



UPC_CFI_14/2023
Procedural order
the Court of First Instance of the Unified Patent Court,
issued on: 08/29/2023

PRINCIPLE:

1. According to Rule 13 of the Constitution, a lawsuit can be effectively filed and served without attachments if the statement of claim simply announces the submission of these attachments at a later date.
2. The requirement to grant the defendant a sufficient hearing, including with regard to attachments submitted later, may need to be met by fine-tuning the time limit regime.

KEYWORDS:

time of delivery; deadline calculation; extension of deadline; shortening of deadline; Announcement, submit attachments; legal hearing

Date of receipt of the statement of claim: 01/06/2023

Sanofi-Aventis Deutschland GmbH

(Defendant) - Höchst Industrial Park, Brüningstrasse 50 -
65926 - Frankfurt am Main - DE

Statement of claim served on 11/07/2023

Sanofi-Aventis Groupe SA

(Defendant) - 54 rue La Boétie - 75008 - Paris - FR

Statement of claim served on 11/07/2023

Sanofi Winthrop Industrie SA

(Defendant) - 82 avenue Raspail - 94250 - Gentilly - FR

Statement of claim served on 11/07/2023

Regeneron Pharmaceuticals Inc.

(Defendant) - 81 Columbia Turnpike - 12144 -
Rensselaer - US

Statement of claim served on July 19, 2023

PLAINTIFF

1)	Amgen Inc. (Plaintiff) - One Amgen Center Drive, Mail Stop 28-2-C - 91320-1799 - Thousand Oaks - US	Represented by: John Heselberger
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DEFENDANT

1)	Sanofi-Aventis Deutschland GmbH (Defendant) - Höchst Industrial Park, Brüningstraße 50 - 65926 - Frankfurt am Main – DE	Represented by: Niels Holder
2)	Sanofi-Aventis Groupe SA (Defendant) - 54 rue La Boétie - 75008 - Paris – FR	Represented by: Niels Holder
3)	Sanofi Winthrop Industrie SA (Defendant) - 82 avenue Raspail - 94250 - Gentilly - FR	Represented by: Niels Holder
4)	Regeneron Pharmaceuticals Inc. (Defendant) - 81 Columbia Turnpike - 12144 - Rensselaer - US	Represented by: Niels Holder

PATENT IN DISPUTE

Patent no.	owner
EP3666797	Amgen Inc.

DECISIVE JUDGES

COMPOSITION OF THE BODY – FULL COMPOSITION

Presiding judge and rapporteur	Matthias Zigann
Legally qualified judge	Tobias Pichlmaier
Legally qualified judge	Samuel Granata

LANGUAGE OF THE PROCEDURE: German

SUBJECT OF THE CASE:

patent infringement;

here: time of delivery, calculation of deadline, extension of deadline, shortening of deadline

REQUESTS OF THE PARTIES

1) The defendant has filed a letter dated August 10, 2023 (ORD_551192/2023 UPC_CFI_14/2023 – Workflow 1 “Separation of Defendant 4”) or August 16, 2023 (App_562393/2023 UPC_CFI_14/2023) applied for,

a. order that the lawsuit is deemed to have been filed on August 10, 2023, alternatively on June 20, 2023,

b. is deemed to have been served on August 10, 2023, so that the deadline for the objection (Rule 19) expires on September 11, 2023 and the deadline for the statement of defense (Rule 23) expires on November 10, 2023;

alternatively:

c. to adapt the deadlines for the objection and the defense for defendants 1-3 to the deadlines applicable to defendant 4).

2)

In a letter dated August 10, 2023 (ORD_560379/2023 UPC_CFI_14/2023 - Workflow “Uploading the attachments to the statement of claim”) or August 22, 2023 (ORD_562104/2023 UPC_CFI_14/2023) applied for,

a. to shorten the deadline for the defendant 4) to respond to the lawsuit so that it corresponds to the deadline for the defendants 1) to 3),

b. to reject the defendant's applications regarding the calculation of the deadline or extension of the deadline.

BRIEF STATEMENT OF THE FACTS

Service on defendants 1) to 3) took place on July 11, 2023 in accordance with Rule 271.1.c VerFO.

Service on defendant 4) also took place on July 19, 2023 in accordance with Rule 271.1.c VerfO.

Defendants 1) to 4) are represented by the same legal representative.

