

**UPC\_CFI\_191/2025 and 192/2025**  
**Order**  
**of the Court of First Instance of the Unified Patent Court**  
**delivered on 16/04/2025**

APPLICANT/S

- 1) **Moderna Belgium S.R.L.**  
(Applicant, defendant 9) in the main proceedings) - Avenue Marnix 23 - 1000 - Brussels - BE  
Represented by Ruben Laddé
- 2) **Moderna Denmark ApS**  
(Applicant, defendant 10) in the main proceedings) - C/O CSC (DENMARK) ApS Sundkrogsgade 21 - 2100 - Copenhagen - DK  
Represented by Ruben Laddé
- 3) **Moderna Portugal Unipessoal LDA**  
(Applicant, defendant 13) in the main proceedings) - Rua João Chagas 10-B DTO - 1500-493 - Lisbon - PT  
Represented by Ruben Laddé
- 4) **Moderna Poland SP. Z.O.O.**  
(Applicant, defendant 14) in the main proceedings) - Rondo Ignacego Daszyńskiego 1 - 00-843 - Warsaw - PL  
Represented by Ruben Laddé

- 5) **Moderna Netherlands B.V.** Represented by Ruben  
(Applicant, , defendant 4) in the main Laddé  
proceedings) - Claude Debussylaan 7 - 1082 MC  
- Amsterdam - NL
- 6) **Moderna Biotech UK Limited** Represented by Ruben  
(Applicant, defendant 15) in the main Laddé  
proceedings) - 54 Portland Place - W1B 1DY -  
London - GB
- 7) **Moderna Italy S.R.L.** Represented by Ruben  
(Applicant, defendant 8) in the main Laddé  
proceedings) - Via Vittorio Veneto 54/B - CAP  
00187 - Rome - IT
- 8) **Moderna Biotech Spain SL** Represented by Ruben  
(Applicant, defendant 5) in the main Laddé  
proceedings) - C/ Julián Camarillo 31 - 28037 -  
Madrid - ES
- 9) **Moderna France SASU** Represented by Ruben  
(Applicant, defendant 7) in the main Laddé  
proceedings) - 19 Rue Cognacq-Jay - 75007 -  
Paris - FR
- 10) **Moderna Germany GmbH** Represented by Ruben  
(Applicant, defendant 6) in the main Laddé  
proceedings) - Brienner Straße 45 a-d. c/o  
Design Offices Campus Königsplatz - 80333 -  
Munich – DE

All applicants are defendants in the main proceedings (numbers indicated above) and are, together with *MODERNA SWITZERLAND GMBH* (see below at other parties), collectively referred to as “**Applicants**”. Together with the four remaining ‘other proceedings parties’ the fifteen defendants in the main proceedings are

called “**Defendants**” or “**Moderna**” and are referred to separately as “Moderna + country”, e.g. “Moderna Germany”.

RESPONDENT/S

**Genevant Sciences GmbH**

(Main proceeding party - Claimant) -  
Viaduktstrasse 8 - 4051 - Basel – CH

**Arbutus Biopharma Corporation**

(Main proceeding party - Claimant) - 701  
Veterans Circle - PA 18974 - Warminster – US

Both represented by Markus van Gardingen  
Hereinafter collectively: “**Claimants**”

OTHER RELEVANT PROCEEDING PARTIES

**A. Moderna, Inc.**

(Main proceeding  
party – Defendant  
1) - 325 Binney  
Street - MA 02142  
- Cambridge - US

**B.ModernaTX, Inc.**

(Main proceeding  
party – Defendant  
2) - 325 Binney  
Street - MA 02142  
- Cambridge - US

**C.Moderna  
Switzerland GmbH**  
(Main proceeding  
party – Defendant  
3) - Peter Merian-  
Weg 10 - 4052 -  
Basel - CH

**D.Moderna  
Sweden AB**  
(Main proceeding  
party – Defendant  
11) - c/o  
Scandinavian Trust  
AB, Birger  
Jarlsgatan 12 - 114  
34 - Stockholm -  
SE

**E.Moderna  
Norway AS**  
(Main proceeding  
party – Defendant  
12) - c/o CSC  
(Norway) AS,  
Wergelandsveien  
7 - 0167 - Oslo -  
NO

PATENTS AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
<b>EP2279254</b>	Arbutus Biopharma Corporation ( <b>in case 191/2025</b> )
<b>EP4241767</b>	Arbutus Biopharma Corporation( <b> in case 192/2025</b> )

