



**Local Division Munich
UPC_CFI_15/2023**

**Procedural Order
of the Court of First Instance of the Unified Patent Court
Local Division Munich
issued on 15 November 2024**

CLAIMANT (RESPONDENT)

Edwards Lifesciences Corporation, 1 Edwards Way - 92614 - Irvine – US

represented by: Two Birds, Representative Elas Tzschoppe, Maximiliansplatz 22 - 80333 - München - DE

DEFENDANT (APPLICANTS)

Meril GmbH, Bornheimer Straße 135-137 - 53119 - Bonn – DE

represented by: Hoganlovells, Representative Dr. Andreas von Falck, Kennedydamm 24 - 40476 - Düsseldorf - DE

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

represented by: Hoganlovells, Representative Dr. Andreas von Falck, Kennedydamm 24 - 40476 - Düsseldorf - DE

PATENT AT ISSUE

European patent n° 3646825

PANEL/DIVISION

Panel 1 of the Local Division Munich

DECIDING JUDGE/S

This decision has been delivered by the presiding judge Dr. Matthias Zigann acting as judge-rapporteur, the legally qualified judges Margot Kokke and Tobias Pichlmaier and the technically qualified judge Dr. Stefan Wilhelm.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Infringement Action ACT_459987/2023 UPC_CFI_15/2023
Generic procedural Applications App_57746/2024 and App_60393/2024

SUMMARY OF FACTS

The Claimant sued the Defendants for infringement of EP 3 646 825. The Defendants filed, inter alia, counterclaims for revocation. The Local Division Munich referred the counterclaims to the Central Division for decision. The patent was partially upheld.

The written procedure was closed on 15 July 2002. The interim conference was held on 5 September 2024. The interim proceedings were closed on 6 September 2024. The oral hearing was held on 24 September 2024. A date for the announcement of the decision has been set for 15 November 2024.

REQUESTS

Defendants request with application App_56354/2024 dated 16 October 2024:

On behalf and in the name of Defendants, we ask the Division to

I. ask the European Commission to transmit information about the status of the investigations into the potential violation by Claimant of EU antitrust law that prohibits the abuse of a dominant market position, the reasons for the initiation of these investigations and the timing for the next steps

II. ask the European Commission to provide a copy of any decisions that have been adopted so far, in particular, of any decisions that relate to or concern Claimant's patent filing strategy, Claimant's Global Unilateral Pro-Innovation (Anti-Copycatting) Policy and/or Claimant's patent litigation strategy against Defendants, distributors distributing products of the Defendant company and/or companies of the Defendant group; and request that

III. leave be granted for the parties to submit further written pleadings and the oral hearing be reopened, if necessary, after the European Commission has provided the information requested.

Claimant responded with a brief dated 21 October 2024:

Claimant requests that Defendants' Request is dismissed

This request is subject to a different order (App_56354/2024).

Defendants request with application App_57746/2024 dated 22 October 2024:

On behalf and in the name of Defendants, it is hereby clarified in due brevity that the submission filed on 16 October 2024 is not a substantive one on the case, but simply a suggestion to the Local Division to enquire about the status of the European Commission's investigation out of its own motion.

As set out in our brief dated 16 October 2024, the European Commission is not in a position to provide information to the Court unless it has received a request by the Court to do so.

Defendants request with application App_60393/2024 dated 8 November 2024:

We refer to our submission filed with the Local Division on 16 October 2024 (App_56354/2024) by means of which we approached the Local Division on behalf of Defendants to enquire about the status of the European Commission's investigation out of its own motion.

1. As indicated in our submission of 16 October 2024 (in section 2), further information about the status of the antitrust investigations, details about the specific exact grounds that gave rise to the investigations and access to decisions that have been issued in the context of these proceedings so far are highly relevant for the decision by this Court. In addition, approaching the European Commission is warranted in the present case also because the Local Division will have to consider the nature of Claimant's conduct in light of the European Union's antitrust rules in the context of Defendants' defence based on disproportionality and thus, there is a partial overlap with the assessment by the European Commission. In this respect, irreconcilable decisions are to be avoided in accordance with the ratio of Art. 16(1) of Regulation (EC) No. 1/2003 and Defendants respectfully note that the Unified Patent Court, as a court common to the Contracting Member States, is subject to the same obligations under European Union law as any national court of the Contracting Member States (Art. 1(2) UPCA).

2. While Defendants do not intend to comment further on Claimant's submission, they point out the following: Claimant states that there would have been no updates since its Reply filed in the present proceedings (see mn. 8 of Claimant's comments of 21 October 2024). The Reply was, however, submitted only on 9 January 2024, thus well after the proceedings had been initiated by the European Commission in 2023 which leaves open the possibility of events in between. It is also still possible that there is new, relevant information or findings even though the proceedings have so far remained in the preliminary, fact-gathering stage according to Claimant (see mn. 8 of Claimant's comments of 21 October 2024). Claimant itself only alleges that "[s]ince the procedure is still ongoing and the European Commission has not opened a formal investigation, there is no decision of the European Commission in this regard" (mn. 11 of Claimant's comments of 21 October 2024, emphasis added). Defendants further note that they are not informed of communications between the European Commission and Claimant. Defendants do not have any access to decisions adopted in the investigation thus far. Defendants have no right to access the European Commission's file.

