



**Local Division Munich
UPC_CFI_815/2024**

Order
of the Court of First Instance of the Unified Patent Court
Local Division Munich
concerning EP 3 646 825
delivered on 23 January 2025

CLAIMANT

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

represented by: Boris Kreye, Elsa Tzschope (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 Mukthanand Marg, Chala, Vapi - 396 191
Gujara- Vapi – IN

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 JUDGES

This decision has been delivered by the presiding judge Dr. Matthias Zigann acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Application for a cost decision (ACT_66577/2024 UPC_CFI_815/2024)
Application for a confidentiality order (App_66581/2024 UPC_CFI_815/2024)
Application for a deadline extension (App_3108/2025 UPC_CFI_815/2024)

PARTIES` REQUESTS

Meril seeks:

the deadline for Defendants to comment on Claimant's application for a cost decision, filed on 16 December 2024 in workflow App_66577/2024 (UPC_CFI_815/2024), be extended until a point in time after the judge-rapporteur has decided on Claimant's request for the protection of allegedly confidential information (App_66581/2024).

Meril argues:

On the basis of Defendants' reasoned request, the requested deadline extension is to be granted (Rule 9.3(a) RoP). The facts underling the present case are of such an exceptional nature that a deadline extension is warranted.

1. Following the decision of the Munich Local Division issued on 15 November 2024 (ORD_598479/2023) in case UPC_CFI_15/2023 (ACT_459987/2023), Claimant filed an application for a cost decision (UPC_CFI_815/2024, App_66577/2024) on 16 December 2024. Claimant redacted several information in that application and/or the exhibits submitted therewith, asking that the redacted information be kept confidential (see Claimant's request for the protection of allegedly confidential information, App_66581/2024).

2. With order of 30 December 2024, the judge-rapporteur granted provisional protection and invited Defendants to comment on Claimant's application for the protection of allegedly confidential information within 10 days (i.e. by 9 January 2025) and on Claimant's application for a cost decision within 20 days (i.e. by 20 January 2025, R. 301.1 RoP).

3. Defendants submitted their comments on Claimant's application for the protection of allegedly confidential information on 9 January 2025. As a matter of precaution and since provisional protection was granted, Defendants redacted certain information in their comments. For technical reasons, they had to submit the unredacted version in a separate workflow (Rule 9 Application, App_1507/2025) and could submit only a redacted version in the workflow concerning that application (App_66581/2024) (see Defendants' additional submission of 9 January 2025, App_66581/2024, App_1507/2025).

4. With reference to Defendants' additional submission of 9 January 2025, the judge-rapporteur granted Claimant another 10 days to comment on Defendants' additional submission. So far, no comments have apparently been lodged; so far, no final order has been issued on Claimant's application for the protection of allegedly confidential information which

Defendants do not expect to be issued before Claimant has commented on their submission of 9 January 2024. Pending a final order on Claimant's application for the protection of allegedly confidential information, Defendants' representatives – as a matter of precaution and given the order of provisional protection – have to keep the redacted information confidential until the application is dismissed.

5. For this reason, it is, however, not possible for them to properly comment on Claimant's application for a cost decision. Defendants' representatives cannot freely communicate with their clients. Furthermore, their clients may need to discuss any draft comments internally which they are currently unable to do, and the confidentiality request as well as the provisional protection of the redacted information basically make it impossible to comply with any cost order as it is usually not one employee who is responsible for coordinating proceedings, communicating with outside counsel and authorising a bank transfer. Ultimately, if Defendants' representatives were forced to comment on Claimant's application for a cost decision by 20 January 2025 (i.e. today) even though no final order on the confidentiality application is in place and while there is an order granting provisional protection (which Defendants expect to be lifted), this would irreparably harm Defendants' right to be heard and their right to a fair hearing which could not be remedied subsequently (cf. order of the Local Division Mannheim of 13 June 2024, UPC_CFI_219/2023 – Panasonic Holdings Corporation v Xiaomi Technology Germany GmbH et al., p. 3 of the English translation).

6. In addition to the above, Defendants take the view that the application for protection of confidential information is unjustified (and surprising given that no such application was filed in other proceedings pending before this Court). Also, Defendants note that they paid – without prejudice to their appeal – preliminary damages in the amount of 663,000.00 EUR in accordance with the decision of Munich Local Division of 15 November 2024.

7. Furthermore, Defendants have taken reasonable steps to avoid this situation to occur. Defendants' representatives approached Claimant's representative on 14 January 2025 (i.e. even one day before filing their appeal in the main proceedings, cf. APL_1926/2025, UPC_CoA_21/2025) and asked them if Claimant agreed to a stay of the proceedings for a cost decision. The parties eventually agreed (cf. stay requests no. App_2875/2025; App_2876/2025) that the proceedings for a cost decision shall be continued with regard to the costs of representation, the proceedings for a cost decision shall be stayed with regard to the other cost items, and the proceedings concerning Claimant's application for the protection of allegedly confidential information shall be stayed until the Court of Appeal has decided on Defendants' appeal which was filed on 15 January 2025 (see App_1926/2025, UPC_CoA_21/2025). Defendants were confident that the stay would be granted in accordance with the parties' agreement.

8. Finally, there is also no interest on behalf of Claimant in the deadline not being extended, certainly with regard to the cost items other than the costs of representation. This is because, as is evident from the above, Claimant consented to a partial stay in respect of these cost items in return for the proceedings concerning Claimant's application for the protection of allegedly confidential information being stayed. Against this background, Defendants request that the deadline extension be granted for commenting on Claimant's cost application and kindly ask that the current deadline (20 days) be extended so as to run anew from the date an order on Claimant's application for the protection of confidential information is issued.

Given today's deadline for Defendants to comment on Claimant's application, they ask the judge-rapporteur to proceed their request as quickly as possible.

The Judge-Rapporteur replied to the accompanying emails that all deadlines relating to a cost decision and the protection of confidential information have been lifted.

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GROUNDS

All deadlines relating to a cost decision and the protection of confidential information must be lifted. New deadlines will be set in due course.

ORDER

All deadlines relating to a cost decision and the protection of confidential information are lifted.

DETAILS OF THE ORDER

Order no. ORD_3774/2025 in ACTION NUMBER: ACT_459987/2023

UPC number: UPC_CFI_815/2024

Action type: Infringement Action

Related proceeding no. Application No.: 3108/2025

Application Type: Generic procedural Application

Dr. Zigann
Presiding Judge