



Local Division Munich
UPC_CFI_815/2024

Order
of the Court of First Instance of the Unified Patent Court
Local Division Munich
issued on 17 March 2025

CLAIMANT (APPLICANT):

Edwards Lifesciences Corporation, 1 Edwards Way - 92614 - Irvine – US

represented by: Boris Kreye (Bird & Bird)

assisted by: Bernhard Thum, Dr. Jonas Weickert (Thum & Partner);
Siddharth Kusumakar, Tessa Waldron and Bryce Matthewson
(Powell Gilbert)

DEFENDANTS:

1. **Meril Gmbh**, Bornheimer Straße 135-137 - 53119 - Bonn – DE
2. **Meril Life Sciences Pvt Ltd.**, M1-M2, Meril Park, Survey No 135/2/B & 174/2 Muktanand Marg, Chala, Vapi - 396 191 Gujarat - Vapi - IN

both represented by: Dr. Andreas von Falck, Dr. Roman Würtenberger,
Dr. Lukas Wollenschlaeger, Beatrice Wilden, Dr. Alexander Klicznik,
Dr. Felipe Zilly (Hogan Lovells)

assisted by: Peter-Michael Weisse, Ole Dirks, Dr. Eva Maria Thörner (Wildanger)

PATENT AT ISSUE:

European patent n° 3 646 825

PANEL/DIVISION:

Panel 1 of the Local Division Munich

DECIDING JUDGE:

This order has been issued by Presiding Judge Dr. Matthias Zigann acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS:

Application for a cost decision (R 151 RoP) - ACT_66577/2024

Application for protection of confidential information (R. 262A, R. 262.2 RoP) - App_66581/2024; with observations by defendant in APP_1507/2025 and own R262-Application in APL_11521/2025)

Application for leave to change claim or amend case/pleading (RoP263) - App_5747/2025

PROCEDURAL BACKGROUND AND REQUESTS:

The parties are in dispute about the confidential nature of details disclosed in an application for a cost decision and the measures warranted if a confidential nature would be accepted.

Edwards seeks in ACT_66577/2024 (Application for Cost Decision dated 16 December 2024):

- I. determines the costs to be reimbursed by Defendants 1) and 2) as set out below and to order that interest is to be paid on the determined costs at five percentage above the respective base interest rate pursuant to Section 247 of the Civil Code of the Federal Republic of Germany from the date of receipt of this application; and
- II. orders Defendants 1) and 2) to pay the amount determined according to Request I. within a period of time as deemed appropriate by the Court.

Edwards seeks in App_66581/2024 (Application for protection of Confidential Information dated 16 December 2024):

- I. orders specific sections and Exhibits of the Application for a Cost Decision submitted in workflow 66577/2024 to be "Confidential Information" in the sense of Art. 58 UPCA, specifically
 1. the information provided in the table for formal checks and mn. 2, 8, 9, 15, 17, 19, 21, 24, 26-29, 34, 35 and 37 marked in grey of the Application for a Cost Decision; and
 2. Exhibits K- 0 2 – K- 0 5 to the Application for a Cost Decision;

- II. restricts access to the Confidential Information to the representatives of Defendants before this Court and one employee of Defendants each to be specified by Defendants and who require access to the Confidential Information for the purposes of these proceedings;

in the alternative,

restricts access to Confidential Information to a suitable number of employees of Defendants and their legal representatives before this Court;

- III. orders the persons authorized to access the Confidential Information in accordance with Request II. not to disclose Confidential Information to any third party outside of these court proceedings and to use the Confidential Information only for the purposes of these proceeding. The obligations shall continue to apply even after the conclusion of these proceedings;
- IV. orders that an appropriate penalty payment be made to the Court in the event of a violation of the order under Request III, which is to be determined by the Court in reasonable proportion to the significance of the order;
- V. orders that prior to publication of the reasons for the Cost Decision or other announcements, any Confidential Information be redacted therein.

