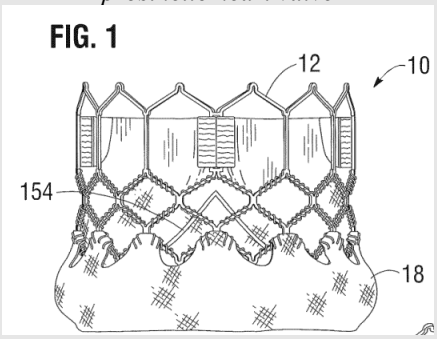
UPC CFI, Central Division Paris, 23 September 2024, Meril v Edwards Lifesciences

prosthetic heart valve



PATENT AND PROCEDURAL LAW

Access based on general interest only – no specific interest as competitors or concern with the validity of the patent –

- **outweighed by the protection of the ongoing proceedings (Rule 262 RoP)**

15. This judge-rapporteur holds that the mere fact of operating in the same field as the patent in dispute is not sufficient to establish a specific interest in the case documents on the part of the applicant. Indeed, it is not adequately alleged, nor much less proven, that the applicants are competitors of the parties to the action, and, as such, concerned with the validity of the patent.

16. Therefore, the applicant's request for access to files seems to be based on a general interest in investigation and while such an interest cannot be disregarded as a general rule, it may not be sufficient to grant access to the sought documents where the interests mentioned in **Article 45 'UPCA'** were deemed to be more relevant.

17. In the case at hand, the protection of the integrity of the ongoing proceedings outweighs the interest in information asserted by the applicant, so that the parties can present their arguments and evidence and so that the court can conduct the proceedings impartially and independently, without influence and interference from external parties in the public sector (**see also Vienna LD, order of 12 August 2024, UPC_CFI_33/2024**, and, with regard to a similar application filed by the same applicants, **North Baltic RD, order of 17 September 2024, UPC_CFI_8/2023**).

Source: **Unified Patent Court**

UPC Court of First Instance,
Central Division Paris, 23 September 2024
(Catallozzi)
ORDER
of the Court of First Instance of the Unified Patent Court
Central division - Paris seat
issued on 23 September 2024

concerning the application **RoP 262.1(b)** No. App_33484/2024 lodged in the revocation action No. ACT_22275/2024 UPC_CFI_189/2024
lodged in the proceedings
UPC_CFI_189/2024
APPLICANTS
[…] […]
SWAT Medical AB - Drottninggatan 11 - 25284 - Helsingborg – SE represented by […]
RESPONDENTS
Meril Life Sciences Private Ltd. - M1-M2, Meril Park, Survey No.135/2/B & 174/2, Muktanand Marg, Chala, Vapi 396191, India
Meril GmbH - Bornheimer Straße 135-137, 53119 Bonn, Germany
Meril Italy S.r.l. - Piazza Tre Torri 2, 20145 Milano, Italy
all represented by Emmanuel Larere and Jean-Hyacinthe de Mitry, Cabinet Gide Loyrette Nouel AARPI, and by Jonathan Stafford and Gregory Carty Hornsby, Marks & Clerck LLP
Edwards Lifesciences Corporation - One Edwards Way, Irvine, California, 92614, USA
represented by Siddharth Kusumakar, Tessa Waldron and Bryce Matthewson, Powell Gilbert (Europe) LLP, by Adam Rimmer, Powell Gilbert LLP, and by Jonas Weickert and Bernhard Thum, Thum & Partner
PATENT AT ISSUE:
European patent n. **4 151 181**
PANEL:
Panel 2
Paolo Catallozzi Presiding judge and judge-rapporteur
Tatyana Zhilova Legally qualified judge
Elisabetta Papa Technically qualified judge
DECIDING JUDGE:
This order is issued by the presiding judge and judge-rapporteur Paolo Catallozzi
SUMMARY OF FACTS AND PARTIES' REQUESTS:
1. On 5 June 2024 the applicant filed an application, pursuant to **Rule 262 (1) (b) of the Rules of Procedures ('RoP'),** registered as No. App_33484/2024, seeking access to all pleadings and evidence in the revocation action proceedings between Meril Gmbh, Meril Life Sciences Pvt ltd. and Meril Italy s.r.l., from one side, and Edwards Lifesciences Corporation, from the other (registered as No. ACT_22275/2024 UPC_CFI_189/2024).
2. The access is requested as a member of the public, in particular as a board member and investor in a medical device company within the field of cardiac implant technology and the purpose of this request is based on a direct interest and concern as a competitor regarding the validity of the patent of the proceedings with regard to a third party product under development potentially similar to the allegedly infringing products of the defendants and covered upon market entry by the granted claims of the present patent of the proceedings.
3. After the parties involved in the forementioned proceedings have submitted their comments, this judge-rapporteur, by order issued on 25 July 2024, requested

