



Central Division
Paris Seat

ORDER
of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
issued on 8 January 2025
concerning the generic procedural application No. App_56782/2024
UPC_CFI_189/2024

HEADNOTES:

1. For the purpose of interpreting Rule 150 'RoP', a "decision on the merits" must be understood as a decision that concludes litigation proceedings, that is proceedings where the ascertainment of a right is sought by one party against another and is capable of producing the effects of res judicata on conflicting subjective positions.
2. The proceedings initiated by the request by a member of the public to have access to the register cannot be considered as litigation in a technical sense even if the application introduces an adversarial phase as it is merely instrumental to the purpose of enhancing transparency in the judicial activity, aims to the protection of the general and collective interest of the public and not to the protection of the particular interests of the applicant or of the parties in the main dispute and the Court's intervention is primarily administrative in nature, lacking the characteristics of a judgment with res judicata effects on conflicting subjective positions.

KEYWORDS: procedure for cost decisions; public access to the register.

APPLICANTS:

- | | |
|-------------------------------------|---|
| Meril Italy srl | - Piazza Tre Torri 2 20145 Milano Italy |
| Meril Gmbh | - Bornheimer Straße 135-137, 53119, Bonn, Germany |
| Meril Life Sciences Pvt Ltd. | - M10M2, Meril Park, Survey No 135/2/B & 174/2, Muktanand Marg, Chala, Vapi 396 191, Gujarat, India |

all represented by Emmanuel Larere and Jean-Hyacinthe de Mitry, Cabinet Gide Loyrette Nouel AARPI, and by Jonathan Stafford and Gregory Carty Hornsby, Marks & Clerk LLP, and assisted by Jean-Robert Callon de Lamarck and Anne Seibel, Regimbeau

RESPONDENTS:

SWAT Medical AB - **[REDACTED]**
- Drottninggatan 11 - 25284 - Helsingborg – SE
represented by **[REDACTED]**

PATENT AT ISSUE:

European patent n° EP 4 151 181

PANEL:

Panel 2
Paolo Catalozzi Presiding judge and judge-rapporteur
Tatyana Zhilova Legally qualified judge
Elisabetta Papa Technically qualified judge

DECIDING JUDGE:

This order is issued by the presiding judge and judge-rapporteur Paolo Catalozzi

SUMMARY OF FACTS AND PARTIES' REQUESTS:

1. On 17 October 2024, the applicants filed an application for costs, registered as No. App_56782/2024, requesting the Court to order the respondents to reimburse costs incurred in the proceedings concerning the respondents' application for access to written pleadings and evidence (registered as No. App_33484/2024), which was subsequently rejected. The requested amount was EUR 15,000.00, payable within a time period to be determined by the judge-rapporteur. Additionally, they requested the Court, should the judge-rapporteur deem further evidence of the costs necessary, to order a respective notice to the applicants pursuant to Rule 156 of the Rules of Procedure ('RoP').
2. On 25 November 2024 the respondents, having been invited to submit written comments, requested that the application be dismissed. They argue that the application is inadmissible as incorrectly filed under Rule 9 'RoP' instead of under Rule 158 'RoP'. Furthermore, they requested that should the application be deemed admissible, further details and evidence of the costs be provided, and they be given an opportunity to comment on any future additional arguments and evidence.
3. On 3 December 2024 the applicants filed another application, registered as No. App_64037/2024, to address the respondents' pleadings and rebut the inadmissibility argument.

GROUNDS FOR THE ORDER:

Admissibility of applicants' written comment filed on 3 December 2024.

4. Upon the filing of the application, the judge-rapporteur granted the respondents a period to submit written comments pursuant to Rule 156 'RoP', considering that such application initiated the procedure for a cost decision.
5. In the preliminary order granting the time limit, the judge-rapporteur did not assign the applicants any further time to reply to the respondents' comments, but nevertheless the applicants considered it appropriate to submit their counterarguments.
6. Within the procedural framework governing the procedure for cost decisions and, more broadly, within the general rules applicable to any request addressed to the Court, parties may not unilaterally submit written comments on opposing arguments absent express authorization from the Court. In this regard, the Court has the discretionary power to allow the further exchange of written pleadings if it deems appropriate, if not essential, to hear from one or each party before rendering its decision on the matter.
7. Accordingly, the written pleading submitted by the applicants on 3 December 2024 shall be disregarded as it was filed without the necessary judicial authorization.

Admissibility of the application.