3. With the date for the announcement of the decision (15 November 2024) approaching, this matter has become even more urgent now. Defendants therefore again kindly ask the Local Division to proceed in accordance with their suggestion and to do so as a matter of priority.

The application App_60393/2024 is dated 8 November 2024, but only came to the attention of the Panel today, 12 November 2024.

Claimant requests with briefs dated 13 November 2024:

Claimant maintains its request of 21 October 2024 (filed in Workflow App_56354/2024), whereby it requests that Defendants' Request be dismissed.

Claimant argues (mn. 8):

Defendants now claim in their submission of 8 November 2024 (mn. 2) that there is a possibility that "events" in regarding the European Commission's procedure occurred prior to the filing of the Reply. There is no explanation as to why this was not raised at the time Claimant's Reply was filed in January 2024, e.g. with Defendants' Rejoinder. Defendants' argument is extremely vague and unsubstantiated. In any event, Claimant maintains that, as already explained during the oral hearing and in Claimant's previous submission of 21 October 2024, the procedure is in a fact-gathering phase, and no formal investigation has been opened. Plainly there cannot be any "new, relevant information or findings" from the European Commission considering this.

GROUND FOR THE ORDER

Defendants' requests are rejected because they are late filed.

I. Under R 9.2 RoP the Court may disregard any step, fact, evidence or argument which a party has not taken or submitted in accordance with a time limit set by the Court or these Rules. Under R 36 RoP the judge-rapporteur, without prejudice to the powers of the judge-rapporteur pursuant to Rule 110.1, on a reasoned request by a party lodged before the date on which the judge-rapporteur intends to close the written procedure [Rule 35(a)], may allow the exchange of further written pleadings, within a period to be specified. Where the exchange of further written pleadings is allowed, the written procedure shall be deemed closed upon expiry of the specified period.

II. The written procedure was closed on 15 July 2024, the interim conference was held on 5 September 2024, the interim proceedings were closed on 6 September 2024 and the oral hearing was held on 24 September 2024. The Court did not allow any post-hearing submissions. The Defendants' request is thus filed outside any procedural realm that would permit the filing of a further written submission, let alone a request.

III. In addition, the Court has set a date for the announcement of its decision, namely 15 November 2024, which could be jeopardised if the defendants' request is granted.

IV. The Court had already asked for an update on the European Commission's proceedings at the hearing on 24 September 2024, and the Claimant confirmed that there had been no update since the reply and that the preliminary proceedings before the European Commission remained at the preliminary stage of fact-finding. It therefore remains the case that the European Commission has not opened a formal investigation (or even taken any steps towards opening a formal investigation). This was undisputed at the time of the Oral Hearing. The Defendants do not claim that this has changed since then. In its submission dated 13 November 2024 the claimant once again confirmed that the European Commission's procedure is in a fact-gathering phase, and no formal investigation has been opened. Therefore, the Panel considers that there is no need to ask the European Commission as requested.

ORDER

Defendants' requests are rejected.

INFORMATION ABOUT APPEAL IN CASE OF AN ORDER FALLING UNDER ART. 73(2)(B) UPCA:

The present order may either - be the subject of an appeal by any party which has been unsuccessful, in whole or in part, in its submissions together with the appeal against the final decision of the Court of First Instance in the main proceedings, or - be appealed by any party which has been unsuccessful, in whole or in part, in its submissions at the Court of Appeal with the leave of the Court of First Instance within 15 days of service of the Court of First Instance's decision to that effect (Art. 73(2)(b) UPCA, R. 220.2, 224.1(b) RoP)

DETAILS OF THE ORDER

Order no. ORD_60760/2024 in ACTION NUMBER: ACT_459987/2023

UPC number: UPC_CFI_15/2023

Action type: Infringement Action

Related proceeding no. Application No.: 57746/2024

Application Type: Generic procedural Application

Order no. ORD_60761/2024 in ACTION NUMBER: ACT_459987/2023

UPC number: UPC_CFI_15/2023

Action type: Infringement Action

Related proceeding no. Application No.: 60393/2024

Application Type: Generic procedural Application

Done and delivered in Munich on 15 November 2024

Dr. Zigann Presiding Judge and Judge-rapporteur	
Kokke Legally Qualified Judge	
Pichlmaier Legally Qualified Judge	
Dr. Wilhelm Technically Qualified Judge	
for the Deputy Registrar	