

App_557291/2023 to UPC_CFI_15/2023
Preliminary decision on request for extension of time limit
of the Court of First Instance of the Unified Patent Court
of 01/08/2023

Applicant

- 1) **Meril Ltd.**
(Applicant)
- Bornheimer Straße 135-137 - 53119 - Bonn -
DE

Represented by

[REDACTED]

Parties

- 1) **Edwards Lifesciences Corporation**
(plaintiff)
- 1 Edwards Way - 92614 - Irvine - US

Represented by

[REDACTED]

- 2) **Meril Ltd.**
(Defendant to 1)
- Bornheimer Straße 135-137 - 53119 - Bonn -
DE

Action served on 07/07/2023

Represented by

[REDACTED]

3) **Meril Life Sciences Pvt Ltd.**
(Defendant to 2)
- M1?M2, Meril Park, Survey No 135/2/B &
174/2 Muktanand Marg, Chala, Vapi - 396
191 Gujarat - Vapi - IN

Action served on 01/08/2023

Represented by

[REDACTED]

Patent in suit

Patent No.

Owner

EP3646825

Edwards Lifesciences Corporation

RAPPORTEUR

Presiding Judge

Matthias Zigann

LANGUAGE OF THE PROCEEDINGS: German

APPLICATION BY APPLICANT NO. 1 DATED 31.07.2023

It is requested that the deadline for the objection pursuant to Rule 19.1 of the Rules of Procedure be extended by four weeks until September 4, 2023 (Rule 9.3 lit. a) of the Rules of Procedure).

FACTS OF THE CASE

Applicant 1) (= defendant 1) asserts, among other things, that on the day of service by email to her registered representative on 7 July 2023, it was not yet possible to access the statement of claim via the case management system (CMS). This access was only possible at a later date. Furthermore, the registered representative was currently on vacation. The plaintiff had filed an application for interim measures against the defendants on the basis of another patent. In addition, the e-mail had not yet been sent to the defendant 2), Meril Life Sciences Pvt Ltd, for reasons for which the defendants were not responsible. Consequently, there was a risk of different timings for the opposition period, but synchronization was urgently required.

REASONS

1. The objection period pursuant to Rule 19.1 of the Rules of Procedure is one month after service. In the case of service by electronic means, the date of service is the date on which the electronic message was sent (Rule 271.6(a) of the Rules of Procedure). If a representative accepts electronic service on behalf of the party in accordance with Rule 8.1 of the Rules of Procedure, service may be effected within the closed electronic system of the EPG case management system (CMS) in accordance with Rule 271.2 of the Rules of Procedure. This means that it is not the statement of claim and attachments themselves that are sent in electronic form, but an access code to the CMS. In this respect, it is not important that the law firm must first allow a representative to fully access the CMS by means of a further step after entering the transmitted access codes in accordance with Rule 8.1 of the Rules of Procedure. This is a protective mechanism designed to ensure that only the addressee designated by the court logs into the CMS. This access authorization by the employees of the law firm regularly takes place on the same day or on the following working day, so that the time gap is usually negligible. Applicant 1) also does not state when exactly she gained full access. However, it can be inferred from her application that full access now exists. Consequently, the non-extended objection period for defendant 1) ends on 7.8.2023 at the latest.

With regard to defendant 2), service was only established by the CMS today, on 01.08.2023, after the registered representative had logged into the CMS using the codes sent by email on 31.07.2023. The automatically generated notification of service dated 1.8.2023 is to be understood as meaning that service was not made on Meril GmbH, but on Meril Life Sciences Pvt Ltd. This is because all further procedural acts of the registered representative relate to the defendant 2), such as the preparation of a statement of defense. The objection period therefore ends for defendant 2) on 04.09.2023 at the latest. Incidentally, CMS appears to base the start of the period on the actual log-in and not, as required under Rule 271.6 VerfO, on the possibility of logging in.

The two deadlines would therefore differ considerably.

However, contrary to what the applicant re 1) believes, the prevention of such a deviation is not required per se. On the one hand, an extension of the time limit for filing an opposition does not necessarily entail an extension of the time limit for filing a response. This is because, as Rule 19.6 shows, the time limit for filing a statement of defense is not even affected by the filing of an opposition, unless the judge-rapporteur decides otherwise. On the other hand, the objection relates solely to the questions of the jurisdiction of the court, the use of the exception under Rule 5 of the Rules of Procedure, the jurisdiction of the Division and the language of the proceedings. These issues can be answered quickly and differently for different defendants. Furthermore, the other party also has a legal interest in having certainty about these questions as soon as possible, also with regard to individual defendants.

The other reasons given, vacation of the registered representative as well as his other burden with other proceedings do not justify an extension against this background.

2. However, it should be noted that working with the new procedural law and the case management system (CMS) poses considerable challenges for all those involved.

A practicable handling of the challenges that arise is therefore required in the initial period. The rapporteur therefore exercises the discretion granted by the Rules of Procedure to grant the request by way of exception.


INTENDED DISPOSAL

1. The deadline for the objection is extended for applicant 1) (= defendant 1) until September 4, 2023.
2. The automatically generated notification of a delivery from 1.8.2023 is should be understood to mean that service was not made on Meril GmbH, but on Meril Life Sciences Pvt Ltd.

ORDERS FOR THE PARTIES AND THE LAW FIRM

1. the The plaintiff has until 02.08.2023 to comment on this preliminary injunction.
2. the defendants can submit their comments by 03.08.2023.

DR. ZIGANN
PRESIDING JUDGE AND RAPPORTEUR


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translation