The legal representative of defendants 1) to 4), based in Munich, had previously informed the law firm that he was willing to accept service by email on behalf of defendants 1) to 4).

No attachments were filed with the statement of claim. Instead, there are indications in the statement of claim that the intention is to submit attachments as soon as delivery to the defendants by electronic means is possible. In a letter dated August 10, 2023 (ORD_560379/2023 UPC_CFI_14/2023 - Workflow "Uploading the attachments to the statement of claim"), the attachments announced in this way were uploaded in response to the rapporteur's order of August 9, 2023.

Due to the successful service on all defendants, the chairman and rapporteur decided on August 14, 2023 (ORD_551192/2023 UPC_CFI_14/2023) not to separate the proceedings.

The chairman and rapporteur informally referred the applications to the ruling body for a decision in accordance with Rule 102 No. 1 Sentence 1 VerfO.

POINTS OF DISPUTE

The time of effective delivery is controversial. Both parties also want the deadlines for the defendants to be aligned, but in different directions.

JUSTIFICATIONS FOR THE DECISION AND ORDERS

1. The relevant delivery times are July 11th, 2023 for defendants 1) to 3) and July 17th, 2023 for defendant 4).

a. If the conditions set out in Article 19 of Regulation (EU) 2020/1784 are met are, the law firm serves the lawsuit electronically on a representative of the defendant in accordance with Rule 271 No. 1 c VerfO in accordance with Rule 8.1 VerfO if the representative has indicated to the law firm or the plaintiff that he intends to serve the statement of claim on the defendant's behalf electronic address.

b. Both requirements are met. The legal representative of defendants 1) to 4) is based in Munich and therefore within a member state of the European Union. Furthermore, he informed the law firm before delivery that he was willing to accept delivery by email on behalf of defendants 1) to 4).

c. Since the recipient is a representative in accordance with Rule 8.1 VerfO, service could be carried out within the closed electronic system of the EPG case management system (CMS) (Rule 271 No. 2 VerfO).

d. Subject to Rules 272.2 and .3 of the Rules of Procedure, a service served in accordance with paragraphs 1 to 5 shall apply

Statement of claim is deemed to have been served on the defendant when served in electronic form on the day on which the electronic message in question was sent (Rule 271 No. 6 a VerfO). This day is July 11, 2023 for defendants 1) to 3) and July 17, 2023 for defendant 4).

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 permission by the law firm's employees usually takes place on the same day or on the following working day, so that the time gap is usually negligible (see App_557291/2023 to UPC_CFI_15/2023 from August 1st, 2023).

2. The fact that the plaintiff only uploaded the attachments to the CMS later, namely on August 10, 2023, does not change these delivery times.

a. According to Rule 271 Constitutional Code, "the lawsuit" must be served on the defendant. According to Rule 270 No. 2 of the Constitution, for the purposes of Rules 270 to 275 of the Rules of Procedure, these are all pleadings in which the actions referred to in Article 32 paragraph 1 of the Convention are filed. According to Rule 13 No. 1 (m) VerfO, the statement of claim must contain the evidence presented, where available, as well as any other evidence offered. According to Rule 13 No. 2 VerfO, the plaintiff must attach to the lawsuit a copy of all documents referred to in the statement of claim.

b. This statement of claim meets these requirements.

By indicating the intention to submit attachments at a later date Evidence has not yet been "presented" in the statement of claim, insofar as it is embodied in appendices, within the meaning of Rule 13 No. 1 m VerfO. This announcement did not constitute a "reference" within the meaning of Rule 13 No. 2 VerfO. Rather, it merely shows the other party that one is in possession of these attachments and will present them at a later date. A statement of claim without these annexes is complete before this point in time even without these annexes being included. Therefore, only the statement of claim needs to be filed and served.

