Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

The Hague - Local Division
UPC_CFI_616/2025
UPC_CFI_1439/2025

R.105.5 Order
of the Court of First Instance of the Unified Patent Court
delivered on 12/06/2026

CLAIMANT/S

1) **GlaxoSmithKline Biologicals SA**
(Claimant) - Rue de l'Institut 89 - 1330 - Rixensart - BE

Represented by Tjibbe Douma, Carlos van Staveren, Nicole Jadeja and Emilia Zalewska of Bird & Bird LLP

DEFENDANT/S

1) **Moderna Netherlands B.V.**
(Defendant) - Claude Debussylaan 7 - 1082 MC - Amsterdam - NL

2) **Moderna Biotech Spain, S.L.**
(Defendant) - C/Julián Camarillo 31 - 28037 - Madrid - ES

3) **Moderna Biotech UK Limited**
(Defendant) - 54 Portland Place - W1B 1DY - London - GB

4) **Moderna Biotech Distributor UK Ltd**
(Defendant) - MYO, 123 Victoria Street - SW1E 6DE - London - GB

5) **Moderna Switzerland GmbH**
(Defendant) - Peter Merian-Weg 10 - 4052 - Basel - CH

6) **Moderna Poland SP. Z.O.O.**
(Defendant) - Rondo Ignacego Daszynskiego 1 - 00-843 - Warsaw - PL

7) **Moderna, Inc.**
(Defendant) - 325 Binney Street - MA 02142 - Cambridge - US

8) **ModernaTX, Inc.**
(Defendant) - 325 Binney Street - MA 02142 - Cambridge - US

9) **Moderna Belgium S.R.L.**
(Defendant) - Avenue Marnix 23 - 1000 - Brussels - BE

10) **Moderna France SASU**
(Defendant) - 19 Rue Cognacq-Jay - 75007 - Paris - FR

11) **Moderna Germany GmbH**
(Defendant) - Brienner Strasse 45 a-d c/o Design Offices, Campus Köningsplatz - 80333 - Munich - DE

12) **Moderna Italy S.R.L.**
(Defendant) - Via Vittorio Veneto 54/B - CAP 00187 - Rome - IT

13) **Moderna Portugal Unipessoal LDA**
(Defendant) - Rua Joâo Chagas, 10-B Direito - 1500-493 - Lisbon - PT

14) **Moderna Sweden AB**
(Defendant) - c/o Scandinavian Trust AB, Birder Jarlsgatan 12 - 114 34 - Stockholm - SE

15) **Moderna Norway A/S**
(Defendant) - C/o CSC (Norway) AS, Wergelandsveien 7 - 0167 - Oslo – NO

Defendants 1-15 are represented by Gertjan Kuipers, Andreas von Falck, Lukas Sievers, Floris Patijn and others.

PATENT AT ISSUE

Patent no.	*Proprietor/s*
EP2590626 B1	GlaxoSmithKline Biologicals SA

The panel/deciding judge

The composition of the panel is as follows:

Edger Brinkman	presiding judge
Stefan Schilling	legally qualified judge
Martin Schmidt	technically qualified judge
Margot Kokke	judge-rapporteur

This order is issued by the judge-rapporteur ("JR").

LANGUAGE OF PROCEEDINGS: English

SUBJECT MATTER OF THE PROCEEDINGS: Infringement action and counterclaim for revocation

GROUNDS

1. Pursuant to Rule 105.5 of the Rules of Procedure (RoP), following the interim conference (IC), the JR shall issue an order setting out the decisions taken. In the present cases, the JR ordered an online IC, which IC was held via Webex at 10 a.m. The Hague time on 11 June 2026 and was audio-recorded (Rule 106 RoP). Due to a technical lapse, it appeared after the hearing, that the recording had not taken place. Some of the discussions from the two-hour IC are therefore included in somewhat more detail in the grounds of this order than is customary.

2. At the IC, beside the JR, the TQJ and LQJ Schilling, the following persons attended:

   On behalf of claimant GSK [redacted] and [redacted] as well as the following representatives: Tjibbe Douma, Carlos van Staveren, Nicole Jadeja, Emilia Zalewska, Will Smith, Charlie Davies and Josh Price;

   On behalf of defendants: [redacted] and the representatives: Gertjan Kuipers, Felipe Zilly, Lukas Sievers, Floris Patijn, Andreas von Falck, Camilla Balleny, Thomas Wolter, Tanis Keirstead and Edward Couchman.

