to various problems with Adobe. On the other hand, the defendant was unable to access the Unified Patent Court's case management system.
4. The attached attachment shows that the defendant sent the response to the withdrawal request on March 22, 2024 via email to the UPC to the email address upc-cms-sa@unifiedpatentcourt.org, stating that it was unable to upload the message

and display of screenshots of the error messages it received in the process. This message did not reach the JR until April 23, 2024, attached to this request.

CONSIDERATIONS

5. The delay in the respondent's response is apparently due to problems with CMS, and does not affect the applicant's legal position (other than delay). Therefore, the response in this case, also in light of the timely email submission, is considered timely submitted.
6. The parties' unanimous withdrawal request is granted and the infringement proceeding UPC_CFI_379/2023 ACT_ 581723/2023 is thereby terminated (rule 265.2(a) RoP). The request to order that that decision be entered in the Register of the Unified Patent Court is also granted pursuant to rule 265.2(b) RoP.
7. The unanimous request to order that each party bear its own costs is also allowable.
8. The court further understands the application to mean that, in addition to the order referred to in the preceding paragraph, by referring to the application of "Rule 270.9(b)," the applicant intends to apply for a partial refund of court fees paid by her to the UPC under Rule 370.9 and 11 RoP. Since rule 270.9(b) RoP does not exist, apparently 370.9(b) RoP is intended in the application; that section governs the refund of court fees. The court will consider this request, even though it is not filed through a separate workflow, to avoid further litigation.
9. Rule 370 RoP reads, to the extent relevant here:
(...)
9. Fixed and value-based fees may be reimbursed as follows:
(a) (...)
(b) In case of the withdrawal of an action [Rule 265] the party liable for the Court fees will be reimbursed by:
(i) 60 % if the action is withdrawn before the closure of the written procedure
(ii) 40 % if the action is withdrawn before the closure of the interim procedure
(iii) 20 % if the action is withdrawn before the closure of the oral procedure
(c) If the parties have concluded their action by way of settlement the party liable for the Court fees will be reimbursed by:
(i) 60 % if the action is settled before the closure of the written procedure
(ii) 40 % if the action is settled before the closure of the interim procedure
(iii) 20 % if the action is settled before the closure of the oral procedure
(d) Only one of the reimbursements referred to in paragraph 9 (a), (b) and (c) will apply per action and party. Where more than one reimbursement is applicable, the larger will be applied for each party.
(e) In exceptional cases, having regard, in particular, to the stage of the proceedings and the procedural behavior of the party, the Court may deny or decrease the reimbursement payable according to paragraph 9 (b) and (c) of the aforementioned provisions.
10.(...)
11. The party seeking reimbursement under paragraphs 9 and 10 shall lodge a reasoned Application for reimbursement to the Court. The Court shall deal with the application without delay and if satisfied that the reimbursement is appropriate shall direct the Registrar to make the payment as soon as practicable.

10. In this case, the proceedings are terminated by decision on the applicant's "withdrawal" request within the meaning of rule 265 RoP. That request stems from a settlement reached between the parties. The panel considers the restitution of part of the court fee in this case appropriate within the meaning of rule 370.11 RoP. Accordingly, the request for restitution will be granted. With the case being terminated at an early stage, i.e., after the issuance of the summons and before the filing of an answer by the respondent, and thus before the "written proceedings" are concluded, 60% of the court fees paid will be refunded. This follows from rule 370.9(b) RoP, on which the applicant relies.

DECISION

1. Declares case UPC_CFI_379/2023, with CMS number ACT_ 581723/2023, terminated pursuant to rule 265.2(a) RoP;
2. Recommends that this decision be entered in the UPC register in accordance with rule 265.2(b) RoP;
3. Recommends that each party bear its own costs;
4. Orders the clerk to refund 60% of the court fee paid to plaintiff under rule 370.9 and 11 RoP.

Edger Brinkman	Edger Frank BRINKMAN  <small>Digitally signed by Edger Frank BRINKMAN Date: 2024.05.01 09:58:29 +02'00'</small>
Samuel Granata	Samuel Rocco M Granata  <small>Digitally signed by Samuel Rocco M Granata Date: 2024.05.01 09:21:58 +02'00'</small>
Margot Kokke	Margot Elsa KOKKE  <small>Digitally signed by Margot Elsa KOKKE Date: 2024.05.01 09:08:42 +02'00'</small>
On behalf of the registry: Nikki Swinkels	Nikki Swinkels  <small>Digitally signed by Nikki Swinkels Date: 2024.05.01 11:29:54 +02'00'</small>

DATA RELEVANT TO THIS DECISION

CMS number request: App_12133/2024
 UPC case number: UPC_CFI_379/2023
 CMS case number: ACT_ 581723/2023
 Type of case: Infringement case