Edwards argues that the information subject to the application holds great economic value for Edwards and should thus be protected. A public disclosure of the reimbursable amount of the costs of representation, the cost of the party experts and the information in their invoices as well as the travel expenses and corresponding invoices would put Edwards at a significant competitive disadvantage in potential subsequent patent infringement proceedings.

Meril seeks in App_66581/2024

that the application of Edwards for protection of confidential information of 16 December 2024 is dismissed.

Meril argues that the information subject to the application is not confidential.

Meril seeks in App_1521/2025

If the judge-rapporteur were to issue measures in accordance with Claimant's Application, we ask the judge-rapporteur to order, on the same grounds underlying such order, measures in accordance with Claimant's requests under items I. to V. of the Application of 16 December 2024 in respect of the information marked in grey at pages

4, 5 and 8 of the unredacted version of Defendants' comments whereby the term "Defendants" in Claimant's request is to be replaced with "Claimant".

With order dated 23 January 2025 (ORD_3866/2025) the JR informed the parties as follows:

Reference is made to the order of the Central Division, Paris Seat, of 30 July 2024 (APP_37662/2024 UPC_CFI_367/2023). The Court intends to follow this reasoning. This would mean that Meril would be granted unlimited access to the costs application. Restrictions under an implied application under Rule 262.2 RoP would apply to third parties or the public.

Protection under Rule 262.2 RoP would also mean that Meril may not disclose the confidential information to third parties or the public.

Edwards is invited to comment within 10 days in workflow App_66581/2024. Once a decision on the confidentiality applications has become final, the Court will invite Meril to comment on the costs application.

With brief dated 3 February 2025 Edwards seeks (App_66581/2024 and APP_5747/2025):

Applicant modifies its Request II. of 16 December 2024 and now requests, that the Court (changes marked by strikethrough as well as underlining and in bold):

II. restricts access to the Confidential Information to **Defendants and their representatives** of Defendants before this Court. ~~and one employee of Defendants each to be specified by Defendants and who require access to the Confidential Information for the purposes of these proceedings;~~
~~in the alternative, restricts access to Confidential Information to a suitable number of employees of Defendants and their legal representatives before this Court;~~

GROUNDS FOR THE ORDER:

1. Leave to amend the confidentiality application is granted (R. 263.3 RoP).
2. Following that amendment Meril is granted unrestricted access to the cost's application.
3. The implied application under R. 262.2 RoP is granted. Although such a decision is normally only warranted where a third party makes an application under R. 262.3 RoP, in the circumstances of the present case an exception should be made in order to complete the pending applications:

- a. In contrast to R. 262A RoP, which regulates the restriction of access to procedural information vis-à-vis parties to proceedings, R. 262.2 RoP deals with access to procedural information for the public and third parties. In this respect, R. 262 RoP is a manifestation of the principle of procedural publicity (see Art. 45 UPCA) and regulates access to the procedural information contained in the Register. Rule 262.1 RoP provides that written pleadings and evidence shall only be made available to the public upon a successful application. Notwithstanding the 14-day rule in paragraph 2, written pleadings and evidence filed together with an application under paragraph 2 and redacted versions will automatically trigger protection from disclosure to the public. However, the public may file an (additional) application pursuant to paragraph 3 to obtain access to pleadings and evidence which are the subject of an application pursuant to paragraph 2.
- b. A decision by the court on an application under paragraph 2 before an application under paragraph 3 has been filed is not provided for in the Rules of Procedure or in the current Case Management System. Protection is granted automatically. It is clear, however, that the automatic provisional protection afforded by this arrangement also affects the other party. The other party may not disclose the allegedly confidential information to third parties or to the public pending a court decision denying the confidential character. If this were not the case, Rule 262 RoP would be meaningless in itself, as an application under Rule 262A RoP would have to be made in any way to prevent the other party from disclosing the allegedly confidential information. However, it is clear that if protection under Rule 262A RoP is granted, it will also mean that the public cannot have access to the information. So Rule 262 RoP would again be pointless.
- c. Although protection is provided automatically a decision on these issues is needed here to bring forward the proceedings.
- d. While the fundamental right to be heard and their right to a fair trial are particularly at issue for the parties to the proceedings who would be affected by a possible confidentiality order under R. 262A RoP, only the general public's interest in information must be taken into account when deciding on the application under R. 262.2 RoP. The requirements for granting a restriction on publication are therefore lowered.
- e. Having regard to this standard, and without prejudice to any arguments that may be made in the context of a third party application under Rule 262.3 RoP, the considerations required under Rule 262.2 RoP show that this application must be granted:
 - It is true that the public has an understandable interest in knowing by whom and to what extent the costs of court proceedings are to be borne. This arises in particular

