Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC_CoA_218/2024
APL_25922/2024
UPC_CoA_220/2024
APL_25924/2024
UPC_CoA_222/2024
APL_25928/2024

ORDER

of the Court of Appeal of the Unified Patent Court
issued on 27 September 2024
concerning notification pursuant to R.158.4 RoP

APPELLANT / DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Volkswagen AG, Wolfsburg, Germany
hereinafter also referred to as: 'Volkswagen';
represented by: attorneys at law Dr. Jan Bösing, Saskia Mertsching, Monika Harten, 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: attorney at law Dr. Thomas Gniadek, Simmons&Simmons, Munich, Germany

PANEL AND DECIDING JUDGES

This order has been adopted by the Second Panel:
Rian Kalden, Presiding judge and judge-rapporteur
Ingeborg Simonsson, legally qualified judge
Patricia Rombach, legally qualified judge

ORDERS OF THE COURT OF APPEAL

□ ORD_48922/2024 in UPC_CoA_218/2024 APL_25922/2024; ORD_48923/2024 in UPC_CoA_220/2024 APL_25924/2024; ORD_48924/2024 in UPC_CoA_222/2024 APL_25928/2024, dated 17 September 2024 (hereinafter: the Order)

PATENTS AT ISSUE

EP 1 875 683
EP 1 552 399
EP 1 552 669

LANGUAGE OF THE PROCEEDINGS

English

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. In the Order, the Court of Appeal ordered NST to provide security for costs to Volkswagen in an amount of EUR 100.000 in APL_25924/2024, ACT_597693/2023, EUR 100.000 in APL_25928/2024, ACT_597691/2023 and in an amount of EUR 300.000 in APL_25922/2024, ACT_597692/2023, either by deposit or by a bank guarantee issued by a bank licensed in the European Union, within three weeks from the date of service of this order.

2. On 25 September 2024 Volkswagen filed a request for rectification pursuant to R.353 RoP (App_53213/2024 UPC_CoA_218/2024). It requests that the rectified order also include: "informs NST that, if NST fails to provide the respective security within three weeks from the date of service, a decision by default may be given, in accordance with Rule 355, in the respective infringement action". Alternatively, Volkswagen requests that the Court informs NST separately that, if NST fails to provide the respective security within three weeks from the date of service, a decision by default may be given, in accordance with R.355 RoP, in the respective infringement action.

3. Volkswagen argues that there is an obvious slip in the order, as R.158.4 RoP provides that the information as referred to above shall be given by the Court. The alternative request is based on an interpretation of R.158.4 RoP such that the information must not necessarily be provided in the operative part of the Order itself.

POINT AT ISSUE

Notification pursuant to R.158.4 RoP

GROUNDS FOR THE ORDER

1. Given that the Court of Appeal in the Order specified the time limit within which NST is to provide the required security, pursuant to R.158.4 RoP, the Court has to inform NST that if it fails to provide adequate security within the time stated in the Order, the Court (meaning in the present case: the Court of First Instance dealing with the main action) may give a decision by default pursuant to R.355 RoP.

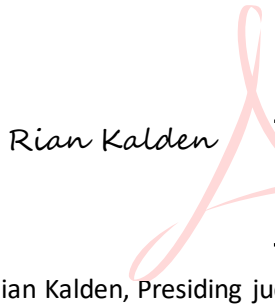
2. It does not follow from R.158.4 RoP that the information as meant therein must necessarily be given in the Order itself. In its Statement of appeal and grounds of appeal, Volkswagen had not requested that this information be included in the Order itself either. The Court thus does not see the necessity for rectification of the Order. It therefore suffices that the information as meant in R.158.4 RoP is provided to NST by this separate order.

ORDER

The Court of Appeal:

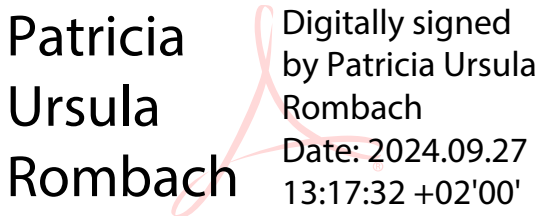
- notifies NST that if it fails to provide adequate security – adequate meaning: the amount of security and in the required form as stated in the Order – within three weeks from the date of service of the Order, i.e. three weeks as from 17 September 2024, the Court may give a decision by default pursuant to R.355 RoP.

Issued on 27 September 2024



Rian Kalden, Presiding judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge



Patricia Rombach, legally qualified judge