

**UPC CFI, Local Division Milan, 1 October 2024,  
Insulet v Menarini**

*fluid delivery device with transcutaneous access tool,  
insertion mechanism and blood glucose monitoring for  
use therewith*

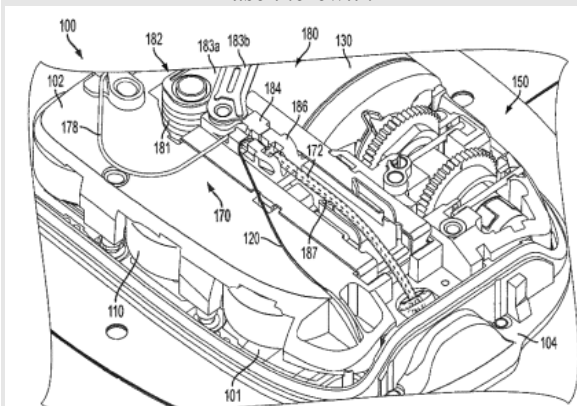


FIG. 1

**PATENT AND PROCEDURAL LAW**

**Request for intervention by EOfFlow in summary proceedings for provisional measures rejected ([R. 313 RoP](#))**

- the outcome of this proceedings only affects Eoflow indirectly: it is only the supplier and the potential negative effects (an economic impairment) at this stage appears only a side effect;

Source: [Unified Patent Court](#)

**UPC Court of First Instance,  
Local Division Milan, 1 October 2024**

(Perrotti, Zana, Klein, Schwengelbeck)

UPC\_CFI\_400/2024

**Procedural Order**

of the Court of First Instance of the Unified Patent Court delivered on 01/10/2024

Order no. ORD\_51903/2024

Applicant

**EOFLOW CO LTD** (intervener)

defendants

1) Insulet Corporation (applicant in the main proceeding)

2) A. Menarini Diagnostics s.r.l.  
(defendant in the main proceeding)

**RELEVANT PROCEEDING PARTIES**

)

**PATENT AT ISSUE**

Patent no. Proprietor/s

[EP4201327](#) Insulet Corporation

**COMPOSITION OF PANEL – FULL PANEL**

Presiding judge Pierluigi Perrotti

Judge-rapporteur Alima Zana

Legally qualified judge Anna-Lena Klein

[Legally qualified judge Uwe Schwengelbeck  
[...]]

**LANGUAGE OF PROCEEDINGS:** English

**SUBJECT-MATTER OF THE PROCEEDINGS**

**[RULE N. 313](#) APPLICATION TO INTERVENE  
ORDER**

**1. Summary of facts**

On 8 July 2024 Insulet Corporation filed an application for provisional measure against Menarini- -exclusive distributor in Europe of the patch-insulin pump EOPacht (attached embodiment)- alleging the infringement of the patent EP 4201 327.

The hearing is scheduled for the 15 October 2024.

On 16 September 2024 Eoflow - the developer and manufacturer of the patch-insulin pump EOPacht (attached embodiment). lodged an application to intervene pursuant to Rule 313 R.o.P. in support of the request of the defendant support to dismiss the application for provisional measures.

Eoflow specified that it is the defendant in parallel proceeding before the Milan Central Division, started by the same applicant, Insulet Corporation.

The other parties were invited to lodge their comments. pursuant to rule 314 R.o.P.;

Insulet (applicant in the main proceeding) noted that the application to intervene is not admissible in light of following reasons:

- Eoflow has no legal interest to intervene;
- it is already a party in parallel proceedings (UPC CFI 380/2024) before the Milan Central Division.
- an intervention can only be dealt with in the proceeding on the merits;
- the interim injunction proceedings would otherwise slowed down.

Menarini (defendant in the main proceeding) agrees with the intervener noting that;

- Eoflow has legal interest to intervene, being in a legal relationship with the supported party;
- Eoflow would be liable to Defendant under the warranty and indemnity provisions of the exclusive distribution agreement.

