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# **UPC Webinar Series: Part II**

## **Case Management**

**Wednesday 27 March 2024**

**Chair: Tess Waldron, Powell Gilbert**

# UPC Webinar Series: Part II Case Management (Preliminary Objections, Security, Language, Parties to Proceedings, Dates of Service)

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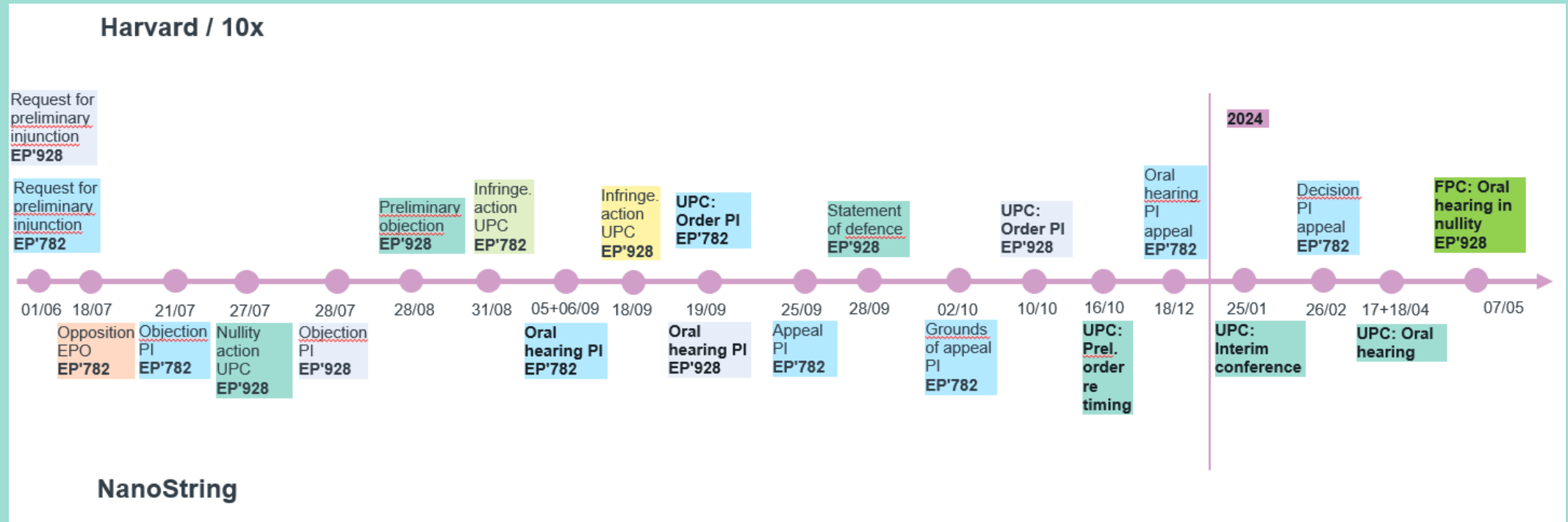
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**27 March 2024**



# Competency

*Introduction into proceedings 10x/Harvard ./ Nanostring*



# Competency

## Lis pendens Nanostring ./ . Harvard

### HEADNOTES:

*Objections based on articles 29 and 30 Brussels Ibis Regulation may be the subject of a Preliminary objection under Rule 48 in connection with 19.1(a) RoP. Preliminary objection is to be dealt with in the main proceedings for reasons of procedural economy and efficiency (Rule 20.2 RoP).*

### KEYWORDS:

*Rule 48, 19.1(a) RoP Preliminary objection. Jurisdiction. Lis pendens. Related actions. Articles 29 and 30 Brussels Ibis Regulation. Rule 20.2 RoP (yes).*

### GROUNDS FOR THE ORDER

In its Preliminary Order, the Court expressed as its preliminary view that the international jurisdiction of the UPC, including objections based on articles 29 and 30 Regulation Brussels Ibis may be the subject of a Preliminary objection under Rule 48 in connection with 19.1(a) RoP. Rule 19.1(a) RoP explicitly refers to “the jurisdiction and competence of the court”. The (international) jurisdiction of the Court and competence are dealt with in Chapter VI UPCA which is headed “international jurisdiction and competence”. In accordance with Article 31 UPCA, the international jurisdiction of this Court shall be established in accordance with Regulation Brussels Ibis. Accordingly, Rule 19.1(a) RoP (also) pertains to these provisions and these may therefore be the subject of a Preliminary objection as indeed in the present case.



