

EIP

Successful appeal deprives penalty payment of basis

Nanostring v 10x Genomics UPC_CoA_470/2023

Order of 10 December 2024 (ORD 598533/2023)

As we previously reported, the Munich Local Division of the UPC imposed a penalty payment against Nanostring for non-compliance with the provisional injunction it had granted. As well as successfully appealing the injunction decision, Nanostring appealed the penalty payment.

The Court of Appeal considered that the revocation of an order granting a provisional injunction will, as a general rule, have retroactive effect. The order is revoked because it has been established by a final judgment of the Court of Appeal that the order should not have been made. A revoked order must therefore be regarded as never having had any legal effect. Therefore, the Court of Appeal reasoned that the revocation of an order granting a provisional injunction prohibiting the continuation of infringements subject to a recurring penalty removes the legal basis for any subsequent decision ordering the payment of a penalty, even if that decision relates to alleged breaches of the provisional injunction prior to the revocation.

Accordingly, the Court of Appeal revoked the order relating to the penalty payment, on the ground that its basis was removed by the successful appeal of the provisional injunction. The Registry was instructed to refund to Nanostring the penalty payment.