from the fact that third parties, as part of the public, can assess whether they wish to take the corresponding litigation and cost risk for future court proceedings of their own if they are aware of the cost decisions.

- However, since lawyers' fees in patent disputes are generally agreed individually in fee agreements anyway, it is not possible to draw any well-founded conclusions about possible own costs in other court proceedings from knowledge of the legal costs incurred and to be incurred. If remuneration paid in accordance with the statutory remuneration, the amount of the remuneration is already determined by law.

- At the same time, the applicant has a legitimate interest in ensuring that the fees she negotiates individually with her legal representatives remain secret from the public. Nothing else follows from the public's control function either. This is sufficiently enabled by access to the court's decision on the question of which party is to bear the costs and in what amount. The request pursuant to R. 262.2 RoP for confidential treatment of the information vis-à-vis the public must therefore be granted.

4. The grant of provisional protection (order of 30 December 2024 in APP_68620/2024 and APP_68618/2024) is revoked in so far as it goes beyond that granted today.

5. Meril's 262A-application must be dismissed for the same reasons.

ORDER:

1. Edwards' request for protection of confidential information pursuant to R. 262.2 RoP is granted.
2. It is stated that Meril and its UPC representatives are therefore prevented from bringing the subject matter of the application in accordance with point 1 to the attention of third parties.
3. Leave to amend the request for protection of confidential information pursuant to R. 262A RoP is granted (Rule 263.3 RoP) to Edwards.
4. The remaining request for protection of confidential information pursuant to R. 262A RoP by Edwards is otherwise rejected.
5. Meril's 262A-application is dismissed.
6. The grant of provisional protection (order of 30 December 2024 in APP_68620/2024 and APP_68618/2024) is otherwise revoked.

INFORMATION ABOUT REVIEW BY PANEL

Any party may request that this Order be referred to the panel for a review pursuant to R. 333 RoP. Pending review, the Order shall be effective (R. 102.2 RoP)

DETAILS OF THE ORDER:

ORDER NO. ORD_13125/2025 IN ACTION NUMBER: ACT_459987/2023

UPC NUMBER: UPC_CFI_815/2024

ACTION TYPE: INFRINGEMENT ACTION

RELATED PROCEEDING NO. APPLICATION No.: 5747/2025

APPLICATION TYPE: APPLICATION FOR LEAVE TO CHANGE CLAIM OR AMEND CASE/PLEADING (RoP263)

ORDER NO. ORD_68757/2024 IN ACTION NUMBER: ACT_459987/2023

UPC NUMBER: UPC_CFI_815/2024

ACTION TYPE: INFRINGEMENT ACTION

RELATED PROCEEDING NO. APPLICATION No.: 66581/2024

APPLICATION TYPE: APPLICATION_ROP262A

ORDER NO. ORD_13128/2025 IN ACTION NUMBER: ACT_459987/2023

UPC NUMBER: UPC_CFI_815/2024

ACTION TYPE: INFRINGEMENT ACTION

RELATED PROCEEDING NO. APPLICATION No.: 1507/2025

APPLICATION TYPE: GENERIC PROCEDURAL APPLICATION

ORDER NO. ORD_13135/2025 IN ACTION NUMBER: ACT_459987/2023

UPC NUMBER: UPC_CFI_815/2024

ACTION TYPE: INFRINGEMENT ACTION

RELATED PROCEEDING NO. APPLICATION No.: 1521/2025

APPLICATION TYPE: APPLICATION_ROP262A

Dr. Zigann
Presiding Judge