



ORD_65290/2024
App_14299/2024
ACT_582093/2023

UPC_CFI_380/2023
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 11 December 2024

APPLICANTS/DEFENDANTS

- 1) **MERIL LIFE SCIENCES PVT LIMITED** - Bilakhia House, Survey No. 135/139, Muktanand Marg, Chala - Gujarat 396191 - Vapi – IN
- 2) **MERIL GMBH** - Bornheimer Strasse 135 – 137 - D – 53119 - Bonn – DE
- 3) **SMIS INTERNATIONAL OÜ** - Harju maakond, Tallinn, Kesklinna linnaosa, Kaarli pst 9-1a - 10119 - Tallinn – EE
- 4) **SORMEDICA, UAB** - V. Kuzmos str. 28 - LT-08431 - Vilnius – LT
- 5) **INTERLUX, UAB** - Aviečių g. 16 - LT-08418 - Vilnius – LT
- 6) **VAB-LOGISTIK, UAB** - Laisvės pr. 60 - LT-05120 - Vilnius – LT

Represented by Andreas von Falck, Alexander Klicznik, Kerstin Jonen, Roman Wurtenberger, Lars-Fabian Blume, Friederike Rohn and Beatrice Wilden

RESPONDENT/CLAIMANT

- 1) **EDWARDS LIFESCIENCES CORPORATION** - One Edwards Way - 92614 - Irvine, California – US

Represented by Jens Olsson, Siddharth Kusumakar and Tessa Waldron

PATENT AT ISSUE

EP3769722

PANEL

Presiding judge & judge-rapporteur	Stefan Johansson
Legally qualified judge	Kai Härmand
Legally qualified judge	Mélanie Bessaud
Technically qualified judge	Stefan Wilhelm

DECIDING JUDGE

This Order has been issued by the Panel

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Infringement action, with Counterclaims for revocation

STATEMENT OF THE FORMS OF ORDER SOUGHT BY THE PARTIES

During the written procedure, the Defendants requested

- a) that the main proceedings be stayed pending a decision by the Opposition Division of the European Patent Office on the validity of the patent in suit, or
- b) in the event that the Regional Division refers the counterclaim for revocation to the Central Division, that the main proceedings be stayed pending a decision by the Central Division of the Court on the counterclaim for revocation of the patent in suit, or
- c) in the alternative, postpone the decision on the request to stay the present proceedings until Claimant has commented on the substance on the validity attacks brought forward (1) in the notice of opposition and (2) in the counterclaim for revocation.

The Claimant requested that the application to stay the proceedings be dismissed.

On 20 August 2024, the Court dismissed the request to stay the proceedings. This Order was set aside by the Court of Appeal (Order on 21 November 2024 in case UPC_CoA_511/2024), and the case was referred back to the panel of the Court of First Instance that issued the impugned order for further consideration of the Defendants request for a stay.

FOUNDATIONS FOR THE (NEW) ORDER

As confirmed by the Court of Appeal in the above mentioned Order, the Defendants request to stay the proceedings shall be decided on the basis of Rule 295(a) RoP in conjunction with Article 33(10) UPCA. According to these provisions, the Court may stay proceedings relating to a patent

which is also the subject of opposition proceedings before the EPO when a rapid decision may be expected from the EPO.

On 10 December 2024, i.e. after the case was referred back to the panel, the judge-rapporteur issued an order after the interim conference (RoP 105.5 Order) that includes the following:

The parallel proceedings at the EPO

The Court has scheduled the oral hearing for 16 January 2025. Thereafter, the Parties have informed the Court that the EPO has accelerated an opposition by a third party, targeting the same Patent, and that the EPO Opposition Division has scheduled its hearing for 17 January 2025.

The Defendants have suggested that the Court reschedule its oral hearing and set a new date, after the decision by the EPO Opposition Division. The Claimant has suggested that the Court proceed as planned with the oral hearing on 16 January 2025.

Proceedings before the UPC shall be conducted in a way which will normally allow the final oral hearing at first instance to take place within one year. This infringement action was initiated in October 2023, which means that this clear ambition will not be met in this case, not even if the Court proceeds as planned with its hearing in January 2025. It is also clear that rescheduling the oral hearing could, inter alia because of other commitments, mean that the decision was significantly delayed further. At the same time, there are good reasons for trying to avoid that conflicting decisions are issued by the UPC and the EPO.

The Parties have provided the Court with a copy of the EPO Opposition Division's preliminary opinion, and the grounds for opposition are very similar to the grounds for revocation in the Counterclaims that will be decided by this Court in accordance with Article 33.3(a) UPCA. Since the EPO Opposition Division normally deliver its decision orally at the conclusion of the oral hearing, it can be expected that the outcome of the opposition proceedings will be available before this Court issues its decision on the merits (even if the Court proceeds as planned with the oral hearing on 16 January 2025). Furthermore, it can reasonably be assumed that the future decision by the EPO Opposition Division will be subject to an appeal.

Against this background, taking into account the interests of the parties and the relevant circumstances of the case, the Court decides not to reschedule the oral hearing. This means that the oral hearing will take place as planned on 16 January 2025. However, at the hearing, the Court will request the Parties to inform the Court (after the hearing) of the outcome of the opposition proceedings. Thereafter, the Court may decide if further procedural steps are needed.

ORDER

2. The oral hearing will take place as planned on 16 January 2025. However, at the hearing, the Court will request the Parties to inform the Court (after the hearing) of the outcome of the opposition proceedings. Thereafter, the Court may decide if further procedural steps are needed.

The Panel share the views expressed in this Order. Considering the relevant circumstances of the case and the balance of the interests of the parties, this is the best way to deal with the situation. Accordingly, the request to stay the proceedings shall be dismissed.

ORDER

The request to stay the proceedings is dismissed.

INFORMATION ABOUT APPEAL

This order may be either the subject of an appeal together with the appeal against the decision or may be appealed with the leave of the Court of First Instance within 15 days of service of the Court's decision to that effect.

Stockholm, 11 December 2024.

Stefan Johansson
Presiding judge and judge rapporteur

Kai Härmand
Legally qualified judge

Mélanie Bessaud
Legally qualified judge

Stefan Wilhelm
Technically qualified judge