EIP

First appeal decision from the UPC

Amgen Inc v Sanofi-Aventis Deutschland GmbH & Ors Order of 13 October 2023 (Order ref ORD_580110/2023) [1]

Both Amgen and Sanofi-Aventis appealed an order [2] in which an extension of the deadline for filing a defence was refused for one of the defendants, and only a modest extension allowed for the other three defendants in order to align the deadlines. The resulting ruling is the first judgment to emerge from the UPC Court of Appeal.

In an interesting decision, the Court makes two key legal rulings, the effect of the second being to mitigate almost entirely the consequence of the first.

In the first aspect, the Court affirms the legal reasoning of the first instance order that it is permissible to file a Statement of Claim referring to annexes that will be filed later, and that consequently service of that Statement of Claim, without those annexes, represents valid service on a defendant pursuant to Rule 271 RoP. Thus, the deadlines that run from service (filing a preliminary objection and filing a defence) are triggered by service of a Statement of Claim without annexes in such circumstances. In this part of the analysis, the Court held that compliance with Rule 13.2 RoP ("The claimant shall at the same time supply a copy of each of the documents referred to in the Statement of claim") was not necessary in respect of such annexes, and stated that "Only such annexes as are indispensable for an understanding of the subject-matter and the cause of action must be served (and translated, if necessary) on the defendant together with the statement of claim". Therefore, in line with the first instance reasoning, the Court held that the relevant deadlines ran from the dates of service of 11 and 19 July 2023 respectively.

In the second aspect, the Court turned to whether an extension of the deadlines should be granted. In this part of the judgment, the Court took a different view of Rule 13.2.

Whereas valid service only requires that "the defendant be enabled to ascertain from the application the subject matter and the cause of action", Rule 13.2 "is intended to allow the defendant to respond to all the submissions contained in the application and all the annexes to which the claimant refers in support of its claim". The Court then held that "In view of this purpose, the obligation under Rule 13.2 applies to all documents already in the possession of the claimant and to which he refers or announces the production of in the statement of claim".

Having in mind this purpose, the Court declared that a request by a defendant for an extension of the time limits for filing a preliminary objection or defence "must already be granted if a claimant has not uploaded the annexes to the CMS at the same time as the statement of claim and has thus failed to comply with Rule 13.2 of the Rules of Procedure, with the result that they are not available when the defendant's representative accesses the CMS using the access code contained in the statement of claim. The nature and/or content of the attachments is irrelevant."

Accordingly, the Court granted extensions of the deadlines as though they ran from the date of service of the annexes (that is, the date the annexes were available to the defendants' representative through the CMS), which was 10 August 2023 – several weeks after the dates of service set out above. Accordingly, the deadline for filing a defence was extended to 10 November 2023.

The practical outcome from the ruling on the second aspect is that the deadlines for the defendant will in most cases be the same as if the court had taken the opposite approach in the first aspect. The effective deadlines for the defendant will usually be set by the filing and consequent service of all of the supporting documentation to the claim, whether this is done with the Statement of Claim or later.

[1] https://www.unified-patent-court.org/sites/default/files/upc_documents/final-order-appeal-572929-002.pdf (in German)

[2] Reported here:
https://eip.com//knowledge_hub/article/determining_date_of_service_and_corresponding_time_limits/