



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

**ORDER**

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

**Central division (Paris seat)**

**issued on 27 June 2024**

**concerning the generic procedural application No. App\_37868/2024**

**lodged in the proceedings UPC\_CFI\_454/2023**

HEADNOTES:

KEYWORDS:

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

RESPONDENT:

**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

DECIDING JUDGE:

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

SUMMARY OF FACTS AND PARTIES' REQUESTS:

1. On 24 June 2024 the applicant, defendant in the revocation action brought by Tandem Diabetes Care and Tandem Diabetes Care Europe B.V before this Central Division (registered as No. ACT\_589997/2023), requested that the Court extends the time period for filing the rejoinder to the reply to the defence to revocation until 29 July 2024.

GROUNDINGS FOR THE ORDER

2. The applicant bases its request on the fact that claimants have submitted new prior art documents with their reply to the defence and their defence to the request to amend the patent that have not been part of the discussion or proceedings prior to this submission and argues that the time period of solely one month to submit a rejoinder to a reply in revocation proceedings is only adequate to prepare a proper rejoinder if the subject matter of the proceedings, especially the validity attacks, remain unchanged.
3. It further argues that the claimants have used the new prior art documents to attack not only auxiliary requests but also the claim as granted.
4. Additionally, the applicant notes that the patent has been attacked by a counterclaim for revocation before the Hamburg local division (registered as No. CC\_36199/2024); therefore, the defendant must also have the chance to consider the attacks against its patent in this counterclaim before preparing another reply before this Central Division.
5. This judge-rapporteur recalls that the Court has the discretionary powers to modify, upon a reasoned request of a party, the deadlines set by the statutory rules for performing procedural activities and in exercising these powers the Court has to observe the principles of proportionality, flexibility, fairness and equity, mentioned in the preamble 2 and 4 of the 'RoP' (see the order of 20 February 2024, issued in the current proceedings).
6. 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 that the protection and the implementation of the right to defence impose to interpret the statutory rules regarding the deadlines in a flexible and equitable way.

7. Bearing in mind all these factors, 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 also on this point the forementioned order of 20 February 2024).
8. It follows that the Court may extend a deadline set by the Rules of Procedures only in case a party alleges and gives evidence that it will not be able or was not able to meet it because of a fact that makes the submission of a document or the arrangement of an adequate content of a pleading in the due time objectively impossible or very difficult.
9. These conditions are not present in the current case.
10. The fact that new prior art documents have been submitted by the claimants with their defence to the request to amend the patent does not constitute an objective impossibility or extreme difficulty for the defendant to meet the statutory deadline for its rejoinder. This type of defence is justified by the need to react to the application to amend of the patent filed by the defendant and is explicitly allowed by the Rules of Procedures. Therefore, such a defence was easily predictable and does not create an objective impossibility or extreme difficulty to arrange a proper reply.
11. Similarly, the new arguments and documents submitted by the claimants in their reply to defence do not create an objective impossibility or extreme difficulty for the defendant to meet the statutory deadline as the defendant is well aware that with this pleadings the claimant may react to its defence.
12. Lastly, the fact that the patent has been attacked by a counterclaim for revocation before the Hamburg local division is not relevant because the relative proceedings are different and autonomous, both in form and substance, as a result of the choice of the applicant to file the infringement claim in a different new proceedings (instead of filing a counterclaim in the present proceedings) and, consequently, of the defendant in the infringement action to react by filing (also) a counterclaim for revocation in that proceedings. Because the proceedings are separate and autonomous, coordination between the defences is not required.
13. Additionally, it may be noted that an eventual decision by Hamburg Local Division to proceed both with the infringement action and the counterclaim does not have as the effect to deprive this Central Division of the power to adjudicate the current revocation action, nor does it necessarily require the latter Division to wait for the decision of the said Local Division.

ORDER

The judge-rapporteur,

having considered Rule 9 'RoP',

rejects the request.

Issued on 27 June 2024.

The Presiding judge and judge-rapporteur

Paolo Catallozzi

ORDER DETAILS

Order no. ORD\_38198/2024 in ACTION NUMBER: ACT\_589997/2023

UPC number: UPC\_CFI\_454/2023

Action type: Revocation Action

Related proceeding no. Application No.: 37868/2024

Application Type: Generic procedural Application