

EIP

UPC Exceptionally grants extension of time limit for preliminary objection

Edwards Lifesciences Corporation v. Meril GmbH and Meril Life Sciences Pvt Ltd. Order of 1 August 2023

Edwards Lifesciences Corporation (Claimant in the main action) is the proprietor of EP3646825, asserted against potential infringers Meril GmbH (Defendant 1 in the main action and Applicant in the request for extension of time) and Meril Life Sciences Pvt Ltd. (Defendant 2 in the main action). In this proceeding, the presiding judge and judge rapporteur Mr. Zigann of the Munich Local Division had to decide whether to grant a request for extension of the time limit for a preliminary objection [1].

The Applicant requested to extend the time limit for the preliminary objection pursuant to Rule 19.1 of the Rules of Procedure (RoP) by 4 weeks according to Rule 9.3 a) RoP. The Applicant argued that due to different dates of service of the statement of claim for the Defendants 1 and 2, different time limits for a preliminary objection are running which should be urgently avoided. In addition, on the date of service by e-mail to the Applicant's registered representative on 7 July 2023, access to the claim via the case management system (CMS) was not yet possible. This access had only been possible at a later date (not specified by the Applicant). Furthermore, the registered representative was currently on leave.

The order discusses the time limits for filing preliminary objections in a UPC proceeding. According to Rule 19.1 of the RoP, the period for a preliminary objection is one month after service of the statement of claim. For electronic service, the service date is considered the day when the electronic message was sent, as per Rule 271.6 a) RoP.

If a representative, as per Rule 8.1 RoP, receives the electronic service on behalf of a

party, the service can occur within the closed electronic system of the CMS under Rule 271.2 RoP. This involves providing an access code to the CMS rather than sending the full complaint electronically. The subsequent access to the CMS by the law firm's representative is an additional step for security reasons, ensuring only the designated recipient accesses the CMS. This access permission is usually granted on the same or the following business day.

The order then notes that the Applicant does not specify when they gained complete access but implies that they now have it. Therefore, the unextended objection period for the Applicant ends no later than August 7, 2023, since the electronic service to the registered representative occurred on July 7, 2023.

Regarding Defendant 2, it was noted that the CMS only recently confirmed the service on August 1, 2023. The registered representative logged into the CMS using codes sent via email on July 31, 2023. Thus, the preliminary objection period for the Defendant 2 ends no later than September 4, 2023 (i.e. the date requested by Defendant 1 as their extended deadline, so the judge here seems to be confirming that if the extension is granted for Defendant 1, then the deadline for Defendant 2 – which according to the one-month period specified in Rule 19.1 RoP should be 31 August or 1 September 2023 - would not exceed the extended deadline for Defendant 1). The judge noted that the CMS seems to consider the actual log-in and not the possibility of logging in for starting the time period, contrary to Rule 271.6 RoP. It seems therefore that the Registry practice may not currently be in accordance with the Rules of Procedure, and so it may need to be adjusted in future.

The order acknowledges that the two preliminary objection periods significantly differ. However, it argues that preventing such divergence is not inherently necessary. Filing a preliminary objection does not necessarily affect the period for lodging the statement of defence, as shown by Rule 19.6. The issues raised by the objection concern court jurisdiction, opt-outs under Rule 5 RoP, competence of the division (Rule 13.1 i)) and language of the statement of claim (Rule 14). These can be quickly addressed and might vary among different defendants. It is important to grant the Claimant rapid certainty on these matters.

The reasons presented by Applicant, such as the representative's vacation, were not deemed sufficient grounds for an extension. Nevertheless, considering the difficulties posed by the new procedural rules and the CMS, the order acknowledges that all parties are facing significant challenges. Therefore, the presiding judge exercised the discretion provided by the procedural rules to grant the request exceptionally due to the initial efforts in handling these challenges.

Hence, the time limit for the preliminary objection was extended for the Applicant (=Defendant 1 in the main action) until September 4, 2023. However, it is clear that parties cannot routinely expect such extensions in the future.

In the meantime, a hearing on an application for provisional measures, presumably a provisional injunction, has been scheduled by the UPC for 10 October 2023 at the Munich local division. [2]

[1] App_557291/2023 to UPC_CFI_15/2023, preliminary decision on request for extension of time limit of the Court of First Instance of the Unified Patent Court of 01/08/2023, available under: https://www.unified-patent-court.org/sites/default/files/upc_documents/23-08-01-ld-munich-provisional-order-extension-of-time-limit-for-preliminary-objection-app-557291_2023-anonymized.pdf (German language link).

[2] <https://www.unified-patent-court.org/en/news/upcoming-hearing-local-division-munich>