Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

The Hague - Local Division
UPC-CFI-1407/2026
UPC-CFI-3154/2026

Order
of the Court of First Instance of the Unified Patent Court
issued on 17 November 2026
regarding: R. 263 RoP

Claimant/Applicant

1) **CureVac Manufacturing GmbH**
Friedrich-Miescher-Straße 15
72076 Tübingen, Germany, "**CureVac**"

Represented by Judith Krens, Mark Marfé, Frederick Nicolle and Florine Willemse (Pinsent Masons)

Defendants

1) **Moderna Inc.**
325 Binney Street, MA 02142 Cambridge, United States of America
2) **Moderna Netherlands B.V.**
Claude Debussylaan 7, 1082 MC Amsterdam, The Netherlands
3) **Moderna Switzerland GmbH**
Peter Merian Weg 10, 4052 Basel, Switzerland
4) **Moderna Biotech Spain SL**
C/ Julián Camarillo 31, 28037 Madrid, Spain
5) **ModernaTX, Inc.**
325 Binney Street, MA 02142 Cambridge, United States of America
6) **Moderna Poland Sp. Z o.o.**
Rondo Ignacego Daszyńskiego 1, 00843 Warsaw, Poland
7) **Moderna Biotech UK Ltd**
54 Portland Place, W1B 1DY London, United-Kingdom
8) **SAS Moderna France**
19 Rue Cognacq-Jay, 75007 Paris, France
9) **Moderna Germany GmbH**
Brienner Straße 45 a-d. c/o Design Offices Campusm, Königsplatz 80333 Munich, Germany
10) **Moderna Italy S.r.l.**
Via Vittorio Veneto 54/B, CAP 00187 Rome, Italy
11) **Moderna Norway AS**
Wergelandsveien 7 c/o Intertrust AS, 0167 Oslo, Norway
12) **Moderna Sweden AB**
Birger Jarlsgatan 12 c/o Scandinavian Trust AB, 11434 Stockholm, Sweden
13) **Moderna Portugal Unipessoal LDA**
Rua João Chagas N, 10B Direito, 1500-493 Lisbon, Portugal

Defendants 1-13, collectively "**Moderna**", are represented by Rutger Kleemans, Laura Whiting, Ruben Laddé, Aidan Southall, Nerissa Teeuwen and Enrico De Jong (Freshfields LLP)

PATENT AT ISSUE

EP4108769	CureVac Manufacturing GmbH

DECIDING JUDGE

The panel consists of:

Presiding Judge and Judge rapporteur	**Margot Kokke**
Legally qualified judge	**Robert van Peursem**
Legally qualified judge	**Francois Thomas**
Technically qualified judge	**Xavier Dorland-galliot**

This order is issued by the panel.

LANGUAGE OF PROCEEDINGS: English

Subject-matter of the proceedings: Infringement proceedings and counterclaim for revocation

FACTS, PROCEDURE

1. For facts and procedure up to 14 October 2026, reference is made to the case management order of that date. With that order, the Confidentiality Regime was confirmed.

2. On 21 October 2026 Moderna filed a R.263 application, requesting to add a new novelty attack ("**WO351**", Art. 54(3) EPC prior art) to its counterclaim of revocation (which was submitted on 1 September 2026). It asserts that the attack is highly relevant and requests:
   i. *to grant Moderna leave under Rule 263 RoP to amend its CfR by introducing WO 2015/095351 (Exhibit DP 34) and the Sartorius Ultrafiltration family catalogue (2014) (Exhibit DP 35), together with the novelty attack set out in Section 3; and*
   ii. *In the alternative, should the Court consider it necessary, to grant the request under (i) on the condition that CureVac be given until 21 December 2026, or such other period as the Court deems appropriate, to respond solely to WO 351 and the novelty attack based on it, without amending the remaining timetable of the proceedings.*

   Should the Court consider that Rule 263 RoP does not provide the appropriate legal basis, Moderna respectfully requests that the Court grant requests (i) and (ii) in the exercise of its general case management powers under Rule 9.1 RoP.