3. During the IC the case was discussed based on topics suggested beforehand by the Court and by the parties. The JR expressed her objective to streamline, prepare and focus the proceedings for the oral hearing ("OH"). Thereby all topics suggested by the parties were addressed. The relevant decisions taken at the IC are listed in the operative part of this order.

4. Materially/in substance, the case was streamlined as follows. The JR provided some guidance/preliminary views (also of the TQJ) on the perceived crucial issues regarding claim construction, infringement and validity. Regarding alleged infringement of feature 1.3. it was indicated that the Court provisionally tends to see no literal infringement, so infringement by equivalence is likely to be a relevant topic. Parties are invited to indicate whether and, if so, to what extent the file wrapper can be relevant here. Focussing also included limiting the validity attacks and auxiliary requests (ARs) to a number that can reasonably be dealt with in these proceedings. The JR indicated that the added matter-attack and the Insufficiency-attack against claims 1 to 12, provisionally do not seem very convincing. Compliance with R. 30.1 (b) RoP was expressed to seem doubtful for a considerable number of ARs (in particular AR3, AR4, AR21, AR22, AR26, AR29, AR30), as their novelty and non-obviousness are substantiated only in reference to claim 1, the validity of which they are meant to overcome. The relevant decisions are set out in sections E, F and G of the operative part of this order.
   The JR also stated that limiting the attacks and ARs to the (perceived) most promising and/or relevant ones does not necessarily prevent the remaining attacks and ARs on file from being used in an appeal.

5. It was also discussed whether the counterclaim for revocation (CC) could be considered conditional on the establishment of infringement. This would mean that, if the infringement action were not successful, the condition upon which the CC was (considered to be) filed, would not be fulfilled (cf. i.a. LD Mannheim decision of 5 December 2025, UPC_CFI_414/2024, Centripedal v Keysight, LD Munich panel 1 decision of 13 January 2026, UPC_CFI_628/2024, Emboline v AorticLab and LD Munich panel 2 decision of 11 March 2026, UPC_CFI_180/2025, BFexaQC v Nvidia). The parties will consider this and inform the court as soon as a decision

has been reached. They expressed concerns regarding the consequences for the legal costs of the CC such conditionality in view of diverging decisions with respect thereto. The JR pointed out that this can in any case be resolved by the parties in a cost agreement. The JR also expressed the preliminary opinion (but this is to be decided by the panel decision) that such conditionality should not imply that costs related to the CC cannot be considered.

6. Procedurally, the case was prepared for the oral hearing by deciding on mutual objections of the parties as much as possible, and by addressing and mostly deciding outstanding applications, after having (further) heard the parties. The orders taken concerning the procedural focusing of the case, are reflected in parts H-M of the operative part.

7. Regarding GSK's requested hearing /cross-examination of experts, the JR stated that the R.176 order of 7 May 2026 reflects the panel's opinion. GSK expressed concern that with this R.176 order, also its alternative requests were dismissed. This led to the filing of the R.333 application and the New R.176 application conditionally, which are intended to reserve any procedural rights. It was clarified that the order means that the experts are expected to attend the oral hearing in person or online, or in any case be available during the day, to answer questions from the Court if necessary (R.112.2 (b)). Experts will not be officially summoned to the oral hearing, but the Court can draw conclusions if they are unable to answer questions. Experts will be questioned if the Court deems this to be necessary. Also in the absence of an official summons, the Court considers R. 181.2(a) and (b), cited below, to apply to the party experts:

   181.2 (a): an expert has a duty to assist the court impartially on matters relevant to his area of expertise which overrides any duty to the party retaining him; (b) an expert is to be independent and objective, and shall not act as an advocate for any party to the proceedings.

8. GSK requested to permit attendance of stenographers at the oral hearing in order to provide a verbatim transcript thereof. The JR gave some preliminary thoughts on the admissibility thereof, but GSK was advised to file an official request for the panel to be able to decide on this.

