



Düsseldorf Local Division
UPC_CFI_315/2024
UPC_CFI_571/2024

Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 23 April 2025
concerning EP 3 756 767 B1

CLAIMANT:

Labrador Diagnostics LLC, represented by its Managers William Chan, Jonathan James, Erez Levy and Ami Patel Shah, 701 S. Carson Street, Suite 200, Carson City, 89701 Nevada, USA

represented by: Christof Höhne and all other UPC Representatives of EIP Europe LLP including, in particular, Sebastian Fuchs, Matthew Blaseby, Darren Smyth (Breite Straße 29-31, 40213 Düsseldorf, Germany and Fairfax House, 15 Fulwood Place, WC1V 6HU, London, United Kingdom),

electronic address for service: chohne@eip.com

DEFENDANTS:

1. **bioMérieux SA**, represented by its President and CEO Alexandre Mérieux, 376 Chemin de l'Orme, 69280 Marcy l'Etoile, France
2. **bioMérieux Deutschland GmbH**, represented by its Managing Director Alexandre Schneider, Weberstraße 8, 72622 Nürtingen, Germany
3. **bioMérieux Italia S.p.A.**, represented by its Directors Renato Porta, Efstathios Chorianopoulos, Alain Mérieux and Yasha Mirotti Ventura, Via di Campigliano 58, Ponte a Ema 50012 Bagno a Ripoli (FI) Italy
4. **bioMérieux Austria GmbH**, represented by its Managing Director Alexandre Schneider and Valérie Sick, Harry-Glück-Platz 2/5, A-1100 Vienna, Austria
5. **bioMérieux Portugal**, represented by its Managers Maria Antónia Ferreira Pica Nascimento, Pedro Hugo Di Rocco, Lapo Giacometti and Eric Marie Pierre Maillet, Lda., Av 25 de Abril de 1974, N°23-3, 2795-197 Linda-a-Velha, Portugal
6. **bioMérieux Benelux BV**, represented by its Directors Vincent Marciniak and Denis Monnaie, Databankweg 26 NL, 3821 AL Amersfoort, Netherlands

represented by: Benjamin Husband and Agathe Michel-de Cazotte, Carpmaels & Ransford LLP, One Southampton Row, London WC1B 5HA,

United Kingdom

electronic address for service: ben.husband@carpmaels.com (Defendant 1.)
#CR_U010328UC@carpmaels.com (Defendants 2. to 6.)

PATENT AT ISSUE:

European patent n° 3 756 767 B1

PANEL/DIVISION:

Panel of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Presiding Judge Thomas, legally qualified judge Dr Thom acting as judge-rapporteur, legally qualified judge Bessaud and technically qualified judge Abello.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: Patent infringement action – R. 37 RoP; Art. 33(3) UPCA (bifurcation)

GROUNDS FOR THE ORDER:

1.

Pursuant to R. 37.2 RoP, the Local Division takes an earlier decision on the question of how to proceed with regard to Art. 33(3) UPCA before the end of the written procedure.

1.

If a counterclaim for revocation has been brought in the case of an infringement action, Art. 33(3) UPCA states that the local or regional division concerned shall, after having heard the parties, have the discretion either to:

- (a) proceed with both the action for infringement and with the counterclaim for revocation and request the President of the Court of First Instance to allocate from the Pool of Judges in accordance with Art. 18(3) a technically qualified judge with qualifications and experience in the field of technology concerned;
- (b) refer the counterclaim for revocation to the central division and stay or proceed with the action for infringement; or
- (c) with the agreement of the parties, refer the case to the central division.

2.

In the present case, the Local Division exercises its discretion to refer the counterclaim for revocation to the Central Division and to proceed with the infringement action (Art. 33(3)(b) UPCA).

While in general there are advantages in having the infringement action and the counterclaim for revocation being heard together by the same panel, the circumstances of this case call for a different decision.

The Claimant has requested referral of the counterclaim for revocation to the Central Division in Milan, where a revocation action is already pending. The Defendants did not object. This means that the case is to be treated in the same way as a unanimous request. Unanimous requests by all parties will be granted unless strong counterarguments require a different decision (UPC_CFI 14/2023 (LD Munich), Order of 2 February 2024 – Amgen v Sanofi; UPC_CFI_468/2024 (LK Düsseldorf), Order of 4 March 2025 – GlaxoSmithKline v Pfizer). The Panel does not see any such strong counterarguments. On the contrary, a referral of the Counterclaim for revocation seems to be appropriate, particularly for reasons of efficiency.

For the avoidance of doubt, it should be noted that the panel refers the counterclaim for revocation filed by all counterclaimants to the Central Division.

3.

The Local Division further exercises its discretion to proceed with the infringement action pursuant to Art. 33(3)(b) UPCA, R. 37.4 RoP.

Where the panel decides to proceed in accordance with Art. 33(3)(b) UPCA, it may stay the infringement proceedings pending a final decision in the revocation proceedings and shall stay the infringement proceedings where there is a high likelihood that the relevant claims of the patent will be held to be invalid on any ground by the final decision in the revocation proceedings, R. 37.4 RoP.

The Panel is of the opinion that a stay of the proceedings would not be appropriate at this stage. The question of whether there is a high likelihood of invalidity requires a detailed examination, taking into account the entire content of the file. For this reason, given the stage of the proceedings, it does not appear effective to deal with the issue of invalidity at this point in time.

However, the Panel reserves the right to reconsider the possibility of staying the infringement proceedings at a later stage (cf UPC_CFI 14/2023 (LD Munich), Order of 2 February 2024 – Sanofi v Amgen).

4.

To avoid any doubt, it is clarified that the Application to amend the patent is referred together with the Counterclaim for revocation.

ORDER:

The Düsseldorf Local Division refers the counterclaim for revocation to the Milan Central Division and proceeds with the infringement action (Art. 33(3)(b) UPCA).

DETAILS OF THE ORDER:

ORD_19201/2025 referring to ACT_35332/2024 and CC_54045/2024

UPC-Number: UPC_CFI_315/2024 and UPC_CFI_571/2024

Subject of the Proceedings: Patent infringement action and counterclaim for revocation

Issued in Düsseldorf on 23 April 2025

NAMES AND SIGNATURES

Presiding Judge Thomas	
Legally qualified judge Dr Thom	
Legally qualified judge Bessaud	
Technically qualified judge Abello	