

UPC CFI, Central Division Munich, 28 December 2023, Astellas v HealiOS



PATENT LAW – PROCEDURAL LAW

The Court will wait for the outcome of the Appeal Proceedings on the application of [Rule 262 RoP](#) before proceeding with the present Application for access to written pleadings and evidence

It may be expected that in the Appeal Proceedings the Court of Appeal will provide clarification as to the interpretation and application of [Rule 262.1\(b\) RoP](#). The decision of the Court of Appeal is therefore likely to be highly relevant for the outcome of the Application. None of the parties brought forward any objections to the Court's intention to wait for the Court of Appeal to decide in the Appeal Proceedings. Therefore, the Court will wait for the outcome of the Appeal Proceedings before proceeding with the present Application.

- **The Applicant is to submit the final Court of Appeal decision in the Appeal Proceedings ('the Court of Appeal decision')** together with any comments the Applicant wishes to make in relation to said decision within three weeks from publication of the Court of Appeal decision on the Court's website or within three weeks from the Court of Appeal decision becoming available through other means to the Applicant, whichever comes sooner.

No legal basis for request to have the judge-rapporteur inform the Court of Appeal of the order staying the present proceedings to ensure that the Court of Appeal is aware of that order

- **Moreover, the judge-rapporteur has no access to the Court of Appeal (CMS) file.**

Source: [Unified Patent Court](#)

UPC Court of First Instance,
Central Division, Section Munich, 28 December 2023
(Kupecz)

UPC_CFI_75/2023

Preliminary Order

of the Court of First Instance of the Unified Patent Court
delivered on 28/12/2023

REFERENCE CODE ECLI:

Not provided APPLICANT/S

1) **Mathys & Squire LLP** (Applicant) - The Shard, 32
London Bridge Street - SE1 9SG - London - GB
Represented by Mathys & Squire LLP

RELEVANT MAIN PROCEEDING PARTIES

1) **ASTELLAS INSTITUTE FOR REGENERATIVE MEDICINE** (Claimant) - 9
Technology Drive - MA 01581 - Westborough - US

Represented by David Carling

2) **HealiOS K.K** (Defendant) - Hamamatsu-cho 2-chome
Minato-ku - 105-6115 - Tokyo - JP

Represented by James Nicholls

3) **Riken** (Defendant) - 2-1, Hirosawa Wako-shi - 351-
0198 - Saitama - JP

Represented by James Nicholls

4) **Osaka University** (Defendant) - 1-1 Yamadaoka
Suita-shi - 565-0871 - Osaka - JP

Represented by James Nicholls

PATENT AT ISSUE

Patent no. Proprietor/s

EP3056563 HealiOS K.K, Riken, Osaka University

DECIDING JUDGE

This is a Preliminary Order of the Judge-rapporteur:
András Kupecz.

LANGUAGE OF PROCEEDINGS: English.

SUBJECT-MATTER OF THE PROCEEDINGS

[Rule 262.1\(b\) RoP](#) request.

BACKGROUND

Mathys & Squire LLP ('the Applicant') on 21 November 2023 lodged a request under [Rule 262.1\(b\)](#) of the Rules of Procedure of the Unified Patent Court ('RoP') with the Central Division, Munich Section, requesting that the Court makes available all written pleadings and evidence filed in relation to case no ACT_464985/2023 to the Applicant ('the Application').

By way of Preliminary Order dated 5 December 2023, the Court informed the Applicant and the parties to the main proceedings that the Court intended to wait for the outcome of the appeal proceedings that have been brought at the Court of Appeal against [order number 573437/2023 on application number 543819/2023 from the Nordic-Baltic division dated 17 October 2023](#) (APL_584498/2023, 'the Appeal Proceedings') before proceeding with the Application.

The Court noted in said preliminary order that it intends to proceed with the present Application expeditiously as soon as the outcome of the appeal proceedings is known. The Applicant and the parties to the main proceedings were invited to provide comments (limited to the Court's intention to wait for the Court of Appeal before proceeding with the present Application).

The Applicant submitted that it agrees that if the Court of Appeal is properly briefed on arguments in relation to the interpretation of [Rule 262.1](#) in the Appeal Proceedings then it is highly likely the outcome of the Appeal Proceedings will be determinative of the success or otherwise of the Applicant's request in the present case.

The parties to the main proceedings had no comments or objections.

GROUNDINGS

It may be expected that in the Appeal Proceedings the Court of Appeal will provide clarification as to the interpretation and application of [Rule 262.1\(b\) RoP](#). The decision of the Court of Appeal is therefore likely

to be highly relevant for the outcome of the Application. None of the parties brought forward any objections to the Court's intention to wait for the Court of Appeal to decide in the Appeal Proceedings. Therefore, the Court will wait for the outcome of the Appeal Proceedings before proceeding with the present Application.

The Applicant is to submit the final Court of Appeal decision in the Appeal Proceedings (the Court of Appeal decision) together with any comments the Applicant wishes to make in relation to said decision within three weeks from publication of the Court of Appeal decision on the Court's website or within three weeks from the Court of Appeal decision becoming available through other means to the Applicant, whichever comes sooner.

The parties to the main proceeding will then be given the opportunity to respond substantively to the Application including the Court of Appeal decision.

To this end, the Court will set a response deadline for the Applicant of 90 days in the CMS which will allow the filing of the decision and any related submissions. This deadline is for 'CMS purposes' only. The (three week) deadline as set out above is to be adhered to.

The Applicant furthermore asked the judge-rapporteur to inform the Court of Appeal directly of an order staying the present proceedings to ensure that the Court of Appeal is aware of the order. The judge-rapporteur sees no legal basis for granting this request and moreover has no access to the Court of Appeal (CMS) file. The Applicant is, however, free to submit this order to the Court of Appeal.

PRELIMINARY ORDER

- the Court will wait for the outcome of the Appeal Proceedings before proceeding with the present Application

- the Applicant is to submit the Court of Appeal decision with any comments the Applicant wishes to make in relation to said decision within three weeks from publication of the Court of Appeal decision on the Court's website or within three weeks from the Court of Appeal decision becoming available through other means to the Applicant, whichever date comes sooner.

Issued on 28 December 2023

KUPECZ

Judge-rapporteur

ORDER DETAILS

ACTION NUMBER: ACT_464985/2023

UPC number: UPC_CFI_75/2023

Action type: Revocation Action

Related proceeding no. Application No.: 588681/2023

Application Type: APPLICATION_ROP262_1_