8. As previously mentioned, the defendants argue that the application is inadmissible as it was filed under Rule 9 'RoP', which relates to generic procedural request, and not under Rule 150 'RoP' which is specifically provided for a request for a cost decision.
9. The argument is without merit.
10. The application expressly refers to Rule 150 'RoP', both in its caption and in its substantive arguments, thus refuting the defendant's assertion that the request does not invoke Rule 150 'RoP'.
11. In any case, it should be borne in mind that the incorrect citation of the legal provisions upon which an application is grounded does not relieve the Court of its obligation to consider the motion where it is possible to identify the correct legal grounds based on the legal arguments and factual grounds put forward by the applicant in support of the application (see Paris CD, order issued on 27 December 2024, UPC_CFI_164/2024).
12. The respondents contend that the applicants did not file the application using the correct CMS workflow, but this judge-rapporteur is of the opinion that even if Rule 4 (1) 'RoP' stipulates an obligation to use the workflows provided by the CMS in order to make the case management system more transparent and more accessible (see CD Paris, order issued on 2 July 2024, UPC_CFI_484/2023), the use of the wrong workflow does not render a submission inadmissible where, as in the current situation, non-compliance with this procedural rule does not result in any prejudice.

Costs decisions concerning requests for access to the register.

13. In the Unified Patent Court's procedural system, the cost allocation occurs upon the decision on the merits and, if applicable, a decision for the determination of damages, which identifies the

party or the parties liable for such costs [see Rule 105 (5) 'RoP']. As a general rule, costs are borne by the unsuccessful party, although the judge may, in exceptional cases, order that the costs be apportioned equitably or that the parties bear their own costs (Article 69 Unified Patent Court Agreement). Nonetheless, the decision on the merits or for the determination of damages may contain an interim award of costs in favour of the successful party [see Rule 150 (3) 'RoP'] and, similarly, an interim award of costs may also be included in the order by which the Court grants a provisional measure [see Rule 211 (1) (d)]. The quantification of these costs requires a specific request, to be filed within 30 days of the decision, which initiates a separate proceeding (see Rules 150 et seq. 'RoP').

14. From the aforementioned legal framework, it can be inferred that, as a general rule, a decision on costs presupposes that there has been a decision on the merits of the dispute or for the determination of damages. For these purposes, a "decision on the merits" must be understood as a decision that concludes litigation proceedings, that is proceedings where the ascertainment of a right is sought by one party against another and is capable of producing the effects of res judicata on conflicting subjective positions and from which a situation of the defeat of one party with respect to another may arise, justifying the award of costs.
15. The proceedings initiated by the request by a member of the public to have access to the register cannot be considered as litigation in a technical sense even if the application introduces an adversarial phase in which a real conflict between the applicant and one or more parties may arise. Indeed, the measure sought in these proceedings is merely instrumental to the purpose of enhancing transparency in the judicial activity and, consequently, its legitimacy and accountability to the public (see CD Vienna, order issued on 12 August 2024, UPC_CFI_33/2024). Hence, the proceeding in debate aims to the protection of the general and collective interest of the public and not to the protection of the particular interests of the applicant or of the parties in the main dispute. Even in case of conflict between them, the Court's intervention is primarily administrative in nature, lacking the characteristics of a judgment with res judicata effects on conflicting subjective positions. It is not intended to resolve disputes and conflicts, but rather to ensure that the right of access to the register is not exercised in a manner that would prejudice overriding interests of a contrary nature, such as those represented by the protection of confidential information, of the general interest of justice or of the public order (see, in general CoA, order issued on 10 April 2024, UPC_CoA_404/2023).

Conclusions.

16. For these grounds the application shall be dismissed as the Court's order on the request of access to the register cannot be classified as a decision on the merits, therefore lacking the prerequisite for a cost decision.

ORDER

The judge-rapporteur

rejects the application filed by Meril Italy srl, Meril GmbH and Meril Life Sciences Pvt. for a cost decision.

Issued on 8 January 2025.

The presiding judge and judge-rapporteur

Paolo Catallozzi

Paolo
Catallozzi

Firmato digitalmente da
Paolo Catallozzi
Data: 2025.01.08 18:33:20
+01'00'

ORDER DETAILS

Order no. ORD_59519/2024 in ACTION NUMBER: ACT_22275/2024

UPC number: UPC_CFI_189/2024

Action type: Revocation Action

Related proceeding no. Application No.: 56782/2024

Application Type: Generic procedural Application