



Action number:
APL_83/2024
UPC_CoA_2/2024
ORD_6625/2024

Procedural order
of the Court of Appeal of the Unified Patent Court issued on
15 February 2024
concerning the appeal fee

OPPONENTS AND APPELLANTS

1. **Meril GmbH**
Bornheimer Straße 135-137, 53119 Bonn, Germany

2. **Meril Life Sciences Pvt Ltd.**
M1-M2, Meril Park, Survey No 135/2/B & 174/2, Muktanand Marg, Chala, Vapi 396 191,
Gujarat, India

represented by lawyers Dr Andreas von Falck, Dr Roman Würtenberger and Beatrice Wilden
(Hogan Lovells International LLP)

APPLICANT AND APPELLANT

Edwards Lifesciences Corporation
1 Edwards Way, Irvine, 92614 California, USA

represented by lawyers Boris Kreye and Anika Boche (Bird&Bird)

PATENT OF DISPOSITION

EP 3 763 331

DECIDING JUDGE

Peter Blok, legally qualified judge and judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

German

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Court of First Instance of the Unified Patent Court, Munich Local Division dated 19 December 2023
- Action number of the Court of First Instance: UPC_CFI_249/2023
 ACT_550921/2023
 ORD_577734/2023

FACTS AND APPLICATIONS OF THE PARTIES

On 19 June 2023, the applicant and respondent (hereinafter: respondent) issued a warning to the applicants and appellants (hereinafter: appellants) for infringement of European patent 3 763 331 relating to a crimping device for crimping stent-based valve prostheses, in particular heart valve prostheses.

On 18 July 2023, the appellant applied to the Munich local division of the Unified Patent Court for the adoption of provisional measures.

In a document dated 25 September 2023, the appellants submitted a declaration to cease and desist. The appellee has revoked this declaration in a document dated 29 September 2023 accepted.

During a video conference on 2 October 2023, both parties agreed that the proceedings were now concluded in accordance with Rule 360 of the Rules of Procedure. The parties disagreed on the question of who should bear the costs.

By order dated 19 December 2023, the Court of First Instance, local division Munich:

1. determined that the application for provisional measures had become irrelevant as a result of the submission of the declaration of discontinuance and undertaking by the appellants on 25 September 2023 and that the proceedings were therefore terminated,
2. the proceedings concerning the application for the adoption of provisional measures,
3. ordered that the appellants bear the costs of the legal dispute as well as the other costs of the appellee up to a maximum of € 200,000.00,
4. otherwise dismissed the appellees' applications as currently premature and the appellants' applications as unfounded,
5. set the amount in dispute at € 1,500,000.00 and
6. the appeal was authorised.

In a document dated 2 January 2024, the appellants filed an appeal against the order of the court of first instance. In the notice of appeal, they request

- I. annul the order in respect of the order relating to point 3 and order the appellant to pay the costs of the proceedings before the Court of First Instance, including the costs incurred by and in connection with the filing of protective letters relating to European patent 3 763 331, on the understanding that the recoverable costs of representation are limited to an amount of 200,000.00,

- II. to immediately order the suspensive effect of the appeal against the aforementioned order with regard to the order under no. 3,
- III. order the defendant to pay the costs of the appeal proceedings.

When filing the notice of appeal, the appellants paid the fee for an appeal pursuant to Rule 220.2 VerFO in the amount of € 1,500.

In addition, on 2 January 2024, the appellants again filed an application to give their appeal against the order of the court of first instance suspensive effect (APL_100/2024, UPC_CoA_4/2024). By order dated 18 January 2024, the Court of Appeal rejected this application. In doing so, the Court of Appeal found that, in accordance with Rule 360 of the Rules of Procedure, the Court of First Instance's order on point 3, against which the appellants had filed an appeal, was to be regarded as a final decision within the meaning of Rule 220.1(a) of the Rules of Procedure.

By email message dated 23 January 2024, the appellants' representative asked the court to clarify whether the appellants were liable to pay a higher appeal fee than they had paid and to issue the necessary instructions. The appellants are of the opinion that no higher fee is owed.

In his reply of 29 January 2024, the appellees' representative took the view that the appellants were liable to pay the court fee for an appeal under Rule 220.1(a) of the Rules of Procedure.

JUSTIFICATION OF THE ORDER

1. A fee of € 11,000 is payable for the present appeal proceedings.
2. As the Court of Appeal stated in its order of 18 January 2024, the Court of First Instance's order on point 3, against which the appellants have appealed, is to be regarded as a final decision within the meaning of Rule 220.1(a) of the Rules of Procedure pursuant to Rule 360 of the Rules of Procedure.
3. The Table of Fees does not provide for a specific fee for an appeal under Rule 220.1(a) of the Rules of Procedure against an order determining which party is to bear the costs of the proceedings in the context of the dismissal of an application for provisional measures under Rule 360 of the Rules of Procedure. In the absence of a specific fee, the fee is to be paid for the case that is most comparable to the present case according to the system of the table of fees. The Table of Fees determines the fee for an appeal under Rule 220.1(a) RP based on the type of action or application decided by the Court of First Instance. Under this system, the provision providing for a fee of €11,000 for an appeal under Rule 220.1(c) RP concerning an application for provisional measures under Article 62 UPCA applies mutatis mutandis to the present appeal. This is because these appeal proceedings also concern an appeal against an order terminating proceedings relating to an application for provisional measures under Article 62 UPCA.
4. The fact that the appeal is directed only against the order that the appellants should bear the costs of the proceedings does not lead to any other conclusion.

Judgement. In their grounds of appeal, the appellants state that the Court of Appeal must examine whether the application for provisional measures was well-founded when deciding on costs. The Court of Appeal will assess in its final decision whether such an examination of the merits of the application is necessary in the present case. However, the appellants' submissions imply that the merits of the application may be part of the proceedings before the Court of Appeal. Therefore, it is also appropriate that the appellants have to pay a fee corresponding to the fee for an appeal under Rule 220.1(c) RP concerning an application for provisional measures under Article 62 UPCA.

5. As the appellants have already paid an amount of € 1,500 in court fees, the Court of Appeal will order them to pay the remaining amount of € 9,500.

ORDER

The appellants are ordered to pay €9,500 in fees within 14 calendar days.

This order was issued on 15 February 2024.

**Peter
Hendrik
Blok**  Digitally signed
by Peter Hendrik
Blok
Date: 2024.02.15
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Peter Blok, legally qualified judge and judge-rapporteur