3. In support of its assertion that the attack could not have been filed with reasonable diligence at an earlier stage, Moderna explains that it instructed a renowned, specialised search provider to carry out a comprehensive prior art search for EP 769. Although conducted with diligence (it took a few weeks), that search did not identify WO351. The document was identified only after the counterclaim for revocation had been filed, by another search provider conducting a search relating to another patent, not for these proceedings. Apparently, the document was difficult to find, despite the diligent search conducted by the first search provider. After WO351 had been identified and analysed, Moderna relied on it in the parallel EPO opposition proceedings on 14 October 2026. It now submits the document in these proceedings promptly, without waiting for its next written pleading.

4. Curevac opposes the request. It points out that Moderna offer to furnish additional evidence (e.g. a witness statement) that it could not have filed the additional attack earlier, but as it stands, have not yet done so. In Curevac's view, the Moderna's explanation lacks sufficient detail to satisfy the Court of criteria (a) Rule 263.2 RoP.

AND GROUNDS

5. R.263.1 RoP stipulates that a party may at any stage of the proceedings apply to the Court for leave to change its claim or to amend its case, including adding a counterclaim. According to 263.2 RoP, leave shall not be granted if the party seeking the amendment cannot satisfy the Court that:
   (a) the amendment in question could not have been made with reasonable diligence at an earlier stage; and
   (b) the amendment will not unreasonably hinder the other party in the conduct of its action.

6. In view of the front-loaded and fast-paced nature of UPC proceedings, it is, as a general rule, not permitted to amend a revocation action by adding a completely new attack after the initial filing of the case, unless the above circumstances are met. In this case, the amendment is requested after the filing of the counterclaim of revocation, but well before (a little over one month) the defence to the counterclaim is due. In this case, the other party can be permitted additional time to respond to this new attack, as also suggested by Moderna in the alternative and as requested by Curevac. On the other hand, Moderna will be ordered to reply in the usual timeframe, together with the remainder of the action. Permitting the documents will thus not impact the schedule of the proceedings and each party can use all written briefs foreseen, also regarding the amendment. The Court thus finds that in this situation, the other party is not unreasonably hindered by the amendment, and the requirement at (b) has thus been satisfied.

7. In the specific circumstances of this case, the Court is also finds that the requirement at (a) is met. No reasonable party would deliberately withhold a 'highly relevant' attack from its counterclaim for revocation and file it later, risking that it will not be allowed into the proceedings. The Court thus finds Moderna's assertion that the amendment could not have been made with reasonable diligence at an earlier stage, plausible. Moreover, the R.263 application was filed before the reply/defence to the CC of CureVac.

8. The leave to change the claim is therefore granted and the new novelty attack is permitted into the proceedings under the conditions set out below. The deadline for Curevac to file its reply/defence to the counterclaim regarding all other topics remains 23 November 2026. The deadline to respond to the WO351 attack, including and the filing of auxiliary requests in response to this attack, is extended to 21 December 2021. For the calculation of the deadline of further submissions, 23 November 2026 is considered the filing date of Curecac's submission for all issues.

ORDER

The Court, having heard the parties,

I. Grants leave to change the claim in the counterclaim action as requested;

II. Curevac can file a response to the additional novelty attack (and any auxiliary requests relating thereto) as a supplement to its defence to the counterclaim on or before 21 December 2026;

III. The deadline for Moderna's comprehensive rejoinder/reply to the counterclaim, including the reply to WO351, is to be calculated starting from 23 November 2026.

Kokke, presiding judge and judge rapporteur	Digitally signed Kokke Margot Elsa 2026-11-17 05:03:31 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
Van Peursem, legally qualified judge	Digitally signed Van Peursem Gerard Robert Bernard 2026-11-17 11:56:34 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
Thomas, legally qualified judge	Digitally signed Thomas Francois Paul Etienne 2026-11-17 11:25:47 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
Dorland-galliot, technically qualified judge	Digitally signed Dorland-Galliot Xavier Thomas Oliver 2026-11-17 07:53:51 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
For the Deputy Registrar, clerk	Digitally signed Hageman Larissa Donata 2026-11-17 12:02:45 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet

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)