



**Order
of the Court of First Instance of the Unified Patent Court
delivered on 29/07/2024**

Date of receipt of Statement of claim : 27/12/2023

Meril Statement
GmbH of claim
(Defendant) served on
- 07/02/2024
Bornheimer
Straße 135-
137 - 53119
- Bonn - DE

Meril Life Statement
Sciences of claim
Pvt. Ltd. served on
(Defendant) 05/01/2024
- M1-M2,
Meril Park,
Survey No
135/2/B &
174/2,
Muktanand
Marg,
Chala, -
396 191
Gujarat -
Vapi - IN

Meril Italy Statement
S.r.l. of claim
(Defendant) served on
- Piazza Tre 07/02/2024
Torri 2 -
20145 -
Mailand - IT

CLAIMANT/S

- | | | |
|----|--|-------------------------------|
| 1) | Edwards Lifesciences Corporation
(Claimant) - One Edwards Way - 92614 - Irvine
- US | Represented by Boris
Kreye |
|----|--|-------------------------------|

DEFENDANT/S

- | | | |
|----|--|---|
| 1) | Meril GmbH
(Defendant) - Bornheimer Straße 135-137 -
53119 - Bonn - DE | Represented by Hans-Roman
Würtenberger |
| 2) | Meril Life Sciences Pvt. Ltd.
(Defendant) - M1-M2, Meril Park, Survey No
135/2/B & 174/2, Muktanand Marg, Chala, -
396 191 Gujarat - Vapi - IN | Represented by Hans-Roman
Würtenberger |
| 3) | Meril Italy S.r.l.
(Defendant) - Piazza Tre Torri 2 - 20145 -
Mailand - IT | Represented by Hans-Roman
Würtenberger |

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP3669828	Edwards Lifesciences Corporation

DECIDING JUDGE

COMPOSITION OF PANEL (1) – FULL PANEL

Presiding judge and	
Judge-rapporteur	Matthias Zigann
Legally qualified judge	Margot Kokke
Legally qualified judge	Tobias Pichlmaier
Technically qualified judge	Stefan Wilhelm

This order was made by Presiding Judge Matthias Zigann acting as judge-rapporteur.

LANGUAGE OF PROCEEDINGS: English

GROUND(S) FOR THE ORDER

I.

The Sub-Registry has attempted to set a date for the Oral Hearing by e-mail communication, as instructed by the Presiding Judge. On [REDACTED] 2024, the Panel and all representatives except Hans-Werner Würtenberger are available.

Hans-Werner Würtenberger has indicated that he would be very grateful if the date of the Oral Hearing could be postponed to the end of [REDACTED] or [REDACTED] 2025, if at all possible. This is because his wife is expecting a child at the end of November 2024 and he will be on parental leave for two months after the birth. He also argues that he is the person in charge of the main case in the infringement procedure. Other members of the team have other key responsibilities.

The claimant argues that the defendants are not represented by a single lawyer but by a large team in the various proceedings between Edwards and Meril. Also in the underlying case, according to the statement of defence of 26 April 2002, the defendants are represented by at least five UPC representatives from the law firm Hogan Lovells in Düsseldorf, including Andreas von Falck and Alexander Klicznik, who are listed in the statement of defence before Mr Würtenberger and usually act as lead counsel for the defendants. He therefore considers that Mr Würtenberger's e-mail must be taken into account in view of the number of lawyers acting for the defendants and the apparent availability of at least four other representatives of Hogan Lovells on [REDACTED] 2024.

The last defendant was served on 07/02/2024. The written procedure will be closed on 02/11/2024.

As a balance must be struck between the objective of completing the first instance proceedings within one year (after service on the defendants) and the principle of a fair trial, which includes allowing a party to be represented by a representative of its choice whenever possible, the Presiding Judge has identified an alternative date on [REDACTED] 2025 when the members of the Panel are available for an oral hearing. As the interim conference should take place after the end of the written procedure but before the date for the oral hearing, he initially offered a date on [REDACTED]

██████████ 2024, and alternatively on ██████████ 2024, both irrespective of the parental leave planned by Mr. Würtenberger.

The parties have commented on their availabilities as follows:

Claimant will be available on all proposed dates.

Defendants informed the court as follows:

1. Interim Conference ██████████ 2024, ██████████, via videoconference

On that day, Mr. von Falck will need to attend long-planned preparatory meetings for an oral hearing before the District Court of Munich I. This oral hearing (Panasonic v. Xiaomi, docket number 21 O 9429/23) before the District Court of Munich I, in which Mr. von Falck will be one of the lead counsel, is scheduled for ██████████ 2024. And Hans-Werner Würtenberger will likely already be on parental leave on ██████████ 2024.

2. Alternative date for the interim conference ██████████ 2024, ██████████ via videoconference

Defendants appreciate the Court's proposal of an alternative date for the interim conference and inform the Court that they would prefer ██████████ 2024 as the date for the interim conference. It is correct, however, that Mr. Würtenberger will most likely not be able to attend the interim conference either way.

