



Central Division
Paris Seat

ORDER
of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
issued on 8 October 2024
concerning the generic procedural applications Nos. App_52773/2024,
53244/2024, 54060/2024 and 54624/2024
lodged in the proceedings UPC_CFI_189/2024 and UPC_434/2024

HEADNOTES: 1. The procedural efficiency must yield to the principle of the fair trial. Therefore, a request for extension of a time period must be denied where the opposing party has already met the correspondent shorter, ordinary time period.

KEYWORDS: request for extension.

APPLICANT:

Edwards Lifesciences Corporation - One Edwards Way, Irvine, California, 92614, USA

represented by Siddharth Kusumakar, Tessa Waldron and Bryce Matthewson, Powell Gilbert (Europe) LLP, by Adam Rimmer, Powell Gilbert LLP, and by Jonas Weickert and Bernhard Thum, Thum & Partner

RESPONDENTS:

Meril Life Sciences Private Ltd. - M1-M2, Meril Park, Survey No.135/2/B & 174/2, Muktanand Marg, Chala, Vapi 396191, India

Meril GmbH - Bornheimer Straße 135-137, 53119 Bonn, Germany

Meril Italy S.r.l. - Piazza Tre Torri 2, 20145 Milano, Italy

all represented by Emmanuel Larere and Jean-Hyacinthe de Mitry, Cabinet Gide Loyrette Nouel AARPI, and by Jonathan Stafford and Gregory Carty Hornsby, Marks & Clerck LLP

PATENT AT ISSUE:

European patent n. 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 23 September 2024 the applicant requested under Rule 9 (3) (a) of the Rules of Procedure ('RoP') that the Court extend the deadline for lodging its rejoinder to the respondents' reply to defence to revocation and its reply to respondents' defence to application to amend the patent, actually set for 16 October 2024, to the deadline for lodging its reply to respondents' defence to counterclaim, set for 25 October 2024 (application registered as No. App_52773/2024).
2. The applicant argues that a short extension (of 9 days) to the deadline for lodging its rejoinder to the respondents' reply to defence to revocation and its reply to respondents' defence to application to amend the patent is reasonable and appropriate and, by allowing to align the deadlines, will contribute to the procedural efficiency of the present proceedings and will ensure that the written procedure can proceed in a straightforward and orderly manner. Furthermore, the applicant adds that the sought extension is consistent with the provision set in Rule 52 'RoP' which stipulates that these documents are to be lodged together with the reply to the defence to the counterclaim for infringement.
3. On 24 September 2024 the respondents filed an application (registered as No. App_53244/2024) noting that the counterclaim was served on 8 August 2024 and not on 25 July 2024, as incorrectly assumed by the applicant, and asked the Court to refuse the applicant's request and to rule that the two-month deadlines for filing a defence to the counterclaim expires on 8 October 2024. The respondents point out that the sought extension of the deadline would result in less time for them to file their defence to counterclaim (in case it is established that the service of the counterclaim was effected on 25 July 2024) or more time for the applicant to file its rejoinder to the reply to defence to revocation and its reply to respondents' defence to application to amend the patent.
4. On 30 October 2024 the applicant lodged an application (registered as No. 54060/2024) commenting the respondents' previous application and while did not object, for the purpose of setting up the deadline for the opposing party's written pleadings activity, that the counterclaim was served on 8 August 2024 maintained its original request.

5. On 3 October 2024 the respondents filed an application (registered as No. App_54624/2024), asking that the Court reject the applicant's request and, in the alternative, that the Court extend the procedural deadline for the respondents to lodge their rejoinder to the applicant's reply to the defence to the application to amend the patent by as much time as the duration of the extension granted to file the reply to the defence to the application to amend the patent, grant leave to appeal the order and order the applicant to bear the costs of the applications.

GROUNDS FOR THE ORDER

Request for extension of time period.

6. This judge-rapporteur notes that the timing discrepancy between the deadline for lodging the rejoinder to the respondents' reply to defence to revocation and the reply to respondents' defence to application to amend the patent and the deadline for lodging the reply to respondents' defence to counterclaim is attributable to an error in the CMS that prevented the counterclaim from being filed and served on the same day as the defence to revocation and the application to amend the patent.
7. It must be considered that when considering the request of time extension, the Court must account for the multiple purposes served by procedural deadlines (to ensure expeditious decisions; to safeguard the principle of fair trial; to protect the judicial impartiality; to guarantee legal certainty by setting specific timeframes for procedural steps) and bearing that in mind it must be affirmed that the power to extend the time limit should only be used with caution and only in justified exceptional cases (see Paris CD, order of 27 June 2024, UPC_CFI_454/2023).
8. In the current situation, while the alignment of the deadlines, requested by the applicant, would allow for a more efficient progression of the proceedings, enabling all of the defendant's written defences to be filed simultaneously, it would nonetheless provide the defendant with a longer period for the lodging of the rejoinder to the respondents' reply to defence to revocation and of the reply to respondents' defence to application to amend the patent.
9. This judge-rapporteur considers that granting the application would allow the applicant more time to prepare their written pleadings than is ordinarily provided for by the relevant provision and this would create an imbalance between the parties, given that the claimants have already complied with the shorter, standard deadline set forth in the Rules.
10. It follows that the procedural efficiency sought by the applicant must yield to the principle of the fair trial, which would be compromised if the application were granted.

Request for cost allocation.

11. With regard to the respondents' request that the Court order the applicant to bear the costs in respect of the applications concerning the request for time extension, this judge-rapporteur considers that the issue of the party obliged to bear those costs will be addressed with the decision on the merits of the relevant proceedings.
12. Regarding the respondents' request for costs, the judge-rapporteur will address this issue with the final decision on the case.

ORDER

The judge-rapporteur:

- **rejects the request for extension of time period filed by Edwards Lifesciences Corporation on 23 September 2024;**
- **rejects, for the time being, the request for cost allocation filed by Meril Life Sciences Private Ltd., Meril GmbH and Meril Italy S.r.l. on 24 September 2024.**

Issued on 8 October 2024.

The presiding judge and judge-rapporteur

Paolo Catalozzi

ORDER DETAILS

Order no. ORD_55287/2024 in ACTION NUMBER: ACT_22275/2024

UPC number: UPC_CFI_189/2024

Action type: Revocation Action

Related proceeding no. Application No.: 52773/2024

Application Type: Generic procedural Application