



UPC Court of Appeal
UPC_CoA_301/2024
APL_33746/2024
App_35055/2024

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 19 June 2024
concerning an application for suspensive effect
(R.223 RoP) and a request for expedition of the appeal
(R.9.3(b) RoP)

HEADNOTES:

- Article 74 UPCA generally allows the Court of Appeal to decide, at a motivated request, that an order shall be given suspensive effect. Orders as meant in R.220.2 RoP are not excepted from this. In case of a conflict between the UPCA and the RoP, the provisions of the UPCA prevail (R.1.1 RoP). The Court of Appeal therefore considers that granting suspensive effect to an order pursuant to R.220.2 RoP is possible pursuant to Art. 74(1) UPCA, notwithstanding R.223.5 RoP.
- Given the clear principle underlying Art. 74(1) UPCA and R.223.5 RoP, that proceedings before the Court of First Instance must as much as possible continue unhindered by any (procedural) appeals, the Court of Appeal shall only give suspensive effect to appealed orders under *exceptional* circumstances, especially if such order concerns an order as meant in R.220.2 RoP

KEYWORDS:

Suspensive effect; expedition of the appeal, R.225 (e), R.9.3 (b) RoP

APPLICANT / APPELLANT / CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE:

ICPillar LLC, Houston, Texas, USA,

hereinafter also referred to as: 'ICPillar',

represented by: Lionel Martin, Attorney at law and European patent attorney, SCP August Debouzy, Paris, France

RESPONDENTS / DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

1. **ARM Limited**, Cambridge, United Kingdom.
3. **Apical Limited**, Cambridge, United Kingdom
4. **Arm France SAS**, Biot, France
5. **Arm Germany GmbH**, Grasbrunn, Germany
6. **Arm Germany d.o.o.**, Sentjernej, Slovenia
7. **Arm Ireland Limited**, LTD, Galway, Ireland
8. **Arm Poland Sp. z.o.o.**, Katowice, Poland

9. Arm Sweden AB, Lund, Sweden

10. Simulity Labs Limited, Cambridge, United Kingdom

12. SVF Holdco, London, United Kingdom

hereinafter also jointly referred to (in singular) as 'ARM',

represented by: Christoph Crützen, Mayer Brown LLP, Düsseldorf, Germany

LANGUAGE OF THE PROCEEDINGS:

English

PATENT AT ISSUE

EP 3000239

PANEL

Second Panel

DECIDING JUDGES:

This order was 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: 21 May 2024; ORD_23494/2024 in related proceedings (application for security for costs) App_22767/2024, in the main infringement action ACT_596432/2023
- Action number attributed by the Court of First Instance, Local Division Paris: UPC_CFI_495/2023

PROCEDURAL HISTORY

On 26 April ARM filed an application under R.158.1 RoP (App. 22767/2024), requesting the Court of First Instance to order ICPillar to provide adequate security for legal costs and other expenses incurred by ARM. The Court of First Instance allowed the Application. Leave to appeal was requested by ICPillar on 28 May and granted by the Court of First Instance by order dated 30 May 2024.

INDICATION OF PARTIES' REQUESTS

In the appeal proceedings, ICPillar requests that the impugned order shall be set aside.

In the request for suspensive effect or (as subordinate request) expedition of the appeal, ICPillar requests the Court of Appeal to give suspensive effect to the impugned order or expedite the appeal in accordance with R.9.3(b) RoP.

POINTS AT ISSUE

Application for suspensive effect and request for expedition of the appeal, R.223, R.9.3 (b) RoP

