Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC_CoA_769/2024
APL_64383/2024
App_68623/2024

# ORDER

**of the Court of Appeal of the Unified Patent Court**
**issued on 9 January**
**on automatic extension of time period (R.301.2 RoP)**

HEADNOTES:

R.301.2 RoP grants an automatic extension of the time period until the end of the first working day following the day on which it is once again possible for the court to receive documents.

KEYWORDS:
R.301 RoP, automatic time extension

APPELLANT (AND APPLICANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**Insulet Corporation**, Acton, United States of America
(hereinafter Insulet)

represented by attorneys-at-law Dr. Marc Grunwald and Dr. Frank Peterreins
(Peterreins Schley, Munich, Germany)

RESPONDENT (AND RESPONDENT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**A. Menarini Diagnostics s.r.l**, Florence, Italy
(hereinafter Menarini)

represented by attorneys-at-law Dr. Christopher Maierhöfer and Dr. Jonathan Hechler
(Bird & Bird, Munich, Germany)

LANGUAGE OF THE PROCEEDINGS
English

PATENT AT ISSUE

EP 4 201 327

PANEL AND DECIDING JUDGE

PANEL 2,

Patricia Rombach, legally qualified judge and judge-rapporteur

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

□ 22 November 2024, ORD_56587/2024, ACT_40442/2024, UPC_CFI_400/2024

SUMMARY OF FACTS

1. On 8 July 2024 Insulet filed an application for provisional measures before the Local Division Milan against Menarini.

2. By order issued on 22 November 2024 (ORD_56587/2024) the Milan Local Division rejected the application for a preliminary injunction against Menarini as well as the ancillary requests.

3. Insulet appealed the order of 22 November 2024. The Statement of appeal and grounds of appeal were lodged on 4 December 2024. On 11 December 2024 the Statement of appeal and grounds of appeal was served.

4. On 23 December 2024 Menarini´s representative informed the Court´s support team, that "when attempting to file the statement of response in case no APL_64383/2024 (UPC_CoA 769/2024), the system does not allow to continue after point "assessment of court fees". With the deadline for the response being 27 December 2024, we would require immediate assistance in order to file the statement of response timely" (Annex 1).

5. With email of 27 December 2024 Menarini´s representative informed the Registry that "IT support has still not provided us with a solution for this issue by now, and we therefore decided to lodge the statement of response in a Rule 9 workflow as a workaround. However, since it turns out that we do not have access to the appeal proceedings in the CMS at all anymore, we have now lodged the Statement of response and the corresponding confidentiality requests by way of a Rule 9 application related to the first instance proceedings (pending before the Milan Local Division) under workflow ID 68375/2024. In addition, we also send the Statement of response (redacted and unredacted version), the confidentiality request as well as Exhibits BB 51-56 along with English translations thereof (see attached zip folder) with this email."

6. On 30 December 2024 the Court´s Case Management Support informed the Menarini´s representative that the issue was resolved (Annex 1 to the request). The Statement of response was lodged in the appeal workflow on 30 December 2024.

PARTIES' REQUESTS

7. Menarini requests that the Court extend the deadline for filing the Statement of response until 30 December 2024.

PARTIES' SUBMISSIONS

8. Menarini´s submissions can be summarised as follows:

- Given the circumstances, Menarini believes that it has done everything in its power to make the Statement of response availaible to the Court and Respondent. Nevertheless, as a measure of utmost caution, Menarini files this Application to extend the deadline for lodging the Statement of response.
- The circumstances described in detail above made it simply impossible for the Applicant to lodge the Statement of response within the deadline of R.235.2 RoP in the correct workflow of the Case Management System. Since access to the appeal workflow was restricted for technical reasons, it was also not possible to file an application for extending the deadline at an earlier time in the correct workflow.
- Furthermore, the Statement of response was already made available to the Court and Insulet via the Case Management System and via email. Therefore, re-filing the Statement of response now in the correct workflow is a mere formality.
- All this justifies extending the deadline for lodging the Statement of response by one business day.

REASONS

9. There is no need to extend the time limit pursuant to R.9 RoP. The request of Menarini is superfluous and therefore is no need for an order.

10. It is not necessary to decide whether the filing of the Statement of response by email or in a Rule 9 application related to the first instance proceedings (pending before the Milan Local Division) on 27 December and therefore within the deadline pursuant to R.235.2 RoP was sufficient.

11. If the filing by email or in a Rule 9 application related to the first instance proceedings was not sufficient, it was still possible to upload the Statement of response in the appeal workflow, because the deadline pursuant to R. 235.2 RoP would not yet have expired. According to R.301.1 RoP, if a time period expires on a day specified in R.301.1 RoP, the time period shall be extended until the end of the first following working day. Pursuant to R.301.2 RoP this shall apply *mutatis mutandis* if documents filed in electronic form cannot be received by the Court. As can be seen in particular from the title of R.301 RoP, the deadline extension is automatic without any order by the Court.

12. Where it is necessary to upload the Statement of response in the appeal workflow there is such automatic extension. Since the Court of Appeal could not receive the Statement of response via CMS there was an automatic extension of the deadline until the end of the day following the day on which the upload was

possible. The upload was possible on 30 December 2024. Therefore the time period was extended until the next following working day.

ORDER

The request to extend the deadline for filing the Statement of response until 30 December 2024 is dismissed.

Issued on 9 January 2025

Patricia Ursula Rombach

Digitally signed by Patricia Ursula Rombach
Date: 2025.01.09 15:47:51 +01'00'

Patricia Rombach, legally qualified judge and judge-rapporteur