Order
of the Court of First Instance of the Unified Patent Court
issued on 01/07/2026
regarding: R.190 RoP and R.9.3

Claimant/Applicant

1) CureVac Manufacturing GmbH
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72076 Tübingen
Germany
"**CureVac**"

Represented by Judith Krens

Defendants

1) Moderna Inc.
325 Binney Street
MA 02142 Cambridge
United States of America

Represented by Rutger Kleemans

2) Moderna Netherlands B.V.
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The Netherlands

Represented by Rutger Kleemans

3) Moderna Switzerland GmbH
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Switzerland

Represented by Rutger Kleemans

4) Moderna Biotech Spain SL
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Spain
Represented by Rutger Kleemans

5) ModernaTX, Inc.
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United States of America
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6) Moderna Poland Sp. Z o.o.
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10) Moderna Italy S.r.l.
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Represented by Rutger Kleemans

11) Moderna Norway AS — Represented by Rutger Kleemans
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Norway

12) Moderna Sweden AB — Represented by Rutger Kleemans
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Sweden

13) Moderna Portugal Unipessoal LDA — Represented by Rutger Kleemans
Rua João Chagas N, 10B Direito
1500-493 Lisbon
Portugal

Defendants 1-13 are collectively referred to as "**Moderna**".

PATENT AT ISSUE

Patent no.	*Proprietor/s*
EP4108769	CureVac Manufacturing GmbH

DECIDING JUDGE

FULL PANEL

Presiding judge	**Edger Brinkman**
Judge-rapporteur	**Margot Kokke**
Legally qualified judge	**Francois Thomas**

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

LANGUAGE OF PROCEEDINGS: English

Subject-matter of the proceedings: Infringement proceedings (case 1407/2026) and R.190 Application (case 1408/2026)

FACTS AND PROCUDERE

1. CureVac is the registered proprietor of EP4108769 ("the patent") which relates to methods of producing and purifying ribonucleic acid ("RNA"), in particular using tangential flow filtration ("TFF"). It asserts that Moderna infringes the patent.

2. On 24 April 2026, CureVac initiated infringement proceedings against Moderna, pending as case UPC_CFI_1407/2026.

3. On the same day it filed an application pursuant to R.190 RoP, registered as case UPC_CFI_1408/2026 (the "R.190 Application").

4. On 13 May 2026 Moderna filed a "joint application" to align the deadlines for the service on all defendants and subsequent submissions (the "R.9.3 Application"). As it was not apparent from the application or any exhibit that CureVac agreed (it was not co-signed by CureVac), confirmation was requested. CureVac confirmed its agreement on 20 May 2026. The JR communicated that the application would be granted and confirmed by order at a later point in time.

REQUEST AND SUBMISSIONS

R.190 Application

5. With the R.190 Application, CureVac requests, in accordance with Article 59 UPCA and Rule 190 RoP, in association with Article 53 UPCA, that

> *the Respondents be ordered to provide CureVac the parts of the CTDs and technical data sheets as specified in paragraph 37 of this application with sufficient evidence to conclusively show: (1) whether or not the manufacture of the Infringing Products (and each of them) comprises using a TFF membrane cassette comprising a cellulose based membrane; (2) wherein the membrane is a cellulose derivative membrane; (3) wherein the membrane has a molecular weight cutoff of ≤ 500 kDa; (4) wherein the TFF step comprises diafiltration with an aqueous salt solution;(5) wherein the RNA has a size of 500 to 5000 nucleotides or base pairs; (6) wherein the RNA membrane load of the TFF membrane is about 1 to about 10 mg/cm 2; (7), wherein the in vitro transcription mix subjected to the TFF step comprises spermidine; and (8) wherein the in vitro transcription is performed in the presence of a cap analog. For the avoidance of doubt, the Respondents are ordered to provide the evidence relevant to each integer of the claims as specified irrespective of any position they intend to take regarding lack of infringement of EP 769.*
> *the evidence sought is provided in electronic format within two weeks of service of the Order (together with – if need be – a R. 262A and/or R. 262.2 RoP request).*
> *In accordance with Rule 190(7) RoP, if the Respondents fails to comply with this order, the Court take such failure into account when deciding on the issue in question.*
> *Pursuant to Article 74 UPCA, the Court render its decision with regard to the measures requested above enforceable notwithstanding an appeal that may be filed by the Respondents.*

