



Nordic-Baltic Regional Division UPC_CFI_380/2023

App_33375/2024
App_33473/2024
App_33475/2024
App_33476/2024
App_33478/2024
App_33480/2024
App_33481/2024

Headnote: There is no legal basis for ordering a member of the public, who has made a request for access to written pleadings and evidence, to reimburse legal costs incurred by the parties to the relevant proceedings when they are consulted by the judge-rapporteur in accordance with Rule 262.1(b) RoP. Article 69 UPCA does not apply in this situation. Therefore, such requests for reimbursement of costs shall be dismissed.

Keywords: Rule 262.1(b) RoP, Rule 265 RoP, Article 69 UPCA, access to pleadings and evidence, withdrawal, legal costs.

Order of the Court of First Instance of the Unified Patent Court delivered 21 January 2025

APPLICANT

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Represented by Erik Krahbichler

PARTIES TO THE RELEVANT PROCEEDINGS

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

Represented by Jens Olsson (Advokatbyrån Gulliksson AB), Siddharth Kusumakar & Bryce Matthewson (Powell Gilbert (Europe) LLP) & Adam Rimmer (Powell Gilbert LLP)

2. **MERIL LIFE SCIENCES PVT LIMITED** - Bilakhia House, Survey No. 135/139, Muktanand Marg, Chala - Gujarat 396191 - Vapi – IN

3. **MERIL GMBH** - Bornheimer Strasse 135 – 137 - D – 53119 - Bonn – DE
4. **SMIS INTERNATIONAL OÜ** - Harju maakond, Tallinn, Kesklinna linnaosa, Kaarli pst 9-1a - 10119 - Tallinn – EE
5. **SORMEDICA, UAB** - V. Kuzmos str. 28 - LT-08431 - Vilnius – LT
6. **INTERLUX, UAB** - Aviečių g. 16 - LT-08418 - Vilnius – LT
7. **VAB-LOGISTIK, UAB** - Laisvės pr. 60 - LT-05120 - Vilnius – LT

Represented by Andreas von Falck, Alexander Klicznik, Kerstin Jonen, Roman Würtenberger, Lars-Fabian Blume, Beatrice Wilden & Friederike Hermes (Hogan Lovells International LLP)

Co-representatives: Karin Westerberg & Julia Ericsson (Sandart & Partners Advokatbyrå KB)

PATENT AT ISSUE IN THE RELEVANT PROCEEDINGS

EP 3 769 722

COMPOSITION OF THE FULL PANEL IN THE RELEVANT PROCEEDINGS

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

DECIDING JUDGE

This is an order by judge-rapporteur Stefan Johansson (cf. Rule 262.2(b) RoP)

LANGUAGE OF THE PROCEEDINGS

English

SUMMARY OF RELEVANT FACTS AND REQUESTS

In case CFI_380/2023, Edwards Lifesciences Corporation (hereafter referred to as Edwards) have initiated infringement proceedings against Meril Life Sciences PVT Limited, Meril GmbH, Smis International OÜ, Sormedica UAB, Interlux UAB and Vab-Logistik UAB (hereafter referred to as Meril et al.) based on European Patent 3 769 722. Meril et al. has inter alia responded by submitting counterclaims for revocation of the patent.

The Applicant requested, as a member of the public, access to all pleadings and evidence in these proceedings (infringement and counterclaims).

The judge-rapporteur consulted Edwards and Meril et al., in accordance with Rule 262.1(b) RoP, and they objected to these applications for access and requested that the applications

were dismissed. In addition, Meril et al. requested that the Applicant was ordered to bear the costs of the proceedings relating to his applications on access to documents.

Thereafter, the Applicant, Edwards and Meril et al. submitted additional comments. In this context, the Applicant stated that the applications were not made only on behalf of himself (personally), but also on behalf of SWAT Medical AB as co-applicant, and requested the permission to amend the applications in this respect. Edwards and Meril et al. replied that he should not be allowed to make this amendment. The Applicant also argued that there is no legal basis for ordering him to pay costs.

Thereafter, the Applicant has withdrawn his applications.

Edwards has replied that it does not object to the withdrawal and is content for the Court to issue a decision declaring the proceedings relating to the access requests closed.

Mertil et al. has replied inter alia that they do not object to the withdrawal. However, Meril Life Sciences PVT Limited has requested

- a cost decision be issued (R. 156.2, 265.2(c) RoP);
- Applicant be ordered to reimburse costs incurred in the proceedings concerning the requests for access to written pleadings and evidence in the amount of EUR 17,168.70;
- Applicant be ordered to pay said costs within a time period ordered by the judge-rapporteur (R. 156.3 RoP);
- in case the judge-rapporteur considers the requests as having been validly filed in the name and on behalf of SWAT Medical AB too, it is requested that an order is issued with regard to this company too.

GROUND FOR THE ORDER

The Applicant has withdrawn the applications for access to documents. The withdrawal must be understood to include a withdrawal of the requests to permit SWAT Medical AB to become a co-applicant. The proceedings concerning the applications shall therefore be closed.

