

EIP

Extension of time limit for statement of defence

Edwards Lifesciences Corporation v. Meril GmbH and Meril Life Sciences Pvt Ltd. Order of 23 August 2023

Edwards Lifesciences Corporation (Claimant in the main action) is the proprietor of EP3646825, asserted against potential infringers Meril GmbH (Defendant 1 in the main action and Applicant in the request for extension of time for statement of defence) and Meril Life Sciences Pvt Ltd. (Defendant 2 in the main action). In this proceeding, the presiding judge and judge rapporteur Mr. Zigann of the Munich Local Division had to decide whether to grant a request for extension of the time period for the statement of defence. [1]

The Applicant requested to extend the time period for the statement of defence pursuant to Rule 23 of the Rules of Procedure (RoP) until 1 November according to Rule 9.3 a) RoP. Following the - successful - request to extend the time-limit for the preliminary objection (cf. App_557291/2023 UPC_CFI_15/2023 [2]), the Applicant further requested the extension of the time limit for filing a statement of defence. According to Rule 23 RoP the Defendant shall lodge a Statement of defence within three months of service of the Statement of claim. The Statement of claim was served on the first Defendant on 7 July and on the second Defendant on 1 August.

The Applicant argued that the request must be granted as this would lead to a concurrent time-period for lodging the statement of defence for both Defendants.

As the court already stated in its 1 August order (cf. footnote 2) the reasons presented by the Applicant do not generally warrant an extension of time-period. Specifically, harmonizing the time-period regime itself is not a justification for extending the time-period for the party to whom the statement of claim has been served at an earlier date.

Harmonization, in fact, can also be achieved by shortening the time-period for the party to whom the statement of claim was served at a later date, which is possible with regard to Rule 9.3 b) RoP.

However, the court noted again that working with the new procedural rules and the Case Management System (CMS) poses significant challenges for all parties involved. Therefore, in the initial stages, a practical approach to handling these challenges is necessary. The rapporteur, therefore, exercised the discretion granted by the procedural rules to (once again) exceptionally grant the extension request. Additionally, the Claimant has consented to the extension of the time period. Since November 1, 2023, is a holiday in Bavaria, the extension was granted until 2 November 2023, Rule 301.1 RoP.

[1] App_561742/2023 on UPC_CFI_15/2023 - Final decision on request for extension of time limit for statement of defence of the Court of First Instance of the Unified Patent Court of 23/08/2023, available under: https://www.unified-patent-court.org/sites/default/files/upc_documents/23-08-23-ld-munich-app-561742-upc-cfi-15-2023-459987-2023-anonymized.pdf (German language link).

[2] Cf. summary in CIPA journal, September 2023, Extension of time limit for preliminary objection, p. 43; also available on EIP Latest Knowledge Hub under: <https://eip.com//knowledge hub/article/upc extension of time limit for preliminary objection/>