

EIP

UPC rules it has
jurisdiction in cases
where a claim is brought
in violation of a contract

Tandem Diabetes Care, Inc., Tandem Diabetes Care Europe B.V. v Roche Diabetes Care GmbH (UPC_CFI_589997/2023)

Order of 10 May 2024 (ORD_7903/2024) [1]

Tandem Diabetes Care, Inc & Tandem Diabetes Care Europe B.V. ("**Tandem**") have sued Roche Diabetes Care GmbH ("**Roche**") for revocation of EP2196231 as well as for a declaration of non-infringement.

Roche lodged a preliminary objection pursuant to Rule 19(1)(b) RoP stating that the UPC did not have any jurisdiction as Tandem's claim for revocation was in breach of a 90 day standstill clause in a "Confidential Disclosure Agreement" between Tandem and Roche. Tandem disputed this arguing, inter alia, that they were not in breach of the standstill agreement and that the standstill agreement did not affect the jurisdiction of the UPC in any event.

The Court[2] preferred Roche's interpretation of the relevant clause in the Confidential Disclosure Agreement and did not agree with Tandem that the standstill only related to legal proceedings relating to confidential information.

The Court dismissed Tandem's argument that standstill clauses should not affect the jurisdiction as it that would be a breach of a party's "right to access to court and to a fair trial". This was because the Court found that the relevant rights[3] are not absolute and a 90 day standstill agreement would have a legitimate purpose and be proportionate.

The Court then found that bringing a claim in violation of a standstill clause did not affect the Court's jurisdiction as the breach did not mean that either (a) the Court should defer to an alternative jurisdiction, which the Court refers to as a 'relative' lack of jurisdiction, or (b) that the Court was not granted power to resolve the dispute (i.e. revocation of EP2196231) in question, which the Court refers to as an 'absolute' lack of jurisdiction. A particular reason the Court for rejecting Roche's argument was that this would mean that the Court would temporarily lack jurisdiction and would then regain jurisdiction after a short period of time, which the Court thought contrary to the objective criteria by which to assess jurisdiction.

The Court did leave open the possibility that violation of the standstill agreement might affect this litigation going forwards but left that to be decided once the parties have completed the pleadings pursuant to Rule 43 RoP.

[1] <https://www.unified-patent-court.org/en/node/703>

[2] Paris Central Division

[3] Articles 6 & 13 of the European Convention on Human Rights, and 47 & 48 of the Charter of Fundamental Rights of the European Union