**2. General considerations**

2.1 This Order is adopted having regards to:

(i) the following principles set out in the Preamble 2 of the RoP

- proportionality, flexibility and fairness;
- the discretionary power for the judges to organise the proceedings in the most efficient and cost effective manner;

- the Fairness and equity, having regard to the legitimate interests of all parties;

(ii) the [Rule n. 313](#) and segg. R.o.P.;

(iii) the case law of the UPC on the intervention.

2.2. [Rule 313 ROP](#) states that:

1. An Application to intervene may be lodged at any stage of the proceedings before the Court of First Instance or the Court of Appeal by any person establishing a legal interest in the result of an action submitted to the Court (hereinafter “the intervener”).

2. An Application to intervene shall be admissible only if it is made in support, in whole or in part, of a claim, order or remedy sought by one of the parties and is made before the closure of the written procedure unless the Court of First Instance or Court of Appeal orders otherwise.

2.3. Therefore, the conditions to intervention are the following:

- legal interest, direct and present in the issuance of the order or decision requested by the assisted party;<sup>1</sup>
- in support by one of parties.

2.4. The deadline is the closure of the written procedure of the proceeding of the merits (unless the Court orders otherwise).

The rules of procedures don't specify if the intervention is admissible in the IP proceeding, even the recall to the "written procedure" could suggest that this instrument is provided only for the proceedings on the merits.

On the other hand, however, the Court notes that the paragraph 1 admits it "at any stage of the proceedings".

### 3. The case at hand

The intervener - the producer of the conflicting goods - alleged a direct and present interest in the dismissal by the court of the order and it wishes to support the Defendant, its distributor.

Deciding pursuant the rule of case by case the Court notes that the balance of conflicting interests suggests to deny the admissibility of the intervention, in light of the following considerations:

- (i) the efficiency of the proceeding and the interest of a speedy decision.

In the case at hand the application to intervene is lodged in a proceeding for provisional measures pursuant to [rule 206 ROP](#).

Even if the interpretation would generally consider the urgent procedure compatible with the intervention of the third party:

- the procedure to introduce the third party ruled by [rule 313 ROP](#) e segg. (first step on the admissibility and second step the filing of the statement in intervention) is not compatible to the already scheduled hearing for 15 October 2024;

- if the intervention was allowed, the interim injunction proceedings would be excessively slowed down.

- (ii) the intervener is the defendant in the parallel proceeding before the Central division relating to the same patent.

Therefore:

- it is likely to have been aware of the proceeding since last July 2024, but it decided to intervene only 30 days before the hearing. The application to intervene goes against the applicant's interest to a quick decision in interim injunction proceedings;
- its reasons against the patentee are already submitted to the Court in the parallel proceedings;

- (iii) the provisional measures is incidental to the main proceeding and it does not have res iudicata effects (effects arising only from judicial decisions, which become finale after all rights of appeal have been exercised or after expiry of the time-limits of appeal).

Therefore, in the case at hand the third party intervention is only direct to limit factual prejudice deriving from the judgment.

In other words, the outcome of this proceedings only affects Eoflow indirectly: it is only the supplier and the potential negative effects (an economic impairment) at this stage appears only a side effect;

Eoflow's direct interest is already overseen in the parallel proceeding pending before the Milan Central Division and there is not indivisible cause of action, with compulsory joinder of the parties.

Therefore, the legitimate interests of the applicant (in the main proceeding) to a speedy decision is higher than Eoflow's to intervene in this proceeding and Menarini's to be supported by the intervener.

In the light of the above considerations the request to intervene is dismissed.

Delivered and signed in Milan 1 October 2024

The Presiding Judge Pierluigi Perrotti

The Judge rapporteur Alima Zana

The legally qualified judge Anna-Lena Klein

The technically qualified Judge

[...]

-----

<sup>1</sup> [LD Duesseldorf, June 26, 2024, procedural order, UPC CFI 457/2023](#); [LD Vienna, July 30, 2024, procedural order UPC CFI 33/2024](#).