



Milan - Central Division - First
Instance - central division

UPC_CFI_380/2024
Final Order
of the Court of First Instance of the Unified Patent Court
delivered on 04/09/2024

Date of receipt of Written Procedure : Not provided

APPLICANT/S

- 1) **EOFLOW Co., Ltd.** Represented by Ronald
(Applicant) - 302Ho, HUMAX VILLAGE, 216 - Mirko Weinert
13595 - Hwangsaeul-ro, Bundang-gu,
Seongnam-si, Gyeonggi-do - KR

RESPONDENT/S

- 2) **Insulet Corporation** Represented by Dr. Marc Grunwald
(Main proceeding party - Applicant) - 100
Nagog Park - MA 01720 - Acton - US

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP4201327	Insulet Corporation

No SPC details provided

DECIDING JUDGE

COMPOSITION OF PANEL – FULL PANEL

Presiding judge	Andrea Postiglione
Judge-rapporteur	Andrea Postiglione
Legally qualified judge	Anna-Lena Klein
Technically qualified judge	Uwe Schwengelbeck

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS

Request of Connection Joinder pursuant to Art. 340 RoP

SUMMARY OF FACTS

1. On 26 August 2024, EOFLOW INC filed a request for joinder, on the ground of objective connection and identity of patent, with case no. UPC_CFI 400/24 pending before the UPC Local Division in Milan.
2. On 28 August 2024, this Court issued an order postponing the hearing already set in this proceeding as to September 6th 2024 to October 16th 2024 and making the postponement subject to a more thorough evaluation of EOFLOW's request for joint discussion, on which INSULET was asked to express his opinion pursuant to the adversarial principle expressed in Article 340.1 RoP.
3. INSULET lodged his opinion on 30 August 2024 opposing to the requested connection joinder (point 11. of the defence), emphasising that the connection could only take place if the proceedings were pending in front of the same court (point 12. of the defence), denouncing the violation of the principle of the statutory judge and the infringement of his rights of defence, since MENARINI, defendant in the parallel case, could possibly take advantage of different time limits to introduce its own defence, throughout EOFLOW, also in this case.
4. EOFLOW comment was lodged on September 2nd. The company maintained the request for joinder.
5. INSULET replied on 3 September insisting on the violation of the principle of the statutory judge.
6. EOFLOW also commented on the infringement of the principle of the statutory judge.

POINTS AT ISSUE

Request of Joinder pursuant to Art. 340 RoP / Adjournment of the hearing of September 6th (Art. 9 RoP)

GROUND FOR THE ORDER

1. Parties have been heard on the request of connection joinder, therefore the requirements of art. 340 RoP have been met.
2. The judge rapporteur also consulted with the presiding judge of Milan Local Division.
3. At the outcome the judge rapporteur, in his function as presiding judge of Milan central Division, considers that the parallel handling of the two cases in the timeline already represented in the order of 28 August is sufficient to prevent the issuance of contradictory decisions on the same patent.
4. The question of the statutory judge must therefore be considered no longer relevant. It should be noted, however, that if the rule 340 provides for the possibility of connection joinder between two proceedings, also if they are pending in front of different courts (see 340.1 (a) RoP), the principle of the statutory judge might well be set aside - under some conditions - by the principles of procedural efficiency and celerity, which are of equal importance.
5. Indeed, the proceedings before the UPC are inspired (see preamble of RoP) not only by the principles of equity but also by the principles of flexibility and celerity (see paragraph 7 of the preamble). Art. 340 RoP reminds also of the proper administration of the justice system, to which also belongs a thorough assessment of all interests at stake, whether of the parties or of the consistency of Divisions' decisions.
6. The question of the possible advantage that MENARINI may derive from proposing concealed defences in the context of these proceedings, question raised by Insulet which seems to be unrelated to the subject matter of the parties' requested comments though, is purely speculative. Without mentioning the fact that in such a misuse of his/her powers, the lawyer could incur relevant conduct under Articles 284, 290 and 291 RoP.
7. On the other hand, the pendency of two similar proceedings before two divisions of the same UPC on the very same patent responds to a precise choice made by the plaintiff INSULET, who knew very well in advance that this would unquestionably lead to two different lines of defence and who has moreover argued extensively against the hypothesis of a unitary treatment, which would certainly have prevented the risk that he now alleges.
8. Lastly, pursuant to Rule 113 the presiding judge is entitled set time limits for parties' oral submissions in advance of the oral hearing. The presiding judge considers that, also in view of the hearing which took place the previous day, the discussion on October 16 in front of Milan CD could be held over approximately 6 hours (two hours for each side for explanatory statements and one hour each for replies).

ORDER

1. EOFLOW's request for connection joinder is rejected.
2. The timeline set in his Order of August 28th is confirmed:
3. The Court awards to EOFLOW a term to file an objection to application on the PI (statute of defence) by 16 September 2024.
4. INSULET is invited to lodge a reply by 26 September 2024.
5. EOFLOW is invited to deposit a rejoinder to reply by 7 October 2024.
6. An oral hearing is set on 16 October 2024, at 09.00 am. to be held at the premises of Milan CD Via San Barnaba 50 Milan (second floor) Courtroom A;
7. The discussion of such a hearing can reasonably be held over 6 hours (two hours for each party for explanatory statements and one hour each for replies).

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY

Parties will inform the sub-registrar of Milan Central Division at contact_milan.cti@unifiedpatentcourt.org by 30 September 2024 of the names and qualifications of each person attending the hearing referred to in this ORDER. The oral hearing and any separate hearing of witnesses shall be open to the public unless the Court decides to make a hearing, to the extent necessary, confidential in the interests of one or both parties or third parties or in the general interests of justice or public order. The hearing shall be audio recorded. The recording shall be made available to the parties or their representatives at the premises of the Court after the hearing (art. 115 Rop).

Milan 4 September 2024

The judge Rapporteur
Andrea Postiglione

ORDER DETAILS

Order no. ORD_48857/2024 and ORD_48857/2024 in ACTION NUMBER: Not provided

UPC number: UPC_CFI_380/2024

Action type: Request for Rejoinder

Related proceeding no. Application No.: 39640/2024

Application Type: Application for provisional measures (RoP206)