

EIP

Infringement action following provisional injunction

Syngenta Limited v Sumi Agro Limited and Sumi Agro Europe Limited (UPC_CFI_201/2024)

Order of 12 December 2024 (ORD_65555/2024[1])

As we reported,[2] Syngenta obtained a provisional injunction against Sumi Agro from the UPC local division in Munich. A requirement of such an injunction according to Rule 213(1) RoP is that an action on the merits is started within 31 calendar days or 20 working days, whichever is the longer, from a date specified in the order, in this case 27 August 2024, failing which the injunction will lapse.

Syngenta uploaded the papers for an infringement action on the merits through the CMS on 27 September 2024. The court fee was received by the Court on 30 September 2024.

Sumi Agro applied to have the provisional injunction revoked. They argued that, since Rule 15(2) RoP states: "The Statement of claim shall not be deemed to have been lodged until the fixed fee and, where applicable, the value based fee for the infringement action has been paid...", the action on the merits was not deemed filed until 30 September 2024, later than the 27 September 2024 deadline according to Rule 213 RoP. It was therefore asserted that the order for the provisional injunction should be revoked.

The Court disagreed on two grounds.

First, the Court considered that Rule 15(2) RoP requires only that the fee have been paid. It does not require that it have been received by the court, nor does it specify when.

Moreover, Rule 213 (1) RoP states that applicant has "to start" proceedings on the merits.

The Court considered that this is complied with when the statement of claim is filed in the CMS, and does not require that the fees have been received by the Court.

Therefore, the Court decided that the deadline of 27 September 2024 had been observed in compliance with Rule 213(1) RoP, and rejected the application to revoke the provisional injunction.

[1] <https://www.unified-patent-court.org/en/node/1323>

[2]

https://eip.com/uk/latest/article/upc_ld_munich_further_defines_the_limits_for_issuing_a_preliminary_injunction