## DECIDING JUDGE

Judge-rapporteur

**Margot Kokke**

LANGUAGE OF PROCEEDINGS: English

## REQUESTS AND BACKGROUND

1. By statements of claim (“SoCs”) dated 3 March 2025, Claimants initiated two separate infringement proceedings each concerning infringement of a different patent (case UPC\_CFI\_191/2024 concerning EP 2 279 254 and case UPC\_CFI\_192/2025 regarding EP 4 241 767), against the same fifteen defendants. All defendants belong to the Moderna-group.
2. On 21 March 2025 the SoC in both proceedings was served on Moderna Germany, Moderna Belgium and Moderna UK. In case UPC\_CFI\_192/2025 the SoC was also served on Moderna Poland on 21 March 2025. Applicants acknowledge in the Applications that the first date of service is 21 March 2025.
3. On 24 March 2025 a representative was registered for Moderna Switzerland (Defendant 3 in the main proceedings) in both actions, as is apparent from the Court Management System (“CMS”). On 28 March 2025 representatives were registered for Moderna Germany and on 31 March 2025 representatives registered for the remaining Applicants except for Moderna Portugal (on behalf of which representatives were registered in the CMS on 8 April 2025).
4. By R.9 RoP applications of 9 April 2025 (application numbers App\_17259/2025 in UPC\_CFI\_191/2024 and App\_17164/2025 in UPC\_CFI\_192/2025, the “Applications”) Applicants filed the following, identically worded, requests:

*In the name and on behalf of the Defendants 3) to 10) and 13) to 15), we request to extend*

- 1. the deadline to lodge the Preliminary Objection until **2 June 2025**, and*
  - 2. the deadline to lodge the Statement of Defense until **2 August 2025**.*
5. Claimants were given the opportunity to reply to the applications by preliminary orders of 9 April 2025, which they did by submissions of 14 April 2025. Because the service on some Moderna entities (notably the five defendants mentioned above as ‘*other relevant proceeding parties*’) has not yet been effected or has not yet been registered in the CMS, it was not possible – due to the configuration of the CMS - to issue the preliminary order in the respective R.9 RoP CMS-workflows and consequently no workflow was created for Claimants to upload their reply in the same workflow. The responses were therefore, after consultation

with the registry, uploaded in separate R.9 RoP workflows (with applications numbers App\_18039 in UPC\_CFI\_191/2024 and App\_18047/2025 in UPC\_CFI\_192/20240).

6. Claimants' responses to both applications conclude as follows:

*13 In light of the above, it is respectfully requested that the extensions requested by Defendants be dismissed. (...)*

*14 In light of the above, Claimants request your Court to set the deadlines in both of the abovementioned proceedings for all Defendants for filing a Preliminary Objection and for filing a Statement of Defence, on **28 April 2025** resp. **28 June 2025**.*

*15 For completeness sake, Claimants would like to mention that, to show good intentions, they have voluntarily offered Defendants to file their Preliminary Objections (if any) in both proceedings on 15 May 2025 at the latest, and the Statements of Defence at the latest on 1 July 2025 (ACT\_10280/2025, EP 254) resp. 15 July 2025 (ACT\_10284/2025, EP 767). Defendants however have rejected that offer, without substantiation.*

7. On 15 April 2025, Applicants uploaded unsolicited replies to Claimants' responses by way of two new R.9 RoP-applications (App\_18190 in UPC\_CFI\_191/2024 and App\_18187/2025 in UPC\_CFI\_192/20240). As the court did not invite Applicants to comment, these comments shall therefore be disregarded (R.9.2 RoP). The same applies to the R.9 RoP-applications dated 16 April 2025 uploaded by Claimants as App\_18715/2025 in UPC\_CFI\_191/2024 and App\_18719/2025 in UPC\_CFI\_192/2025.

GROUNDS

8. Moderna Switzerland (Defendant 3 in the main proceedings) is not listed as Applicant in the Applications. It is understood from the wording (*'In the name and on behalf of the Defendants 3'*) that the requests are also filed on behalf of this entity. It was not possible to actually include Moderna Switzerland in the application due to clerical CMS-issues regarding the registration of the service on this company.
9. The SoCs have not yet been served on the two Moderna US entities (Defendants 1 and 2 in the main actions, based at Moderna's headquarters) nor on Moderna Norway. In case 191/2025 service on Moderna Sweden was effected (on 7 April 2025), but no representative has been registered yet (explaining why this entity could not be included as an Applicant). In case 192/2025 service on Moderna Sweden has not been registered in the CMS.
10. Applicants request both extension of the deadline for filing a preliminary objection pursuant to R.19 RoP and for filing the Statement of Defence (hereinafter also: "SoD").
11. The request for an extension to file a R.19 RoP-Objection, if any, is rejected. Such objection has a very limited scope and concerns the jurisdiction and competence of (a division of) the Court (R.19.1 RoP at (a) and (b)). Such objections seem to be particular to each specific defendant. More general objections common to the parties covered by R.19 RoP (opt-out and language), do not appear to be an issue here. Therefore, the deadline for each defendant is as specified in R. 19.1 RoP. Nevertheless, and in case of any R.19 RoP-Objections, Moderna

is encouraged to combine R.19 RoP-objections for individual defendants in one submission where the respective deadlines permit this.