GROUNDS FOR THE ORDER

1. There is no need to consult ARM about this request in view of the outcome.
2. The application is admissible.
3. Art. 74 UPCA stipulates that an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties.
4. Although R.223.5 RoP provides that there shall be no suspensive effect for an order pursuant to (amongst other) R.220.2 RoP, the Court of Appeal considers that this does not preclude that an application for suspensive effect is lodged – and if justified, granted – for such orders.
5. Art. 74 UPCA generally allows the Court of Appeal to decide, at a motivated request, that an order shall be given suspensive effect. Orders as meant in R.220.2 RoP are not excepted from this. In case of a conflict between the UPCA and the RoP, the provisions of the UPCA prevail (R.1.1 RoP). The Court of Appeal therefore considers that granting suspensive effect to an order pursuant to R.220.2 RoP is possible pursuant to Art. 74(1) UPCA, notwithstanding R.223.5 RoP.
6. Given the clear principle underlying Art. 74(1) UPCA and R.223.5 RoP, that proceedings before the Court of First Instance must as much as possible continue unhindered by any (procedural) appeals, the Court of Appeal shall only give suspensive effect to appealed orders under *exceptional* circumstances, especially if such order concerns an order as meant in R.220.2 RoP.
7. An example of such exceptional circumstances would be where the appeal is devoid of purpose or would render the appeal largely ineffective if the impugned order were not given suspensive effect, because the consequences of enforcement of the impugned cannot be effectively reversed if the order is later set aside (see UPC_CoA_407/2023, order of 6 November 2023; UPC_CoA_177/2024, order of 2 May 2024). Other exceptional circumstances that could justify suspensive effect would be where the impugned order is manifestly wrong (See UPC_CoA_2/2024, order of 18 January 2024).
8. Other than as argued by ICPillar, the Court of Appeal is of the opinion that the circumstances of the present case do not justify that the impugned order is given suspensive effect. In the impugned order ICPillar is ordered to provide security for legal costs and other expenses within six weeks of service of the order, which time period according to ICPillar ends on 2 July 2024.
9. The impugned order requires ICPillar to either deposit an amount of €400.000 at the dedicated bank account of the UPC or to provide a bank guarantee for that amount. ICPillar argued as a matter of principle that the obligation to provide security would represent an undue economic burden because it would be in addition to an insurance it has already taken out for the purpose of covering any legal costs it may have to compensate in the infringement proceedings. ICPillar has however not argued it is not *able* to comply with the order, nor has it stated that it would *in fact* lead to extreme detriment if it complies with it.

10. The mere fact that leave to appeal has been granted and that the order is not definitive due to the appeal, is inherent to every procedural appeal and not sufficient to constitute the required exceptional circumstances. Nothing else follows from the possibility that the Court renders a decision by default if ICPillar decides not to comply with the impugned order.
11. The consequences of enforcement of the impugned order and a later decision by the Court of Appeal setting aside this order, can effectively be reversed by return of the deposit or the bank guarantee and (if justified by the facts) a compensation of costs incurred. The situation that the appeal would be devoid of purpose if no suspensive effect is given to the impugned order therefore does not arise.
12. The complaints brought forward by ICPillar against the impugned order are not such that the order must be considered to be manifestly wrong.
13. The Court of Appeal is thus of the opinion that under the circumstances of the case, ICPillar's interest in maintaining the status quo until the decision on its appeal is issued, does not sufficiently outweigh ARM's interest in enforcing the order without delay.
14. As a subordinate request, ICPillar has requested the court to expedite the appeal proceedings by shortening the time period for lodging the Statement of response to 10 days, to hold the oral hearing on Friday 28 June and to issue an order on Tuesday 2 July 2024.
15. R.9.3(b) RoP empowers the Court to shorten any time period on a reasoned request by a party. When considering such a request, the Court has to balance the interests of both parties, whereby due account must be given to the principles of due process, among which equality of arms. ICPillar itself recognizes that sufficient time for debate must be given.
16. The fact that ICPillar has not used the entire time period it could have used to lodge its Statement of grounds of appeal does not alter that. In fact, even though ICPillar only used 6 days after the Court of First Instance granted leave to appeal on 30 May, ICPillar only requested leave on 28 May, a full week after the impugned order was issued on 21 May, thus still having used 15 days after the impugned order was issued. This is the same time period the respondent has to lodge its response in a R.220.2 RoP-appeal.
17. The Court of Appeal does not consider the circumstances of the present case to be of such an urgent nature that the interests of ICPillar outweigh the interest of ARM and the principles of due process. The requested expedition is therefore rejected.

ORDER

- The application for suspensive effect is rejected
- The (subordinate) request for expedition of the appeal proceedings is rejected.

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

This order closes App_35055/2024.

Issued on 19 June 2024

NAMES AND SIGNATURES

Judges

Rian Kalden, Presiding judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Patricia Rombach, legally qualified judge