

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 19 December 2025
concerning the need to adjudicate pursuant to R. 360 RoP

APPELLANT (AND DEFENDANT BEFORE THE COURT OF FIRST INSTANCE)

Viatis Santé, Lyon, France
(hereinafter 'Viatis')

represented by attorney at law Marc Lauzeral and other representatives from the law firm Schertenleib, Paris, France

RESPONDENTS (AND APPLICANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Merz Pharmaceuticals LLC**, Raleigh, United States of America
2. **Merz Therapeutics GmbH**, Frankfurt am Main, Germany
3. **Merz Pharma France**, Courbevoie, France

(hereinafter jointly 'Merz')

represented by attorney at law Laëticia Bénard and other representatives from the law firm Allen & Overy Shearman Sterling LLP, Paris, France as well as representatives from the law firm Carpmaels & Ransford LLP, London, United Kingdom

PATENT AT ISSUE

EP 2 377 536 (French Supplementary Protection Certificate No. 13C0033)

PANEL AND DECIDING JUDGES

Panel 2

Rian Kalden, legally qualified judge and presiding judge
Patricia Rombach, legally qualified judge and judge-rapporteur
Ingeborg Simonsson, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Order of 29 October 2025 issued by the Paris Local Division, UPC_CFI_697/2025

LANGUAGE OF THE PROCEEDINGS

English

FACTS

1. Merz filed an application for provisional measures with the Paris Local Division seeking injunctive relief against Viatris for the alleged infringement of French Supplementary Protection Certificate No. 13C0033 relating to the patent at issue.
2. Merz filed a procedural application, essentially asking the Court to declare specified exhibits inadmissible and to disregard any arguments or legal grounds based on these materials introduced by Viatris in its Rejoinder.
3. In a procedural order issued on 7 October 2025 (rectified by an order under R. 353 RoP of the same day), the judge-rapporteur ordered that certain exhibits from Viatris' rejoinder be disregarded as they were filed late, and rejected Merz's further requests.
4. With the impugned order of 29 October 2025, after panel review pursuant to R. 333 RoP requested by Viatris, the panel confirmed the order of the judge-rapporteur.
5. Viatris appealed this order (hereafter impugned order) with Statement of appeal and grounds of appeal lodged on 13 November 2025.
6. By order issued on 21 November 2025 the Paris Local Division rejected the application for preliminary measures against Viatris (hereinafter final order). It ordered that Merz is required to pay interim costs of the proceedings. Merz appealed this final order (UPC_CoA_917/2025).
7. On 1 December 2025, the parties were informed by the judge-rapporteur that it has to be considered whether the appeal has become devoid of purpose and that there is no longer any need to adjudicate on this. The parties were invited to comment. Viatris commented while Merz did not comment.

PARTIES' REQUESTS

8. Without prejudice to Viatris' right to file the exhibits in the appeal proceedings lodged by Merz (see para. 6 above) if need be, Viatris does not oppose the dismissal of the appeal UPC_CoA_906/2025 by way of order pursuant to R. 360 RoP.

REASONS

9. According to R. 360 RoP the Court may at any time, on the application of a party or its own motion, after giving the parties an opportunity to be heard, dispose of the action by way of order if the Court

finds that an action has become devoid of purpose and that there is no longer any need to adjudicate on it.

10. R. 360 RoP applies not only when the action itself has become devoid of purpose, but also when the appeal has become devoid of purpose. If the appellant has no legal interest in bringing appeal proceedings anymore, there is no reason to adjudicate on it. This means the appeal has become devoid of purpose in the meaning of R. 360 RoP (Court of Appeal, 9 January 2025, UPC_CoA_584/2024, APL_54646/2024, *EOFlow v Insulet*, para. 19). To have a legal interest in bringing appeal proceedings the appeal must be likely, if successful, to procure an advantage for that party (*EOFlow v Insulet*, para. 21). This also applies to a procedural appeal.
11. Since the Paris Local Division issued the final order rejecting Merz's applications for provisional measures in favour of Viatris, it has not detrimentally affected Viatris that the Paris Local Division disregarded the specified exhibits and submissions. The procedural appeal pursuant to R. 220.2 RoP is therefore devoid of purpose. In the appeal proceedings Merz initiated against the final order, Viatris may request that the specified exhibits and submissions be admitted. When exercising its discretion under R. 222.2 RoP the Court of Appeal is not bound by a preclusion of exhibits or submissions by the CFI. Even if an exhibit or submission was rightly not admitted by the CFI, the Court of Appeal decides at its discretion, considering all circumstances, whether this is to be taken into account in the appeal proceedings (see Court of Appeal, 25 September 2024, UPC_CoA_182/2024, *Mammut vs Ortovox*, para. 115.) An exhibit or submission that was wrongfully rejected shall be taken into account, without there being need for a separate appeal against the rejection by the CFI.

Cost decision

12. No decision on the reimbursement of legal costs will be made in this order since this order is not a final order or decision concluding an action (see Court of Appeal, order 16 September 2024, *ICPillar v SVF Holdco*, ORD_50692/2024, APL_33746/2024, UPC_CoA_301/2024, para. 41; *EOFlow v Insulet* para. 27).

ORDER

The Court of Appeal disposes of the appeal UPC_CoA_906/2025.

Issued on 19 December 2025

Rian Kalden, legally qualified judge and presiding judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge