



Munich Local Chamber

App_557291/2023 to UPC_CFI_15/2023 final decision on
application for extension of deadline
of the Court of First Instance of the Unified Patent Court
from 10/08/2023

applicant

- 1) Meril GmbH
(applicant)
- Bornheimer Straße 135-137 - 53119 - Bonn -
EN

Represented by
Dr Andreas von Falck

parties

- 1) Edwards Life Sciences Corporation
(plaintiff)
- 1 Edwards Way - 92614 - Irvine - US

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

Represented by
Elsa Tzschope

Service of action on 07/07/2023

Represented by
Dr Andreas von Falck

3) Meril Life Sciences Pvt Ltd. Service of action on 01/08/2023
(Defendant 2)
- M1-M2, Meril Park, Survey No 135/2/B & 174/2 Represented by
Muktanand Marg, Chala, Vapi - 396 191 Gujarat - Vapi - Dr Andreas von Falck
IN

Patent in suit

Patent No.	owner
EP3646825	Edwards Life Sciences Corporation

REPORTER

Presiding Judge Matthias Zigann

LANGUAGE OF THE PROCEDURE: German

APPLICANT'S APPLICATION FOR 1 DATED JULY 31, 2023

It is requested that the deadline for the objection in accordance with Rule 19.1 VerfO be extended by four weeks to the 4th. September 2023 (Rule 9.3 lit. a) VerfO).

FACTS

The applicant 1) (= defendant 1) claims, among other things, that on the day of delivery by email to her registered representative on July 7, 2023, access to the statement of claim was not yet possible via the case management system (CMS). This access was only possible at a later date. Furthermore, the registered representative is currently on vacation. The plaintiff filed an application for interim measures against the defendants regarding another patent. In addition, the e-mail has not yet been delivered to defendant 2), Meril Life Sciences Pvt Ltd., for reasons for which the defendants are not responsible. There is therefore a risk of different deadlines for the objection period, but synchronization is urgently required. The respondent (= plaintiff) agreed to the application for an extension of the deadline following the provisional extension of the deadline on August 1, 2023.

REASONS

1. The objection period according to Rule 19.1 VerfO is one month after delivery. For deliveries in electronic form, the day of service is the day on which the electronic message was sent (Rule 271.6(a) Rules). If a representative accepts electronic service on behalf of the party in accordance with Rule 8.1 VerfO, service can be made within the closed electronic system of the EPG case management system (CMS) in accordance with Rule 271.2 VerfO. This means that it is not the statement of claim and its attachments that are sent in electronic form, but rather an access code to the CMS. In this respect, it is not important that the law firm must first allow a representative full access to the CMS through a further step in accordance with Rule 8.1 VerfO after entering the transmitted access codes. This is a protective mechanism designed to ensure that only the addressee designated by the court logs into the CMS. This

Access is granted by the law firm's employees regularly on the same day or on the following working day, so that the time gap is usually negligible. Applicant 1) also does not disclose when exactly she gained full access. However, it can be seen from your application that there is now full access. The non-extended objection period for defendant 1) therefore ends on August 7, 2023 at the latest.

With regard to defendant 2), delivery was only determined by the CMS today, August 1st, 2023, after the registered representative logged into the CMS using the codes sent by email on July 31st, 2023. The automatically generated notification of delivery on August 1, 2023 should be understood to mean that it is not sent to Meril GmbH, but to Meril Life Sciences Pvt Ltd. has been delivered. Because all other procedural actions of the registered representative relate to the second defendant, for example the preparation of a response to the lawsuit. The objection period therefore ends for defendant 2) on September 4th, 2023 at the latest. The CMS also seems to base the start of the deadline on the actual login and not, as required by Rule 271.6 VerfO, on the possibility of logging in.

The two deadlines would therefore differ significantly from one another.

However, contrary to what applicant 1) believes, preventing such a deviation is not necessary per se. On the one hand, an extension of the objection period does not necessarily mean an extension of the period for filing a complaint. As Rule 19.6 shows, the course of the time limit for filing a complaint is not even influenced by the filing of an objection, unless the rapporteur decides otherwise. On the other hand, the objection only concerns the questions regarding the jurisdiction of the court, the use of the exception under Rule 5 Constitutional Code, the jurisdiction of the chamber and the language of the proceedings. These issues can per se be answered quickly and in different ways for different defendants. Furthermore, it must also be recognized that the other party has a legal interest in obtaining certainty about these questions, including with regard to individual defendants, as soon as possible.

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

2. However, it should be noted that working with the new procedural law and the case management system (CMS) poses considerable challenges for everyone involved. Therefore, in the early stages, it is necessary to deal with the challenges that arise in a practical way. The rapporteur therefore exercises the discretion granted by the Rules of Procedure to exceptionally grant the request. In addition, the respondent (= plaintiff) agreed to the application for an extension of the deadline following the provisional extension of August 1, 2023.

DISPOSAL

1. The deadline for the objection for applicant 1) (= defendant 1) is until the 4th. Extended September 2023.
2. The automatically generated notification of delivery from August 1st, 2023 is to be understood to the effect that it is not to Meril GmbH, but to Meril Life Sciences Pvt Ltd. has been delivered.

INSTRUCTIONS FOR THE PARTIES AND THE OFFICE

1. The law firm is requested to register in the CMS in accordance with paragraph 2 of the order correct.

DR. ZIGANN
PRESIDING JUDGE AND RAPPORTEUR