

Order
of the Court of First Instance of the Unified Patent Court
issued on 15/09/2026
regarding: rules 9.3, 190 and 361 RoP

Claimant/Applicant

TOOLGEN, INC.,
8F, 172 Magokjungang-ro, Gangseo-gu,
Seoul, 07789,
Republic of Korea
“**Toolgen**”

Represented by Mark Didmon (Potter Clarkson LLP)

Defendants

1. **VERTEX PHARMACEUTICALS INCORPORATED,**
50 Northern Avenue,
Boston, Massachusetts,
02210 United States of America
“**Vertex**”

2. **LONZA NETHERLANDS B.V.,**
Oxfordlaan 70 in
6229 EV Maastricht,
The Netherlands
“**Lonza**”

Defendants are represented by Nerissa Teeuwen and Rutger Kleemans (Freshfields).

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP 4 397 760	ToolGen, Inc

DECIDING JUDGE

The panel consists of:

Presiding judge	Edger Brinkman
Judge-rapporteur	Margot Kokke
Legally qualified judge	Vincenzo Carni

This order is issued by the judge-rapporteur.

LANGUAGE OF PROCEEDINGS: English

Subject-matter of the proceedings: Infringement proceedings

POINTS AT ISSUE AND REQUESTS

1. On 26 May 2026, ToolGen initiated infringement proceedings against defendants pending as case UPC_CFI_1830/2026.
2. Toolgen asserts that defendants, with the product Casgevy.13, infringe ToolGen's patent EP4397760 ("the patent"), which relates to a *"Composition for cleaving a target DNA comprising a guide RNA specific for the target DNA and Cas protein-encoding nucleic acid or Cas protein, and use thereof"*.
3. On 10 June 2026 the parties filed a joint request to align deadlines for both defendants. This request was provisionally granted by communication of the Court of the same day.
4. Defendants filed a **R.190 Application** on 19 June 2026, requesting the Court to:
 - 1) Order ToolGen, Inc. to produce within seven (7) days of service of the Court's order:
 - a. the document identified in the UK Proceedings (HP-2025-000013) as ToolGen_01442, including its attachment "Cho 2013a";
 - b. the documents identified in the UK Proceedings (HP-2025-000013) as ToolGen_00243 and ToolGen_00249;
 - 2) Order that the Documents be produced in electronic form to Applicants' representatives;
 - 3) Order that the Documents be produced without any confidentiality regime or restriction on further use in the UPC Proceedings and the Dutch proceedings;
 - 4) Order that, in the event of non-compliance with the order for production, ToolGen shall pay a penalty payment of EUR 20,000 for each day or part thereof during which the non-compliance continues, subject to a maximum of EUR 2,000.000;
 - 5) Order ToolGen to respond to this Application within seven (7) days of service of the procedural order following the Application.

Defendants assert that they intend to file a counterclaim for revocation and want to rely on the documents listed at 1) (collectively "the Documents").

5. ToolGen responded, requesting the Court to dismiss the application. It argues that the

Application is, in substance, an attempt to obtain documents subject to the CPR 31.22 Undertaking in the UK proceedings through a different procedural route, without first pursuing the remedies specifically contemplated by English law. Rule 190 RoP is not intended to function as a mechanism for circumventing such established procedural safeguards.

6. Prompted by the Court's request for an update, ToolGen by submission of 16 August 2026, informed the Court, inter alia, that the defendants have not made an application to the UK Court seeking permission to use the Documents outside of the UK proceedings. The defendants confirmed this by submission of 24 August 2026.
7. On 3 August 2026, defendants filed a **R.361 Application**, requesting that the Court:
 - i. dismiss, pursuant to R. 361 RoP, ToolGen's claims for injunctive and corrective relief concerning Casgevy.¹³
 - ii. order ToolGen to bear the costs of this application.

In response, ToolGen requested the Court to dismiss the R.361 application.

GROUNDS

The R.190 Application

8. It is undisputed that the Documents requested by the Defendants are not publicly available, that they were obtained through disclosure are restricted in use to what parties refer to as the 'UK proceedings'. The JR agrees with ToolGen that the Defendants cannot circumvent any restrictions placed on access in the UK proceedings by a R.190 order of the UPC. The appropriate route would have been for the defendants to apply to the Court in the pending UK proceedings for permission to use the Documents in other proceedings. The fact that this route was not pursued, indicates that this would not have led to the desired result. This is deemed sufficient reason to dismiss the application. The requirements of proportionality, equity and fairness are not met.

The R.361 Application

9. Rule 361 RoP, titled 'Action manifestly bound to fail', reads as follows:

Where it is clear that the Court has no jurisdiction to take cognisance of an action or of certain of the claims therein or where the action or defence is, in whole or in part, manifestly inadmissible or manifestly lacking any foundation in law, the Court may, after giving the parties an opportunity to be heard, give a decision by way of order.

10. A R.361 application is thus reserved for clear-cut situations only, as clarified by the CoA¹. This is, also in view of ToolGen's response and submissions, not the case here. The defendants argue that, in view of particular factual circumstances, (only) ToolGen's request for injunctive relief should be dismissed as manifestly bound to fail. An assessment of facts, law and evidence is necessary to establish whether this is correct, which makes that the contested relief is not

¹ See CoA order of 15 October 2024, UPC_CoA_570/2024, Micosoft v Suinno

manifestly inadmissible within the meaning of R. 361 RoP.² The R.361 application is therefore dismissed. The arguments raised by the defendants are to be addressed in the main proceedings.

Case management measures

11. The JR uses this opportunity to confirm the deadline for filing the statement of defence by the defendants (pursuant to R.9.3 RoP, see 3. above). Furthermore, as the defendants announced that they intend to file a counterclaim for revocation together with the statement of defence, parties are invited to express their views on the application of Art. 33(3) UPCA.

ORDER

The Court, having heard the parties:

- I. Dismisses the R.190 RoP application;
- II. Dismisses the R.361 RoP application;
- III. Confirms that the deadline for filing the statement of defence for both defendants is **25 September 2026** (R.9.3 RoP);
- IV. Invites the parties to express their views on the application of Art. 33(3) UPCA.



INFORMATION ABOUT PANEL REVIEW

Any party may request that this Order be referred to the panel for a review pursuant to R. 333 RoP. Pending review, the Order shall be effective (R. 102.2 RoP)

² See LD Lisbon, order of 26 May 2026 ,UPC_CFI_850/202, Ericsson v Transsion.