



Action numbers:
APL_83/2024
UPC_CoA_2/2024
ORD_6625/2024

Procedural Order
of the Court of Appeal of the Unified Patent Court
issued on 15 February 2024
concerning the appeal fee

DEFENDANTS AND APPELLANTS

1. **Meril GmbH**
Bornheimer Straße 135-137, 53119 Bonn, Germany

2. **Meril Life Sciences Pvt Ltd.**
M1-M2, Meril Park, Survey No 135/2/B & 174/2, Muktanand Marg, Chala, Vapi 396 191,
Gujarat, India

represented by attorneys-at-law Dr. Andreas von Falck, Dr. Roman Würtenberger and Beatrice Wilden (Hogan Lovells International LLP)

APPLICANT AND RESPONDENT

Edwards Lifesciences Corporation
1 Edwards Way, Irvine, 92614 California, USA

represented by attorneys-at-law Boris Kreye and Anika Boche (Bird&Bird)

PATENT AT ISSUE

EP 3 763 331

DECIDING JUDGE

Peter Blok, legally qualified judge and judge-rapporteur

LANGUAGE OF PROCEEDINGS

German

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Court of First Instance of the Unified Patent Court, Munich Local Division dated 19 December 2023
- Action numbers attributed by the Court of First Instance:
 - UPC_CFI_249/2023
 - ACT_550921/2023
 - ORD_577734/2023

FACTS AND REQUESTS OF THE PARTIES

On 19 June 2023, the Applicant and Respondent (hereinafter: Respondent) issued a warning letter to the Defendants and Appellants (hereinafter: Appellants) for infringement of European patent 3 763 331 relating to a crimping device for crimping stent-based valve prostheses, in particular heart valve prostheses.

On 18 July 2023, the Respondent applied for provisional measures at the Munich Local Division of the Unified Patent Court.

In a written statement dated 25 September 2023, the Appellants submitted a cease-and-desist undertaking. The Respondent accepted this declaration in a written statement dated 29 September 2023.

During a video conference on 2 October 2023, both parties agreed that there was no longer any need to adjudicate on the action in the sense of Rule 360 of the Rules of Procedure (RoP). The parties disagreed on the question of who should bear the costs.

By Order dated 19 December 2023, the Court of First Instance, Munich Local Division:

1. determined that, as the Appellants had submitted a cease-and-desist undertaking on 25 September 2023, the application for provisional measures had become devoid of purpose and that thus there was no longer any need adjudicate on it,
2. disposed of the action concerning the application for provisional measures,
3. ordered that the Appellants bear the costs of the dispute as well as the other costs of the Respondents up to a maximum of €200,000.00,
4. otherwise rejected the Respondents' requests as currently premature and the Appellants' requests as unfounded,
5. set the value of the action at €1,500,000.00 and
6. granted leave to appeal.

In a statement dated 2 January 2024, the Appellants brought an appeal against the Order of the Court of First Instance. In the Statement of appeal, they request:

- I. that item 3 of the Order of the Local Division be revoked, and that the Respondent be ordered to pay the costs of the proceedings before the Court of First Instance, including the costs incurred by and in connection with the filing of protective letters relating to European patent 3 763 331, on the understanding that the recoverable costs of representation are limited to an amount of €200,000.00,
- II. that the suspensive effect of the appeal against the aforementioned item 3 of the Order

- be ordered without delay,
- III. that the Respondent be ordered to pay the costs of the appeal proceedings.

When filing the Statement of appeal, the Appellants paid the fee for an appeal under Rule 220.2 RoP in the amount of €1,500.

In addition, on 2 January 2024, the Appellants again lodged a request to grant suspensive effect to their appeal against the Order of the Court of First Instance (APL_100/2024, UPC_CoA_4/2024). The Court of Appeal rejected this request by an Order dated 18 January 2024. In doing so, the Court of Appeal established that, in accordance with Rule 360 RoP, item 3 of the Court of First Instance's Order, which the Appellants had appealed, was to be regarded as a final decision within the meaning of Rule 220.1(a) RoP.

By an email message dated 23 January 2024, the Appellants' representative asked the Court to clarify whether the Appellants needed to pay a higher appeal fee than they had paid and to issue the necessary instructions. The Appellants are of the opinion that no higher fee is owed.

In his response dated 29 January 2024, the Respondent's representative took the position that the Appellants were liable for the court fee for an appeal under Rule 220.1(a) RoP.

GROUNDS FOR THE ORDER

1. A fee of €11,000 shall be paid for the present appeal proceedings.
2. As the Court of Appeal stated in its Order of 18 January 2024, item 3 of the Court of First Instance's Order, which the Appellants have appealed, is to be considered a final decision within the meaning of Rule 220.1(a) RoP, pursuant to Rule 360 RoP.
3. The table of fees does not provide for a specific fee for an appeal pursuant to Rule 220.1(a) RoP against an order determining which party is to bear the costs of the proceedings in the context of the disposal of an action for provisional measures pursuant to Rule 360 RoP. In the absence of a specific fee, the fee to be paid should be the fee for the case that is most comparable to the case according to the system of the table of fees. The table of fees determines the fee for an appeal under Rule 220.1(a) RoP on the basis of the type of action or application decided on by the Court of First Instance. Under this system, the provision providing for a fee of €11,000 for an appeal under Rule 220.1(c) RoP concerning an Application for provisional measures under Article 62 UPCA applies mutatis mutandis to the present appeal. This is because these appeal proceedings also concern an appeal against an order terminating proceedings relating to an Application for provisional measures under Article 62 UPCA.
4. The fact that the appeal is directed only against the order that the Appellants are to bear the costs of the proceedings does not lead to any other assessment. In their Statement of grounds of appeal, the Appellants argue that the Court of Appeal must examine whether the application for provisional measures was well-founded when deciding on costs. The Court of Appeal will assess in its final decision whether such an examination of the merits of the application is necessary in the present case. However, the Appellants' submissions imply that the merits of the application may be part of the proceedings before the Court of Appeal. Therefore, it is also appropriate that the Appellants have to pay a fee corresponding to the fee for an appeal under Rule 220.1(c) RoP concerning an Application for provisional measures under Article 62 UPCA.

5. As the Appellants have already paid an amount of €1,500 in court fees, the Court of Appeal will order them to pay the remaining amount of €9,500.

ORDER

The Appellants are ordered to pay €9,500 in fees within 14 calendar days.

This order was issued on 15 February 2024.

Peter
Hendrik
Blok



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by Peter Hendrik
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Date: 2024.02.15
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Peter Blok, legally qualified judge and judge-rapporteur