the applicant to indicate the identity of the third party who has an interest in the access to the sought documents as a competitor in the market concerned by the debated patent.
4. On 8 August 2024 the applicant amended the application accordingly, clarifying that the application is filed on his interest, as individual person in the role of Board member of SWAT Medical AB and in the role of an investor in medical device technology), and in the interest of SWAT Medical AB (named as 1st Co-applicant).
5. Then, on 22 August 2024 the respondents filed their comments.
6. Meril Italy s.r.l., Meril Gmbh and Meril Life Sciences Pvt ltd. jointly requested that the judge-rapporteur reject the application; as a subsidiary request, that the judge-rapporteur grant leave to lodge an appeal, suspend the effect of the order pending the outcome of any appeal, grant access only to the documents relating exclusively to the validity of the patent at issue and exclude several documents specifically identified, order that such access is strictly confidential and personal to the applicants ([…] and SWAT Medical AB); reserve its right to seek damages before any competent court against the applicants.
7. Edwards Lifesciences Corporation requested that the application be dismissed; in the alternative, the Court set a deadline for it to identify specific pleadings or particular parts of the pleadings and evidence which is considers should not be disclosed to the applicants, the applicants be ordered to keep any documents obtained confidential and leave to appeal be granted and any order allowing access to any documents not be enforceable until the Court of Appeal issues a final decision on the applicants' requests.

GROUNDS OF THE ORDER

Public access to the register: the general framework.
8. According to **Article 10 (1) of the Unified Patent Court Agreement ('UPCA')**, "*Subject to the conditions set out in this Agreement and the Rules of Procedure, the register kept by the Registry shall be public*. **Article 45 'UPCA'** adds that "*The proceedings shall be open to the public unless the Court decides to make them confidential, to the extent necessary, in the interest of one of the parties or other affected persons, or in the general interest of justice or public order*.
9. **Rule 262 (1) (b) 'RoP'** specifies that "*written pleadings and evidence, lodged at the Court and recorded by the Registry shall be available to the public upon reasoned request to the Registry; …*".
10. As acknowledged by The Court of Appeal (see **order of 10 April 2024, UPC CoA 404/2023**), the aforementioned provisions make clear that the general principle laid down in the 'UPCA' is that the register is public and the proceedings are open to the public, unless the balance of interests involved is such that they are to be kept confidential, which means that in such case access to the public is to be denied.
11. Therefore, when a request to make written pleadings and evidence available to a member of the public is made pursuant to **Rule 262(1)(b) 'RoP'**, the interests of a member of the public of getting access to the written pleadings and evidence must be weighed against the interests mentioned in **Article 45 ('UPCA')**. These interests include the protection of confidential information and personal data ('the interest of one of the parties or other affected persons') but also the general interest of justice, which includes the protection of the integrity of proceedings, and the public order.
12. In order to allow the judge-rapporteur to balance all the interests set forth in **Article 45 'UPCA'**, the applicant must specify the purpose of the request and explain why access to the specified documents is necessary for that purpose, thus providing all the information.
13. It may be pointed out that a member of the public may have a direct interest in the subject matter of the proceedings – such as the validity of a patent that he is also concerned with as a competitor or licensee, or where a party in that case is accused of infringing a patent by a product which is the same or similar to a product (to be) brought on the market by such member of the public – and in that case this interest does not only arise after the proceedings have come to an end but may very well be immediately present.

The balance of the opposing interests.

14. The applicants argue that they have a specific interest in the subject-matter of the proceedings as they operate in the field of the patent at issue.
15. This judge-rapporteur holds that the mere fact of operating in the same field as the patent in dispute is not sufficient to establish a specific interest in the case documents on the part of the applicant. Indeed, it is not adequately alleged, nor much less proven, that the applicants are competitors of the parties to the action, and, as such, concerned with the validity of the patent.
16. Therefore, the applicant's request for access to files seems to be based on a general interest in investigation and while such an interest cannot be disregarded as a general rule, it may not be sufficient to grant access to the sought documents where the interests mentioned in **Article 45 'UPCA'** were deemed to be more relevant.
17. In the case at hand, the protection of the integrity of the ongoing proceedings outweighs the interest in information asserted by the applicant, so that the parties can present their arguments and evidence and so that the court can conduct the proceedings impartially and independently, without influence and interference from external parties in the public sector (**see also Vienna LD, order of 12 August 2024, UPC CFI 33/2024**, and, with regard to a similar application filed by the same applicants, **North Baltic RD, order of 17 September 2024, UPC CFI 8/2023**).
18. In addition, also the necessity to protect personal interests comes into play and conflicts with the granting of access to all the written pleadings.

ORDER

The judge-rapporteur:
- rejects the request to access to written pleadings and evidence filed by […] and SWAT Medical AB on 5 June 2024. Issued on 23 September 2024.

The presiding judge and judge-rapporteur

Paolo Catallozzi
ORDER DETAILS
Order no. ORD_36092/2024 in ACTION NUMBER: […] number: UPC_CFI_189/2024
Action type: Revocation Action
Related proceeding no.
Application No.: 33484/2024
Application Type: APPLICATION_ROP262_1_b