There are also legitimate reasons for such an approach. At the time the lawsuit is filed, the plaintiff does not know how, electronically or in paper form, with or without translation of the statement of claim and/or the appendices, the defendant will be served. It should also be taken into account that delivery by registered mail/return receipt, where legally permissible, is often only carried out by postal companies if a total weight of 1 kg is not exceeded. All of these reasons speak for the approach chosen here. The requirement to grant the defendant sufficient legal hearing, including with regard to attachments submitted later

if necessary, by fine-tuning the deadline regime. Since there is no question of a default decision in this case, it can also be left open in this case whether the defendant was able to understand the accusation of patent infringement made against it based on the statement of claim alone and to consider whether it would like to defend itself against it. The defendant is represented by a lawyer and defends himself.

c. This does not contradict the order of the Central Chamber - Munich Department of June 29, 2023 (APP 528654/2023; ORD 536514/2023; UPC CFI 1/2023; action for nullity ACT_459505/2023; Annex HE 2). Because the nullity plaintiff there, unlike the infringement plaintiff in the present proceedings, had decided to immediately attach referenced appendices to his statement of claim. Therefore, the statement of claim and its attachments had to be served on the defendant, but for purely technical reasons this was only possible at a later point in time within the CMS (see ORD_526798/2023 UPC_CFI_1/2023 from June 23, 2023). It is therefore logical in such a case to set the time of service on the defendant at the later date on which the defendant first received access to both the statement of claim and the referenced appendices.

d. The fact that the law firm objected to the lack of attachments in the present proceedings as part of the examination of the formal requirements under Rule 16 of the Constitution does not change this. Because the complaint was made - as the above statements show - wrongly.

3. Extensions and reductions in deadlines are possible according to Rule 9.3 VerfO after hearing the opposing side. In the present case, defendants 1 to 3 are seeking an extension of six days, so that a synchronization with the deadline applicable to defendant 4) can be achieved. To this extent, the plaintiff seeks to shorten the deadline for defendant 4).

The reasons presented do not generally justify an extension of the deadline. In particular, an alignment of the time limit regime as such is not a reason for an extension of the time limit that runs for the party in dispute who was successfully served at an earlier point in time. Rather, an alignment can also be achieved by shortening the period that runs for the party in dispute who was only served at a later point in time.

The delay in making the systems accessible does not justify an extension of the deadline in this case. Most of the appendices concern the challenged embodiment or parallel proceedings involving the defendant, i.e. the defendant already has them. The remaining appendices concern the patent in suit, with the exception of the feature structure. These are publicly available. The breakdown of characteristics is already reproduced in the statement of claim.

However, it should be noted (again) that working with the new procedural law and the case management system (CMS) poses significant challenges for everyone involved.

Therefore, in the early days, handling is required that takes the challenges that arise into account (cf. App_557291/2023 UPC_CFI_15/2023 from August 1st, 2023 and App_561742/2023 on UPC_CFI_15/2023 from August 23rd, 2023).

The Chamber therefore exercises the discretion granted to it by the Rules of Procedure to exceptionally comply with the defendants 1) to 3)'s request for an extension of the deadline and to reject the plaintiff's request for a shortening of the deadline, especially since there is only a time difference of six days.

4. The objection period therefore already expired on August 12, 2023 and August 17, 2023.

5. The deadline for filing a complaint will expire on October 17, 2023 for all four defendants.

6. An appeal against this order is permitted (Rule 220.2 VerfO). In particular, the question of how to deal with the announcement that attachments will only be submitted at a later date affects the handling of a large number of other procedures and should be clarified quickly.

DECISION AND ORDERS

1. The relevant delivery times for defendants 1) to 3) are July 11, 2023 and for Defendant 4) on July 17, 2023.
2. The deadline for defendants 1) to 3) to file a response is October 17, 2023 extended.
3. The defendant's applications are otherwise rejected.
4. The plaintiff's applications are otherwise rejected.
5. The appeal against this order is allowed for both parties.

INSTRUCTIONS TO THE PARTIES AND THE OFFICER

1. The objection period for defendants 1) to 3) ended on August 12, 2023.
2. The objection period for defendant 4) ended on August 17, 2023.
3. The deadline for defendants 1) to 4) to file a response is October 17, 2023.

INFORMATION ABOUT THE CALLING

Both parties were allowed to appeal against this order. The appeal must be filed within 15 days (Rule 220.2 VerfO). An appeal against an order under Rule 220.2 VerfO has no suspensive effect (Rule 223 No. 5 VerfO).

INFORMATION ON ARRANGEMENT

No. of order: Type of operation: ORD_566193/2023
Time of delivery, calculation of deadline, extension of deadline,
shortening of deadline
No. of the associated procedure: ACT_459916/2023
EPG case number: UPC_CFI_14/2023
Type of operation: Infringement lawsuit

Dr. Zigann
Chairman and rapporteur

Pichlmaier
legally qualified judge

Granata
legally qualified judge