



**Central Division**  
**Paris Seat**

**ORDER**

**of the Court of First Instance of the Unified Patent Court**

**Central division (Paris seat)**

**issued on 10 May 2024**

**concerning the Preliminary objection No. App\_3514/2024**

**lodged in the revocation action UPC\_CFI\_589997/2023**

HEADNOTES: The violation of a standstill agreement does not constitute grounds for challenging the jurisdiction of the Unified Patent Court.

KEYWORDS: jurisdiction; standstill agreement.

REFERENCE CODE ECLI:

**APPLICANT:**

**Roche Diabetes Care GmbH** - Sandhofer Strasse 116, 68305 Mannheim, Germany

represented by Christof Augenstein, Katharina Brandt and Robert Knaps,  
Kather Augenstein Rechtsanwälte PartGmbH

supported by Thomas Kronberger, Grünecker Patent- und Rechtsanwälte  
PartGmbH

**RESPONDENTS:**

**Tandem Diabetes Care, Inc.** - 12400 High Bluff Drive, CA 92130, San Diego, USA

**Tandem Diabetes Care Europe B.V.** - Schiphol Boulevard 359, WTC Schiphol Airport, D-Tower 11th  
floor, 1118 BJ, Schiphol, Netherlands

both represented by Charlotte Garnitsch, Wim Maas and Alexander Rubusch,  
Taylor Wessing N.V.

PATENT AT ISSUE:

European patent n° EP 2 196 231

PANEL:

Panel 2 of the Central Division - Paris Seat

Paolo Catalozzi Presiding judge and judge-rapporteur

Tatyana Zhilova Legally qualified judge

Giorgio Checcacci Technically qualified judge

DECIDING JUDGE:

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

STATEMENT OF THE FORMS OF ORDER SOUGHT BY THE PARTIES

The Applicant requested that the Court declares that it has no jurisdiction and dismisses the action.

The Respondents requested that the Court denies applicant's preliminary objection in full.

SUMMARY OF FACTS AND ARGUMENTS OF THE PARTIES

1. On 30 November 2023, the respondents brought a revocation action against Roche Diabetes Care GmbH concerning the patent at issue (EP '231) before this Central Division, registered as No. ACT\_589997/2023 UPC\_CFI\_454/2023 (as well as an action for declaration of non-infringement of the same patent, registered as No ACT\_589999/2023 UPC\_CFI\_455/2023).
2. On 22 January 2024 the defendant in the revocation action lodged a preliminary objection pursuant to Rules 19 (1) (b) and 48 of the Rules of Procedures ('RoP') (registered as No. App\_3514/2024) on the ground that the Courts currently have no jurisdiction to decide in this matter due to a standstill agreement between the parties according to which a party has to inform the other party of the intention to file a lawsuit 90 days before the lawsuit is filed. It assumes that the claimants have failed to do so.
3. On 9 February 2024 the claimants in the revocation action replied to the preliminary objection noting that: i) the standstill agreement does not affect the jurisdiction of this Court; ii) they did not breach the agreement, as it relates only to the use of confidential information received from the other party; iii) they complied with the 90-day notice period, as applicant's notice started the clock for both parties; iv) the applicant failed to identify any damages or harm that resulted from the respondents' filing.
4. On 20 February 2024 the applicant replied on the respondents' reply arguing that: i) the agreement did concern court jurisdiction; ii) neither damages nor harm is necessary; iii) its notice did not start the clock for both parties and, in any case, 90 days from that notice had not passed when the respondent filed their action.

5. On 26 February 2024 the respondents replied to the applicant's reply emphasizing, in particular, that jurisdiction of the Court cannot be excluded by a standstill agreement and that they did not file the action prior to the period elapsed.
6. The parties presented their arguments at the hearing, which was held remotely on 16 April 2024. The relative file has been uploaded in the workflow generated by the Preliminary objection lodged in the declaration of non-infringement action, registered as No. App\_3516/2024 UPC\_CFI\_455/2023).

### GROUNDINGS FOR THE ORDER

#### *Content of the standstill clause.*

7. The applicant argues that courts currently have no jurisdiction to decide in the subject matter of the current proceedings due to a standstill agreement.
8. This agreement, called 'Confidential Disclosure Agreement', was signed [REDACTED] and concerned the protection of certain confidential information. The agreement was amended on 5 December 2022 and, among other clauses, a new Paragraph 18 was added.