Meril Life Sciences PVT Limited has requested that the Applicant is ordered to reimburse legal costs incurred in the proceedings concerning the requests for access to written pleadings and evidence, in the amount of EUR 17,168.70. Meril Life Sciences PVT Limited has specified that EUR 6,537.17 relates to the request for access to documents in the proceedings on alleged infringements, that EUR 7,616.53 relates to the requests for access to documents in the six proceedings on the counterclaims and that EUR 3,015.00 relates to work by assisting representatives in relation to all these requests. As far as the legal basis is concerned, Meril Life Sciences PVT Limited has inter alia referred to Rule 265.2(c) RoP, the decision of the Court of Appeal of 10 April 2024 in UPC_CoA_404/2023 and an order by another judge-rapporteur at the Nordic-Baltic Regional Division, issued on 18 September 2024 in UPC_CFI_8/2023 concerning five other applications for access to documents (App_33316/2024 App_33491/2024, App_33492/2024, App_33493/2024 and App_33494/2024).

In case UPC_CoA_404/2023, to which Meril Life Sciences PVT Limited refer, the Nordic-Baltic Regional Division had granted a request for access to documents and the appeal against this

order was rejected by the Court of Appeal. In the last point of its decision, the Court of Appeal mentions that “[t]his decision ends the proceedings concerning the application under R.262.1(b) RoP. The judge-rapporteur did not decide on the costs, nor was a cost decision requested on appeal. The Court of Appeal shall therefore not make an order for costs in this decision”.

It is hard to know if the Court of Appeal, by including these sentences, just wanted to point out that reimbursement of costs was not an issue in this case, or if the Court wanted to express the opinion that there is a possibility to recover legal costs in these situations. Furthermore, the decision does not specify how/why the Court of Appeal came to the conclusion that there is a possibility to recover legal costs in proceedings on access to documents, if this was the case. Nor does the order in UPC_CFI_8/2023 explain the legal basis for issuing a cost decision in these situations. It only includes the statement that “[t]he costs can be decided in separate proceedings at the request of the party. The Applicant is ordered to bear the costs of the proceedings”.

The legal basis for the UPC to order reimbursement of legal costs can be found in Article 69.1 UPCA, which reads “Reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity requires otherwise, up to a ceiling set in accordance with the Rules of Procedure”. This provision is based on Article 14 in the Enforcement Directive¹. The provision in the Enforcement Directive does not apply to requests by a member of the public to get access to documents in a Court file and there is no indication in the UPCA that its Article 69 is intended to apply in such situations. For these reasons, it seems clear to the judge-rapporteur that Article 69 UPCA is not intended to apply in the situation at hand. This interpretation is fully in line with the fact that any application of Article 69 UPCA presupposes that a ceiling for recoverable costs has been adopted, and no such ceiling has been adopted in respect of requests by members of the public for access to documents. Nor is the judge-rapporteur supposed to take a decision on the value of the proceedings when faced with an application for access to documents (cf. Rule 152.3 RoP). Furthermore, it follows from Rule 262.1(b) RoP, which stipulates that “the decision is taken by the judge-rapporteur after consulting the parties” [emphasis added], that the parties to the main proceedings are not even considered to be parties to the proceedings concerning requests for access to documents (cf. Article 69 UPCA, and the order of the Court of Appeal of 8 February 2024 in UPC_CoA_404/2023 [paragraph 2 in the reasons for the order]).

To the extent Rule 265 RoP is applicable, directly or by analogy, when an application for access to documents is withdrawn, its reference to the need for issuing a cost decision must be understood as a reminder to do so if there is a legal basis for reimbursement of legal costs. The provision does not in itself create an obligation for a party, or a member of the public, to reimburse costs.

For these reasons, this judge-rapporteur finds that there is no legal basis for ordering a member of the public, who has made a request for access to written pleadings and evidence, to reimburse legal costs incurred by the parties to the relevant proceedings when they are

¹ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

consulted by the judge-rapporteur in accordance with Rule 262.1(b) RoP. Accordingly, the requests for reimbursement of legal costs shall be dismissed.

ORDER

1. The proceedings on applications App_33375/2024, App_33473/2024, App_33475/2024, App_33476/2024, App_33478/2024, App_33480/2024 and App_33481/2024 – including any workflows based on these applications – are closed.
2. The decision on the closure of the proceedings shall be entered on the register.
3. The requests by Meril Life Sciences PVT Limited for reimbursement of legal costs are dismissed.
4. Leave to appeal is granted.

Issued in Stockholm on 21 January 2025

Judge:

Stefan Erik
Johansson
Stefan Erik
Johansson
Date: 2025.01.21
14:08:14 +01'00'

Stefan Johansson
Judge rapporteur

For the Deputy-Registrar:

Johanna Mikkola Jäghammar
Clerk

INFORMATION ABOUT APPEAL

The present Order may be appealed before the Court of Appeal by any party which has been unsuccessful, in whole or in part, in its submissions within 15 days of service of this Order (Art. 73(2)(b) UPCA, Rule 220.2 and 224.1(b) RoP).