6. In paragraph 38 (and not 37 referenced in the request), the evidence is specified as follows:

> "By way of exemplifying the evidence requested, but without limitation to the requests made above, the table below provides further information about the technical information falling within the request:

Claim	Technical information falling within the request
Feature 1d	Configuration information for the TFF units used in each of the TFF steps applied in the manufacture of Spikevax, mRESVIA, mNEXSPIKE and mCOMBRIAX. In particular, the types of TFF module used and the technical specification of the membrane.
2	Technical specifications of the membranes used in the TFF units used in each of the TFF steps applied in the manufacture of Spikevax, mRESVIA, mNEXSPIKE and mCOMBRIAX. In particular, the technical specification of the membrane material.
3	Technical specifications of the membranes used in the TFF units used in each of the TFF steps applied in the manufacture of Spikevax, mRESVIA, mNEXSPIKE and mCOMBRIAX. In particular, the molecular weight cut-off of the membrane.
5	Technical specification of the RNA containing solutions subjected to TFF in each of the TFF steps applied in the manufacture of Spikevax, mRESVIA, mNEXSPIKE and mCOMBRIAX. In particular, the salt composition.
6	Technical specification of the RNA components of Spikevax JN.1 and mCOMBRIAX. In particular, the number of nucleotides.
7	Technical specification of the RNA containing solutions subjected to TFF and the corresponding technical specifications of the membranes used in the TFF units in each of the TFF steps applied in the manufacture of Spikevax, mRESVIA, mNEXSPIKE and mCOMBRIAX. In particular, the RNA concentration and the size (area) of the membrane.
8	Technical specification of the IVT reaction subsequently subjected to TFF in the manufacture of Spikevax, mRESVIA, mNEXSPIKE and mCOMBRIAX. In particular, the spermidine content of the IVT reaction.
10	Technical specification of the IVT reaction subsequently subjected to TFF in the manufacture of Spikevax, mRESVIA, mNEXSPIKE and mCOMBRIAX. In particular, the cap analog content of the IVT reaction.

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7. Moderna oppose the R.190 Application. In its responds they request that the court order:

    1. The dismissal of CureVac's Application in its entirety.

    Alternatively, should any part of the request be granted, Moderna requests that:

    2. Moderna be granted a two-week period (or such other period that the Court may find appropriate) to file an application under R. 262A RoP in relation to the confidentiality terms applicable to any ordered evidence;
    3. The time period for providing any ordered evidence is determined by the Court, but not before the submission of the Statement of Defence (i.e. 1 September 2026);

    In the further alternative, any ordered evidence should be produced within a period of no less than six weeks from the service of the order;

    4. If Moderna is unsuccessful, in whole or in part, and chooses to appeal against the court's order to the Court of Appeal, requesting suspensive effect under Article 74(1) of the UPCA, the time period imposed for producing evidence should not expire before one week after the Court of Appeal's decision on the suspensive effect.

8. They argue inter alia that the R.190 Application, filed well before the deadline for filing a statement of defence (SoD) has expired, is premature in this case. It is not yet clear whether and to what extend the alleged infringement of the method claims of the patent will be

disputed and it is thus disproportionate and unneccessary at this point in the proceedings to order Moderna to present proprietary confidential information.