3. Alternative date for the oral hearing in person set to ██████████ 2025, ██████████

On the suggested ██████████ unfortunately, Mr. Klicznik, who is in charge of the main case handling in the counterclaim for revocation, will not be available due to long-planned preparatory meetings for an oral hearing before the German Federal Patent Court. The oral hearing (Bestway Deutschland v. Intex Recreation, docket number 8 Ni 33/23) before the Federal Patent Court, in which Mr. Klicznik will be lead counsel, is scheduled for ██████████ 2025. Ms. ██████████ who is also part of the team representing Defendants in the present case, will also attend the aforementioned preparatory meetings on ██████████ 2025 (as well as the hearing before the Federal Patent Court on ██████████ 2025).

The presiding judge informed the parties that there was no other date that could be set and invited the defendants to make a choice of date:

The Court understands that neither on ██████████ nor on ██████████ members of the defence teams are bound by a court hearing, but have made plans to prepare for a court hearing on the days before. The Court further understands that these plans would be more easily rescheduled than the dates set by the UPC, which is an international court with a panel of international and very busy part-time judges. As a result of these constraints, no dates could be set for the main oral hearing other than those already communicated. Given that the written procedure will be closed on 02/11/2024 and that one year after service will end on 07/02/2025, no date later than ██████████ 2025 is feasible for the oral hearing. The next available date would be ██████████ 2025. This would jeopardise the claimant's right to an efficient procedure completed within one year. This right must be balanced against the need to allow the Defendants to be represented by a

group of representatives of their choice. The Defendants are therefore invited to choose between the two proposed dates for the oral hearing.

Defendants answered as follows:

Unfortunately, Mr. Klicznik, who is in charge of the proceedings concerning the counterclaim for revocation will not be able to attend the oral hearing on ■■■■■■■■ 2025 as it is not possible to prepare for two comprehensive invalidation cases to be heard on two consecutive days and thereby give both cases, i.e. the present case on ■■■■■■■■ 2025 and the subsequent nullity case on ■■■■■■■■ 2025, sufficient attention. Both cases concern a different subject matter and involve different prior art documents. In this regard, we would further like to draw the Court's attention to the EPO's Guidelines for Examination (Part E., Chapter III, No. 7.1.1) which acknowledge that inter alia the previously notified summons to oral proceedings of the same party in other proceedings "for the preceding or following day" may constitute a serious reason to request a change of the date for oral proceedings. In addition, the oral hearing scheduled on ■■■■■■■■ 2025 (as well as the preparatory meeting on ■■■■■■■■ 2025) will also be attended by UK based attorneys. Moving the date for the preparatory meeting would mean that said meeting could not be conducted in person.

Defendants understand from the Preliminary Order of 18 July 2024 that the Court – unfortunately – cannot offer additional alternative hearing dates. In case this has not changed and that still no alternative dates can be offered to Defendants, Defendants choose ■■■■■■■■ 2025 as the date for the oral hearing. Defendants would like to point out though that this would mean that Defendants would need to re-staff their team of representatives for the present proceedings so that the team will be able to attend the oral hearing on ■■■■■■■■ 2025.

II.

Due to the constraints mentioned above, no feasible dates could be found for the main oral hearing other than those already communicated. The next available date would be ■■■■■■■■ 2025. This would jeopardise the claimant's right to an efficient procedure completed within one year. Balancing the competing principles set out above, the Court acknowledges that the Defendants have chosen ■■■■■■■■ 2025, which will be set as the date for the oral hearing. Accordingly, the alternative date for the interim conference can be set at ■■■■■■■■ 2024. This will allow the Defendants to be represented by Mr Würtenberger at the oral hearing, which was the first and principal request made, but probably not at the interim conference. However, the Defendants will have to reconstitute their team of representatives for the present proceedings in order to be able to attend the oral hearing on ■■■■■■■■ 2025. However, this would also have been the case if the originally proposed date for the oral hearing (■■■■■■■■ 2024) had been set. In that case, the defendants would have had to replace Mr Würtenberger. As the last defendant was served on 07/02/2024, the target of an oral hearing within one year of service is still achievable.

ORDER

1. The date of the interim conference is set for [REDACTED] 2024, [REDACTED] [REDACTED] via videoconference.
2. The Parties are invited to submit, by 4 November 2024, points to be raised at the interim conference.
3. The Parties are summoned to the oral hearing to be held on [REDACTED] 2025, [REDACTED] [REDACTED] in person, Room 212, Denisstr. 3 in Munich.
4. The written procedure will be closed on 4 November 2024.

Matthias ZIGANN  Digital unterschrieben von Matthias
ZIGANN
Datum: 2024.07.29 18:13:24 +02'00'

Dr. Zigann
Presiding Judge and Judge-rapporteur

ORDER DETAILS

Order no. ORD_598411/2023 in ACTION NUMBER: ACT_597277/2023
UPC number: UPC_CFI_501/2023
Action type: Infringement Action