9. According to the new Paragraph 18 [REDACTED]

10. From the wording of the Paragraph 18 it appears that the obligation to provide the other party for a prior written notice relates to any 'proceeding arising from or relating to a dispute over intellectual property', [REDACTED]

11. This interpretation is also supported by the consideration that the paragraph is aiming at regulating the disclosure of confidential information in the course of a proceeding arising from or relating to a dispute over intellectual property between the parties and not in other contexts.

12. Therefore, the claimants' interpretation of this clause, according to which it applies only to proceedings using other party's confidential information, is not convincing, as it contrasts with its wording, as well as the scope of the contractual provision.

#### *Issue of the validity of the standstill clause.*

13. The claimants object that such a clause shall not deny the jurisdiction of this Court, as it would be contrary to the right to access to court and to a fair trial, safeguarded in Article 47 of Charter of Fundamental Rights of the European Union ('CFREU') and Article 6 European Convention on human Rights ('ECHR').

14. This objection is not well grounded. Indeed, the rights enshrined in Articles 6 and 13 of the 'ECHR' and Articles 47 and 48 of the 'CFREU' are not absolute and may be restricted in specific circumstances. A legitimate restriction must have a legitimate purpose, be proportionate and ensure that the very essence of the right is not undermined (see, CJEU 18 March 2010, C-317/08, Alassini). These same principles, developed with reference to the limitations imposed by public authorities, can also be applied to the limitations arising from contractual agreements.
15. The clause at issue appears to have a legitimate purpose, as it is aimed at giving the parties a 'cooling-off' period in order to enhance and enable an out-of-court settlement, is proportionate, as it is limited in time and appropriate to verify if an out-of-court settlement is possible, and does not undermine the rights of the parties (and of the claimants, in particular), as the wait for the lapse of the 90-days period does not appear to be detrimental to its interests and, in any case, no allegation has been made by the claimant on that point.

*Violation of a standstill clause as a possible ground of lack of jurisdiction.*

16. It should be noted that the relevant provisions do not offer a precise definition of the term 'jurisdiction', but it is a general opinion that it refers to the ability of a specific court to hear and issue a decision on one or more specific disputes.
17. Based on this definition, lack of jurisdiction can occur when a different court or a different body (as an arbitration board) which is part of a different judicial system have the power to address the dispute ('relative' lack of jurisdiction) or when the situation brought to courts is not even abstractly configurable as a protectable right, pertaining to the administrative or the legislative power ('absolute' lack of jurisdiction).
18. None of these situations is present in the situation at hand: nor the first, as no other court or judicial body is indicated as the one to have jurisdiction on the proceedings; nor the second, as the objection raised by the defendant concerns the inexistence of the concrete conditions for the Court to address the claim – due to the alleged non-compliance of the obligation of the 90 days prior notice – and not the abstract power of the Court to decide the case.
19. The defendant's arguments, according to which the non-compliance of that obligation determines a lack of jurisdiction of this Court (as of any court in general), would lead to the conclusion that a court may lack jurisdiction only temporary, as it would (re)gain it once the notice has been given and the period elapsed. It would also lead to the conclusion that a court may lack jurisdiction only if the claim is filed by one of the parties, which did not comply with the prior notice obligation, and not if claim on the same contract is filed by the opposing party which, instead, has meet this obligation.
20. These conclusions are not acceptable as the definition of jurisdiction has to respond to objective criteria which must not vary depending on the time of the filing of a claim or on the identity of the claimant.
21. It may be added that also the case-law mentioned by the defendant with regard to similar clauses – although consisting in national judgements formed on the basis of national provisions whose application to the current proceedings is not argued – consider the violation of a standstill agreement as a cause of inadmissibility of the claim and not as a cause of lack of jurisdiction.

22. Therefore, the preliminary objection shall not be allowed.

*Further arguments: start date of the 90-day notice period; calculation of time period.*

23. Since the defendant's argument regarding the standstill clause as a ground for lack of jurisdiction has been rejected, it is unnecessary to address the remaining arguments raised by the parties for the purpose of deciding on this preliminary objection.

24. Indeed, while addressing them now could benefit the future development of the proceedings by clarifying the relevant issues, it is more appropriate to postpone this discussion until after the parties have completed exchanging written pleadings pursuant to Rule 43 'RoP', as they may submit more evidence in support of their arguments.

### ORDER

For these grounds, the judge-rapporteur

- rejects the Preliminary objection.

Issued on 10 May 2024.

The presiding judge and Judge-rapporteur

Paolo Catallozzi