R.9.3 Application

9. With the R.9.3 Application, parties request the court:
   - to confirm that, for procedural purposes, a uniform deemed date of service of Monday, 1 June 2026 may be applied to all defendants, and
   - that the following deadlines shall apply to the parties' respective submissions:
     - Preliminary Objections on behalf of all defendants: Wednesday, 1 July 2026;
     - Statement of Defence on behalf of all defendants: Tuesday, 1 September 2026.
     - Following these initial submissions, the subsequent procedural timetable would again be governed by Rule 29(c)–(e) RoP.

GROUNDS

R.190 Application

10. The R.190 Application is admissible. The filing of a substantiated R.190 Application on the same day as the uploading of the statement of claim in the main action is considered a filing 'during the written procedure' pursuant to R.190.2 RoP.

11. Pursuant to Art. 59(1) UPCA, R.190(1) RoP and Art. 6 of the Enforcement Directive[1], the Court must consider the following cumulative conditions when assessing the R.190 Application:[2]
    (i) The requesting party must have presented plausible evidence "reasonably available" in support of its claims;
    (ii) The evidence to which access is requested must be "specified" and lie in control of the other party;
    (iii) The other party's confidential information must be protected;
    (iv) Any order to produce evidence must satisfy the requirements of necessity, proportionality, equity, and fairness.[3]

12. The Court agrees with Moderna that in the present circumstances, the R.190 Application does not satisfy the requirements of necessity and proportionality in this phase of the proceedings and must therefore be dismissed.

13. The requested evidence pertains to a confidential manufacturing process. At this stage, Moderna has not yet had an opportunity to respond to the alleged infringement of the claims with this manufacturing process. It is therefore yet unclear which facts will be disputed and thus need to be (further) proven. Although no timeframe applies to the filing of a R.190 RoP application, apart from the fact that it must be done during the written and interim procedures (R.190.2 RoP), the assessment of such request may, and in this case

[1] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights

[2] cf. LD The Hague Order of 14 October 2024 in case UPC_CFI_327/2024 (Winnow v Orbisk), para. 8, confirmed and further developed in subsequent case law of the UPC including CoA order of 24 September 2024, in case UPC_CoA_298,299,300/2024 (Oppo v Panasonic).

[3] Condition 4 follows from the general rules of Articles 41(3) and 42 UPCA, as well as Art. 3 Enforcement Directive.

does, depend on the stage of the proceedings. It is considered not to meet the criteria of necessity, relevance and proportionality at this stage of the proceedings. [4]

14. This assessment may differ at a later stage in the proceedings, once it is clear whether, to what extent and in which way the infringement is disputed.[5] The Court can then consider such particular circumstances in order to make a proportionate assessment of the need for an order to produce evidence, taking into account the interests of both parties.

R.9.3 Application

15. With this order the Court confirms its agreement with the requested alignment of deadlines for all defendants, which was provisionally approved by communication of 13 May 2026.

ORDER

The court, having heard the parties:

I. Confirms that the deadline for filing a Preliminary Objection, if any, for all defendants is **Wednesday, 1 July 2026**;
II. Confirms that the deadline for filing the Statement of Defence on behalf of all defendants is **1 September 2026;**
III. Dismisses the R.190 Application.

Margot Elsa Kokke

Digitally signed by Margot Elsa Kokke
Date: 2026.07.01 15:35:46 +02'00'

Information on Appeal

Insofar as this order concerns R.190 RoP, an appeal may be lodged in accordance with Art. 73(2)(a) UPCA and R.220.1(c) RoP (R.190.6 RoP) within fifteen calendar days of the notification of this order.

[4] Cf. UPC CoA, 24 September 2024, UPC_CoA_298/2024 (Oppo v Panasonic), LD Mannheim, 20 October 2024, UPC_CFI_471/2023 (Dish v Aylo II), LD Munich, 3 April 2025, UPC_CFI_846/2024 (Promosome v BioNTech) and LD Brussels, 14 April 2026, UPC_CFI_1357/2025 (Aesthetics v LABS).

[5] Cf. LD The Hague, 11 May 2026, UPC_CFI_478/2025 (Avient v Xingi)