ORDER

Regarding the interim conference

A. The value of the infringement action/proceedings of is set at **EUR 50,000,001.00.**
B. The value of the counterclaim-action/proceedings is set at **EUR 50,000,001.00.**
C. The following further submissions shall be made:
   - (updated) comprehensive overviews of exhibits (leaving out those that were not permitted, as indicated above) (both parties).
   - Insofar as the submissions and exhibits submitted via Tresorit are not OCRed, new OCRed version shall be provided (via Tresorit) (both parties)
   - The latest version of the relief sought by GSK in view of the interim amendment (claimant only).
D. The further submissions at C. must be made within one week from today.
E. Also within one week from today, that is on 18 June 2026 at the latest, Moderna shall clarify on which most promising validity attacks it intends to rely at the oral proceedings to focus

the case, specifying the parts of its submissions relevant thereto. During the IC a maximum of five attacks was mentioned as (just) manageable.

F. At the latest one week after Moderna submits the aforementioned at E, GSK shall submit a list of auxiliary requests ("ARs") on which it intends to rely, specifying the parts of its submissions relevant thereto. Five-ten is suggested as a reasonable number. For each AR GSK shall indicate to which specific validity attack the AR is a response.

G. At the latest one week after GSK submitted the list mentioned at F. above, Moderna shall inform the court on which additional validity attacks, if any, it intends to rely against the ARs, specifying the parts of its submissions relevant thereto. One per AR is suggested as reasonable, where Moderna is urged to rely on the same prior art as for (claim 1 of) the patent as granted where possible.

H. GSK's objection to Moderna's exhibits HL77, (Petsch 2012), HL78 (Brito 2014), HL82 (Zimmer 2010) and HL83 (Chikh 2002) (D3 para 2.10, and reservation regarding HL73 (Sebastiani declaration) and HL74 (2nd declaration Merkel), are rejected.

I. Moderna's objection to allegedly late filed new submissions in GSK's Rejoinder to the CC/reply to the application to amend of 13 April 2026, are partly granted, namely, insofar as they concern infringement only. Other objections are rejected. This results in the following:
   - **Exhibits BB140A-E, concerning** Cryo-TEM data with stained mRNA of the accused products, are not permitted into the proceedings;
   - the particle-by-particle analysis of the accused products against feature 1.2 in the Forrest 2nd Declaration (**BB137A**) shall be deleted; GSK will submit a revised or redacted version (within one week from today);
   - exhibits and submissions regarding mCOMBRIAX as an additional accused product, are not permitted into the proceedings.

   GSK shall indicate within two weeks from today the parts of the 13 April 2026 submission where the rejected exhibits and topics are discussed. These parts shall not be considered by the Court.

J. GSK's R.9 application dated 22 May 2026 is withdrawn.

K. GSK will inform the court within one week of today whether its R.333 application of 22 May 2026 and its New R.176 application dated 29 May 2026, both concerning the cross-examination of experts, can be considered as withdrawn.

L. Moderna's submission filed as a R.36/ R.9 application dated 2 June 2026 is not permitted into the proceedings; the same applies to the accompanying exhibit HL90.

M. GSK's R.9 application of 8 June 2026 is dismissed.

N. The court confirmed that the oral hearing will be conducted on one day, on **1 September 2026.**

O. At the oral hearing the maximum pleading time for each side is **120 minutes**, with an additional **30 minute** rebuttal each side. All issues are to be pleaded together, however, with GSK starting on all issues apart from validity (and ARs). The suggested schedule is as follows:

- GSK all issues apart from validity: 60’
- Moderna all issues (including response to GSK’ pleadings) : 120’
- GSK validity (including response to Moderna’s pleadings) and rebuttal other issues : 60’+ 15’ = 75’
- Moderna rebuttal : 30’
- GSK rebuttal validity: 15’

Parties are free to vary the time spent on topics, provided the total pleading times set above are respected. Extra time will be added for interruptions by the Court.

P. A PowerPoint presentation is permitted at the oral hearing under the condition that these do not include any new information. Such presentations must be exchanged and sent to the Court at the latest twenty four hours before the start of the oral hearing. Dutch style pleading notes are also permitted under the conditions discussed (inter alia as a ‘transcript’-aid to the court only, no legal status).

Q. Unless parties reach an agreement on the costs (which they are urged to do; the maximum reimbursable amount based on the case values is EUR 2,000,000), parties are ordered to submit a **specified overview of the costs** that they will seek to recover to the court and to the other party two days before the start of the oral hearing.

Margot Elsa Kokke

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