12. The request to '*extend the deadline to lodge the SoD until 2 August 2025*', is also rejected. However, it is in the interest of all involved, including the court, that the proceedings are streamlined and that all co-defendants of the same group file one Statement of Defence where possible. This greatly improves efficiency. The court will therefore set one deadline for filing the Statement of Defence by Moderna.
13. In setting a deadline, the interests of all parties has to be considered, as well as the objective of the UPC to provide expeditious proceedings. In principle, given the UPC's objective to resolve cases within 12-14 months in first instance from the start of an action, it is preferable to streamline deadlines to the earliest possible date by shortening later ones, especially if all defendants belong to the same corporate group of companies, as is the case here.
14. Because all Defendants belong to the same corporate group of companies, it can be assumed that all Defendants – also those on whom service could not yet be formally finalised – already have knowledge of the SoCs in both cases. This follows firstly from the fact that Claimants' U.S. counsel, asked Defendants' U.S. counsel (by email) on 10 March 2025 to accept service for all Defendants at its corporate headquarters in the USA (which request was refused on 18 March 2025, whereupon service on all individual defendants was initiated by the registry). Furthermore, the Applicants' representatives indicated in the Applications, that they are likely to be instructed for all other Moderna defendants:

*At least four Defendants, including the US entities Moderna, Inc. and Moderna TX, Inc., have not been served yet. Once served, we will likely also be instructed for these Defendants.* (emphasis added by JR)

It is also mentioned in the Applications that, if the extension is granted, Defendants would undertake to accept service for entities that have not yet been served:

*Defendants propose an extension of six weeks counted from the first date of service. Defendants would undertake to accept service for those entities that have not yet been served, where the service documents appear to be incomplete and/or where it may take a considerable period of time before actual effective service will have occurred.*

From this it appears that all Defendants are aligned and have already instructed the same counsel. In this light, the refusal of the attempted Service on the U.S. entities at Defendants' U.S. corporate headquarters on 1 April 2025, because a specific person for delivery was not mentioned – as the process server instructed by the Court (ABC Legal) was informed by an employee working at Defendants' U.S. corporate headquarters – can be seen as an attempt to delay the proceedings. No R.275.2 RoP applications have been filed.

15. The court finds Applicants' argument that the technique of the present cases is rather complicated, not convincing. This holds for many patent cases before the UPC and was considered when settings the time limits. That the complexity of the present cases is exceptional, is not substantiated. This therefore does not merit an extension of the deadline

for filing the SoD for all Defendants. In addition, Claimants pointed out that Moderna is familiar with the technique of at least the patent at issue in case 191/2025 as it filed opposition against the grant of that patent (which proceedings are in the appeal stage at the EPO). The subject matter of both patents at issue seems to be related.

16. The argument that Claimants initiated several lawsuits in various jurisdictions at the same time, which binds capacities of the responsible case handlers at Moderna and thus may lead to a prolonged coordination process, is dismissed. This (unsubstantiated) assertion also does not merit an extension of deadlines. It is a foreseeable, not negligible, consequence of (virtually) worldwide operations by a corporate group, that, in case of alleged infringement, there can be simultaneous litigations in several jurisdictions. The company can be expected to deal with this in conformity with the requirements in each jurisdiction.
17. On the other hand, it was Claimants' choice to file parallel proceedings against fifteen co-defendants based in fourteen different countries, within and outside the territory of the Contracting Member States to the UPC. This complicates service and is bound to result in different dates of service for different defendants and, consequently (pursuant to R.23 RoP), in different deadlines for filing the statement of defence. This, as mentioned above, not in the interest of the parties and of the court.
18. Moderna pointed out that Claimants do not seem to have a specific interest in an urgent decision as they are not an implementor and they have been aware of the alleged infringement for several years. Claimants have not indicated a specific negative consequence of an extension. It substantiates its objection – apart from refuting Applicants' substantiation of an extension (Applicants' arguments were addressed above) – only by pointing out that it is entitled to an injunction as its patents are infringed and by stressing that the object of the UPC is to provide expeditious proceedings. It has furthermore apparently proposed to Moderna to extend the deadline for filing the SoD to 15 July 2025 for one of the proceedings (and to 1 July for the other action, which is hardly an extension).
19. In view of the above, of R. 271.6 RoP and the specific circumstances of the present actions, the court will set the deadline for filing of the SoD for all Defendants at 8 July 2025. This is effectively a (limited) extension for most Applicants and a shortening of the deadline for those not yet served.

## **ORDER**

The court, having heard the parties

1. Rejects the Applications regarding the extension of deadlines for R.19 Preliminary Objections;
2. Sets the deadline for the lodging of the Statement of Defense on **8 July 2025** for all Defendants;
3. Informs the parties that, with the purpose to close application-workflows in the CMS, the present order will be uploaded (workflows permitting) in the following (eight) CMS



workflows: App\_17164/2025, App\_17259/2025, App\_18039/2025, App\_18047/2025, App\_18190/2025, App\_18187/2025, App\_18715/2025 and App\_18719/2025.

ORDER DETAILS

Order no. ORD\_18458/2025 in

ACTION NUMBERS: ACT\_10280/2025 and ACT\_10284/2025

UPC numbers: UPC\_CFI\_191/2025 and UPC\_CFI\_192/2025 (respectively)

Action type: Infringement Actions

Application No.s: 17259/2025 and 17164/2025

Application Type: R.9 RoP procedural Applications to request the scheduling of deadlines

Related applications: 18039/2025 and 18047/2025