



Reference no.:

App_45052/2024
APL_45049/2024
UPC_CoA_464/2024

App_45041/2024
APL_44701/2024
UPC_CoA_457/2024

App_45044/2024
APL_44702/2024
UPC_CoA_458/2024

Procedural order
of the Court of Appeal of the Unified Patent Court
issued on 6 September 2024

APPELLANT IN THE APPEAL NO. 45049/2024 (CLAIMANT IN THE PROCEEDINGS NO. 551308/2023 BEFORE THE COURT OF FIRST INSTANCE)

MERIL ITALY SRL

Piazza Tre Torri 2, 20145 Milan, Italy

represented by attorney-at-law Emmanuel Larere (Cabinet Gide Loyrette Nouel)

APPELLANT IN THE APPEAL NO. 44701/2024 (COUNTERCLAIMANT IN THE PROCEEDINGS NO. 584916/2023 BEFORE THE COURT OF FIRST INSTANCE)

MERIL GMBH

Bornheimer Straße 135-137, 53119 Bonn, Germany

represented by attorney-at-law Dr. Andreas von Falck (Hogan Lovells International LLP)

APPELLANT IN THE APPEAL NO. 44702/2024 (COUNTERCLAIMANT IN THE PROCEEDINGS NO. 585030/2023 BEFORE THE COURT OF FIRST INSTANCE)

MERIL LIFE SCIENCES PVT LTD.

M1-M2, Meril Park, Survey No 135/2/B & 174/2, Muktanand Marg, Chala, Vapi 396 191, Gujarat, India

represented by attorney-at-law Dr. Andreas von Falck (Hogan Lovells International LLP)

the appellants in the three appeals hereinafter together: Meril,

RESPONDENT IN THE APPEALS NO. 45049/2024, 44701/2024 AND 44702/2024 (DEFENDANT IN THE PROCEEDINGS NO. 551308/2023 AND COUNTERDEFENDANT IN THE PROCEEDINGS NO. 584916/2023 AND 585030/2023 BEFORE THE COURT OF FIRST INSTANCE)

EDWARDS LIFESCIENCES CORPORATION

1 Edwards Way, Irvine, 92614 California, USA

represented by attorney-at-law Elsa Tzschoepe and Boris Kreye (Bird&Bird),

hereinafter: Edwards.

PATENT AT ISSUE

EP 3 646 825

DECIDING JUDGE

Peter Blok, Legally qualified judge and judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED DECISION AND ORDER OF THE COURT OF FIRST INSTANCE

- I. Decision of the Court of First Instance of the Unified Patent Court, Central Division, Paris Seat, in three actions, dated 19 July 2024

Reference numbers:

Appeal no.	Court of First Instance no.
APL_45049/2024 UPC_CoA_464/2024	ACT_551308/2023 UPC_CFI_255/2023 ORD_598365/2023
APL_44701/2024 UPC_CoA_457/2024	CC_584916/2023 ORD_598366/2023
APL_44702/2024 UPC_CoA_458/2024	CC_585030/2023 ORD_598367/2023

- II. Order of the Court of First Instance of the Unified Patent Court, Central Division, Paris Seat, dated 30 April 2024

Reference numbers:

