

EIP



Discretion allowing in expert declarations

Sanofi-Aventis Deutschland GmbH & Ors v Amgen Inc (UPC_CFI_1/2023)

Order dated 24 January 2024 (ORD_2233/2024)

The pleadings in this revocation action had progressed to the rejoinder by defendant (Rule 43.1(d)). Such rejoinder is “limited to a response to the matters raised in the Reply” (Rule 52) and is the final stage of the written procedure envisaged in the Rules of Procedure.

The claimants made a request for the court to allow a further submission in response to the rejoinder including expert declarations, on basis that the expert declarations accompanying the defendant’s rejoinder introduce new points, some of which are inaccurate and require a response. The claimants rely on the court’s discretion under Rule 9.1 RoP and the principles of flexibility and fairness. The defendant argued that pleadings have closed and the claimants’ request is premature and should be made at the interim conference.

Decision

The judge-rapporteur allowed in the material.

First, during the written procedure, Rule 58, together with Rule 36, provides that the judge-rapporteur “may allow the exchange of further written pleadings” on a “reasoned request by a party”. Further Rule 9.1 provides a discretion to make a procedural order on a reasoned request by a party “at any stage” of the proceedings. While Rules 103 and 104 allow the judge-rapporteur to order further pleadings and evidence during the interim procedure, that does not mean that a request made before the written procedure closes is premature and should be rejected.

The exchange of written pleadings is normally limited in accordance with Rule 43 RoP. Departing from this framework is a matter of discretion bearing in mind conducting proceedings in an efficient, proportionate, fair and equitable way. There are a small number of discrete new points, the declarations are concise (only six pages) and the request seems to be a bona fide attempt to respond to the new points.

A request from the defendant, relying on the right to be heard, to make a further reply brief was rejected.

The judge-rapporteur further decided that there was no need for the interim conference which had been provisionally scheduled and set the date for closure of the written procedure as 6 February 2024 (Rule 101 and Rule 58 together with Rule 35(b)). The main oral hearing had already been set for 4 June 2024.