



**App_557291/2023 to UPC_CFI_15/2023
Preliminary Decision on Request for Extension of
Time Limit by the Court of First Instance of the Unified Patent Court
from 01/08/2023**

applicant

- 1) **Meril GmbH**
(Applicant)
- Bornheimer Strasse 135-137 - 53119 - Bonn -
EN

Represented by



parties

- 1) **Edwards Life Sciences Corporation**
(claimant party)
- 1 Edwards Way - 92614 - Irvine - US

Represented by



- 2) **Meril GmbH**
(Defendant 1)
- Bornheimer Strasse 135-137 - 53119 - Bonn -
EN

Service of complaint on 07/07/2023

Represented by



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

Service of complaint on 01/08/2023

Represented by



patent in suit

Patent No.

owner

EP3646825

Edwards Life Sciences Corporation

REPORTER

presiding judge

Matthew Zigann

LANGUAGE OF THE PROCEDURE: German

REQUEST BY THE APPLICANT FOR 1 DATED 31.07.2023

It is requested that the period for the objection according to Rule 19.1 Rules of Procedure be extended by four weeks to 4 April 2020. September 2023 (Rule 9.3 lit. a) VerfO).

FACTS

The applicant for 1) (= defendant for 1) asserts, among other things, that on the day of delivery by e-mail to her registered representative on July 7th, 2023, access to the statement of claim via the case processing system (CMS) was not possible. This access was only possible at a later point in time. Furthermore, the registered agent is currently on holiday. The plaintiff filed an application for interim measures against the defendants because of another patent. In addition, the e-mail was not delivered to the second defendant, Meril Life Sciences Pvt Ltd., for reasons for which the defendants are not responsible. There is therefore a risk of different time frames for the objection period, but synchronization is urgently required.

REASONS

1. The objection period according to Rule 19.1 Rules of Procedure is one month after delivery. The date of service, for communications in electronic form, is the date on which the electronic message was sent (Rule 271.6(a) Rules of Procedure). If a representative accepts electronic service on behalf of the party pursuant to Rule 8.1 Rules of Procedure, the service can be carried out within the closed electronic system of the EPG case processing system (CMS) pursuant to Rule 271.2 Rules of Procedure. This means that it is not the statement of claim and its attachments that are sent in electronic form, but an access code to the CMS. In this respect, it is not important that the law firm first has to allow a representative full access to the CMS through a further step in accordance with Rule 8.1 VerfO after entering the transmitted access code. This is a protective mechanism intended to ensure that only the addressee determined by the court logs into the CMS. This access permission by the employees of the law firm usually takes place on the same day or on the following working day, so that the time gap is regularly negligible. Applicant 1) also does not state when exactly she obtained full access. However, it can be inferred from your application that a complete

access exists. The objection period for defendant 1), which was not extended, therefore ends on August 7, 2023 at the latest.

With regard to defendant 2), the CMS only established service today, on August 1, 2023, after the registered representative had logged into the CMS using the code sent by email on July 31, 2023. The automatically generated notification of a delivery dated August 1, 2023 should be understood to mean that it was not sent to Meril GmbH, but to Meril Life Sciences Pvt Ltd. has been delivered. Because all further procedural acts of the registered representative refer to the defendant to 2), for example the preparation of a statement of defense. The objection period therefore ends for the defendant

to 2) no later than September 4th, 2023. Incidentally, the CMS seems to focus on the actual login for the start of the period and not on the possibility of logging in, as required by Rule 271.6 VerfO.

The two deadlines would therefore differ significantly.

Contrary to what applicant 1) believes, however, preventing such a deviation is not necessary per se. On the one hand, an extension of the objection period is not necessary an extension of the time limit for filing a complaint. For as rule 19.6 shows, the run will be the The filing of the objection does not even influence the time limit for a reply to the complaint, unless the rapporteur decides otherwise. On the other hand, the objection concerns only the questions about the jurisdiction of the court, the use of the exception under Rule 5 Rules of Procedure, the jurisdiction of the chamber and the language of the proceedings. These issues can per se be answered quickly and differently for different defendants. Furthermore, a legal interest of the other party to have certainty about these questions, also with regard to individual defendants, as soon as possible is to be recognized.

Against this background, the other reasons given, vacation of the registered representative and his other burden with other procedures do not justify an extension.

2. However, it can be said that working with the new procedural law and the case management system (CMS) poses considerable challenges for all those involved.

Therefore, in the early days, there is a practical way of handling the challenges that arise required. The rapporteur therefore exercises the discretion conferred by the Rules of Procedure to exceptionally grant the request.

PROPOSED DISPOSAL

1. The deadline for the objection is set for applicant 1) (= defendant 1) by the 4th September 2023 extended.
2. The automatically generated notification of a delivery dated August 1, 2023 to be understood that not to Meril GmbH, but to Meril Life Sciences Pvt Ltd. has been delivered.

ARRANGEMENTS FOR THE PARTIES AND THE FIRM

1. The plaintiff can comment on this provisional order until August 2nd, 2023.
2. The defendants can comment until August 3, 2023.



DR. ZIGANN
PRESIDENT JUDGE AND REPORTER