App_19959/2024 and App_23242/2024

ACT_551308/2023
UPC_CFI_255/2023
ORD_24620/2024

FACTS AND REQUESTS OF THE PARTIES

1. Edwards is the proprietor of European patent 3 646 825 relating to a prosthetic heart valve (hereinafter: the patent at issue).
2. On 1 June 2023, Edwards brought an infringement action against Meril GmbH and Meril Life Sciences Pvt Ltd before the Munich Local Division of the Court of First Instance, requesting inter alia an order prohibiting – in summary – the alleged infringement of the patent at issue by Meril GmbH and Meril Life Sciences Pvt Ltd (ACT_459987/2023 UPC_CFI_15/2023, hereinafter: the infringement action).
3. On 4 August 2023, Meril Italy Srl brought an action for the revocation of the patent at issue against Edwards before the Central Division, Paris Seat (ACT_551308/2023 UPC_CFI_255/2023, hereinafter: the revocation action).
4. On 2 November 2023, Meril GmbH and Meril Life Sciences Pvt Ltd each filed a counterclaim for the revocation of the patent at issue in the infringement action (CC_584916/2023 and CC_585030/2023, hereinafter: the counterclaims for revocation).
5. By order dated 28 March 2024, the Munich Local Division referred the counterclaims for revocation to the Central Division, Paris Seat.
6. In the impugned order of 30 April 2024, the Central Division, Paris Seat, granted Edwards' third application for patent claim amendments, including auxiliary request II.
7. In the impugned decision of 19 July 2024, the Central Division, Paris Seat, rejected the revocation action and the counterclaims for revocation and maintained the patent at issue as amended by auxiliary request II.
8. Meril lodged appeals against the impugned decision, requesting – in summary – that the Court of Appeal set aside the impugned decision and revoke the patent at issue. Meril Italy Srl's appeal also concerns the impugned order.
9. Meril requests the expedition of the appeal proceedings. In this context, Meril Italy Srl refers to: i) the need to establish a consistent application and interpretation of R. 50.2, R. 30.1 and R. 30.2 of the Rules of Procedure of the Unified Patent Court (hereinafter: RoP), ii) a failure by the Court of First Instance to examine and respond to several arguments, and iii) the pending proceedings in the infringement action. Meril GmbH and Meril Life Sciences Pvt Ltd argue that i) the impugned decision contains significant errors, ii) Edwards is seeking an injunction in the infringement action based on a patent that will prove to be invalid on appeal, and iii) such injunction would cause severe and irreparable harm to Meril. In addition, they refer to the litigation history regarding a family member of the patent at issue, European patent 3 583 920.
10. Edwards requests that the requests for expedition be dismissed, that the appeals proceed in

accordance with the regular procedural timetable and that the Court order that the costs of the expedition requests be borne by Meril jointly.

GROUNDS FOR THE PROCEDURAL ORDER

11. The requests for expedition of the appeals are to be rejected.
12. Under R. 9.3(b) RoP the Court may shorten any time period on a reasoned request by a party. In considering such a request, the Court must balance the interests of both parties while ensuring that the principles of due process are adequately taken into account. (CoA 19 June 2024, UPC_CoA_301/2024 APL_33746/2024 App_35055/2024).
13. For the reasons set out below, the interests put forward by Meril do not justify the expedition of the appeals at the expense of Edwards' legitimate interest in having the appeals dealt within the timeframe provided for by the RoP.
14. The possibility that the Munich Local Division might grant an injunction on the basis of a patent that has been upheld by the Court of First Instance but may subsequently be revoked by the Court of Appeal, is not sufficient to justify expediting the appeals.
15. The Munich Local Division has various means at its disposal to mitigate the risk of granting an injunction or the harm caused by such an injunction, in situations where the validity of the patent is subject to appeals. For example, the division can stay the infringement proceedings pending the appeals or render its decision under the condition subsequent that the patent is not held invalid by a final decision in the revocation proceedings (R. 118.2 RoP). Meril has made such requests in the infringement proceedings.
16. Furthermore, the requested expedition cannot prevent the alleged harm to Meril from an injunction. In the expedited timetable proposed by Meril, the oral hearing in the appeal proceedings is scheduled for mid-January 2025. The oral hearing in the infringement proceedings has been scheduled for 24 September 2024. Given these timeframes, it is highly unlikely that the appeals will be decided before the decision in the infringement proceedings.
17. Meril's complaint that the impugned decision contains significant errors and fails to address several arguments, falls within the scope of the examination of the merits of the appeal. These alleged errors do not justify expediting the appeal proceedings.
18. For similar reasons, the Court of Appeal dismisses Meril's reference to the need to establish a consistent application and interpretation of R. 50.2, R. 30.1 and R. 30.2 RoP. Such a need does not justify the expedition of the appeal proceedings.
19. No decision on the reimbursement of legal costs will be made in this order, since this order is not a final order or decision concluding an action.

PROCEDURAL ORDER

The requests for expedition of the appeals are rejected.

This order was issued on 6 September 2024.

Peter Blok, judge-rapporteur