



Munich Local Chamber

App\_560315/2023 UPC\_CFI\_249/2023

Procedural order of the Court of First Instance of the Unified Patent Court dated  
14/08/2023

MAIN PRINCIPLE: Successful service under Rule 271.1.c of the Constitution on one of several defendants Parties can, in the circumstances of the main proceedings, be assessed as an effective alternative service on another defendant party under Rule 275.2 of the Constitution.

KEYWORDS: Defendant majority, CMS malfunction, alternative service

REFERENCE CODE ECLI: ...

Date of submission of the application: August 8, 2023

applicant

- |    |   |                               |
|----|---|-------------------------------|
| 1) | Edwards Life Sciences Corporation<br>(Applicant) - 1 Edwards Way - 92614 - Irvine -<br>US | Represented by<br>Boris Kreye |
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Parties to the injunction proceedings

- |    |  |                               |
|----|--|-------------------------------|
| 1) | Edwards Life Sciences Corporation<br>(Party to the main proceedings - Not provided) - 1<br>Edwards Way - 92614 - Irvine - US | Represented by<br>Boris Kreye |
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- |    |   |  |
|----|---|--|
| 2) | Meril GmbH<br>(Party to the main proceedings - Not provided) -<br>Bornheimer Straße 135-137 - 53119 - Bonn -<br>EN  | delivery on the<br>07/08/2023<br><br>Represented by<br>Andreas von Falck |
| 3) | Meril Life Sciences Pvt Ltd.<br>(Party to the main proceedings - Not provided) -<br>M1ÿ M2, Meril Park, Survey No 135/2/B &<br>174/2, Muktanand Marg, Chala, - 396 191 -<br>Vapi-IN | delivery on the<br>-<br><br>Represented by<br>Andreas von Falck          |

Injunction patent

Patent No.	owner
EP3763331	Edwards Life Sciences Corporation

DECISIVE JUDGES

COMPOSITION OF THE BODY – CHAMBER

Chairman and rapporteur	Matthias Zigann
Legally qualified judge	Tobias Pichlmaier
Legally qualified judge	Margot Kokke
Technically qualified judge	Elisabetta Dad

REPORTER

Chairman	Matthias Zigann
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PROCEDURE LANGUAGE: German

SUBJECT OF THE PROCEDURE

Application for alternative service in accordance with Rule 275.2 VerfO.

APPLICATIONS

The applicant requests

a court order that service on respondent 1) in accordance with Rule 275.2 of the Rules of Procedure of the EPG (RoP) also constitutes legally valid service on respondent 2).

The respondents have stated that

that they do not oppose the application.

FACTS

The defendants' legal representative was appointed as legal representative for both respondents in the protective letter dated July 3, 2023 (App\_544012/2023).

In an email dated July 31, 2023, the defendants' legal representative confirmed, at the request of the rapporteur and presiding judge, that he would accept service by email on August 7, 2023 - due to the lack of reference to only one defendant, therefore for both defendants, and that postal delivery is not necessary. On August 7, 2023, the aforementioned authorized representative accepted delivery of the application to respondent 1) within the electronic case processing system (CMS). With regard to respondent 2), he stated that he did not have an access code.

The background is that due to a malfunction in the CMS, two identical access codes were generated and transmitted for the two respondents. A second access code has already been ordered via support.

CRITICAL LEGAL QUESTIONS

Pursuant to Rule 275.2 of the Constitution, upon a reasoned request from the plaintiff, the court may order that the steps already taken to bring the statement of claim to the attention of the defendant by an alternative method or at another location constitute legal service. To be stated in the order pursuant to Rule 275.3 VerfO:

- (a) the method or place of service,
- (b) the date on which the statement of claim is deemed to have been served, and
- (c) the deadline for filing the statement of defense.

According to Rule 275.4 VerfO, it is not permitted to order an alternative service under this rule that is incompatible with the law of the state in which service is made.

#### REASONS

1. The injunction procedure is currently in the written procedure according to the rule 205.a VerfO. During the written procedure, the management of the procedure is the responsibility in accordance with Rule 331.1 to the rapporteur. There is no exceptional case according to Rules 102 or 333 of the Constitution.
  
2. Since August 7, 2023 at the latest, the authorized representative of the Respondents are aware of the contents of the application. Since the acceptance of service has already been announced electronically for respondent 2) and has not yet taken place solely due to technical problems with the CMS and the delivery codes, it is appropriate to order a court order in view of the urgency of the present procedure and from a procedural economic point of view that service on the respondent's legal representative with effect for respondent 1) also represents a legally valid service according to an alternative procedure with effect for respondent 2). In addition, the respondents have stated that they are not opposing the application in accordance with Rule 275.2 VerfO.
  
3. Rule 275.4 VerfO is also not opposed because the aforementioned alternative Service is not incompatible with the procedural law of the Federal Republic of Germany. German procedural law also provides for defects in delivery to be cured upon actual receipt (§ 189 ZPO), which corresponds to the facts in the proceedings here.
  
4. The successful service according to Rule 271.1.c VerfO on the respondent 1) can therefore be assessed as an effective alternative service on the respondent 2) according to Rule 275.2 VerfO.
  
5. An objection deadline according to Rule 209.1.a VerfO has not yet been set. Therefore, no order is required under Rule 275.3.c of the Constitution. In this respect, to avoid confusion, a separate order will be issued - outside of the current workflow.
  
6. There are no grounds for allowing the appeal because the application was not opposed in accordance with Rule 275.2 VerfO (Rule 220.2 VerfO).

#### DISPOSAL

It is ordered that with regard to service on the respondent 2):

- a) Type of delivery: Delivery in accordance with Rule 271.1.c VerfO
- b) Date on which the application is deemed to have been served: August 7, 2023
- c) omitted

#### ARRANGEMENTS FOR THE OFFICE

The law firm is requested to

1. the legal representative of respondent 2 should immediately send a separate one provide access code for the CMS; and

2. regardless of 1., enter the delivery data provided above in the CMS.

AVAILABILITY DETAILS

Order number: APP 560361/2023

EPG number: UPC\_CFI\_249/2023

Type of procedure: Request for alternative delivery

Reference procedure: ACT 550921/2023

Type of procedure: Application for interim measures

Dr. Zigann

Chairman and rapporteur