Central Division (Section Munich)

UPC\_CFI\_252/2023

**Order informing the parties that the Preliminary objection will be dealt with in the main proceedings (Rule 20.2 RoP) of the Court of First Instance of the Unified Patent Court delivered on 04/10/2023**

# Competency: Relief for acts carried out pre-UPCA (1 June 2023)

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## Preliminary Objection raised in proceedings between Edwards Lifesciences and Meril Life Sciences

### Meril's position

- Defendant (Meril) argues that the UPC does not have jurisdiction and competence in so far as the claim relates to the “*time period before 1 June 2023*”
- “*A retroactive effect of the UPCA and, hence, the Court's jurisdiction and competence would interfere with fundamental legal principles of European Union law and the law currently applied in the Contracting Member States (e.g., with regard to the question of limitation).*”
- Accept that each act of infringement gives rise to its own cause of action (“*Current and/or future acts generate new separate claims for damages.*”)
- Essentially argue that this would allow for the ‘revival’ of claims which were otherwise time barred under national law

# Competency: Relief for acts carried out pre-UPCA (1 June 2023)

## Preliminary Objection raised in proceedings between Edwards Lifesciences and Meril Life Sciences

### Edwards' Position

- Art. 72 UPCA provides that “*actions relating to all forms of financial compensation may not be brought more than five years after the date on which the applicant became aware, or had reasonable grounds to become aware, of the last fact justifying the action*”.
- Art. 72 UPCA is, however, expressly said to be without prejudice to Art. 24(2) UPCA, which deals with the determination of the national law that is to be applied where the Court bases its decisions on such law in accordance with Art. 24(1)(e) UPCA.
- Given the requirements of Art 20. UPCA (“*the UPC shall apply Union law in its entirety and shall respect its primacy*”), the Court will apply national law to Art. 72 UPCA, if necessary, to ensure that the Union law principles of legal certainty and legitimate expectation are given effect. It follows that national law will be applicable to the question of limitation under Art. 72 UPCA if any relevant national law provisions would result in a shorter limitation period.
- In essence, there is no risk of revival and the UPC does have jurisdiction over acts carried out pre-UPCA

# Competency: Relief for acts carried out pre-UPCA (1 June 2023)

## Preliminary Objection raised in proceedings between Edwards Lifesciences and Meril Life Sciences

MLD Order of 29 September 2023 (ORD\_576853/2023) (JR Matthias Zigann)

- *“In the view of the Judge-Rapporteur, [Meril’s] view is erroneous in law. The Unified Patent Court is competent for decisions on acts of infringement committed before the entry into force of the Agreement on a Unified Patent Court on June 1, 2023. This follows from Art. 3 c) and 32.1.a) UPCA and the absence of conflicting intertemporal regulations.”*

**Art. 3 c) UPCA:** *“This Agreement shall apply to any European patent which has not yet lapsed at the date of entry into force of this Agreement or was granted after that date, without prejudice to Article 83”*

- Objection will be addressed in main proceedings as not determinative of proceedings as a whole

# Security for costs – Rule 158.1 RoP

## *Nanostring ./ Harvard EP928 UPC Nullity Action*

UPC\_CFI\_252/2023

Order

of the Court of First Instance of the Unified Patent Court  
delivered on 30/10/2023

### HEADNOTES:

*The Court has the discretion to order a security for legal costs and other expenses. Factors to be considered when ordering a security order include the financial position of the other party that may give rise to a legitimate and real concern that a possible cost order might not be recoverable and/or the likelihood that a possible cost order by the UPC may not, or in an unduly burdensome way, be enforceable.*

*Imposing a security for legal costs serves to protect the position and (potential) rights of the Defendant. This has to be balanced against the burden for the Claimant caused by an order to provide security. There should not be an unjustified interference with the right to an effective remedy and to a fair hearing. The Court must weigh the relevant facts and circumstances.*

*It is for the party requesting a security order to bring forward facts and arguments why such an order is appropriate in a specific case. Once facts and reasons in support of a security request have been brought forward in a credible way, it is up to the responding party to contest such facts and reasons in a substantiated way, especially since that party will normally have knowledge of and will be in the possession of evidence in relation to its financial position and (the location of) its assets.*

### ORDER

For these grounds, having heard the parties on all aspects of relevance for the following order, the Judge-rapporteur:

- Orders the Claimant to within six weeks of the date of service of this order provide security for legal costs and other expenses pursuant to Rule 158.1 RoP to the amount of EUR 300,000 (three hundred thousand euro) by way of deposit on the UPC account dedicated for security deposits, alternatively by way of bank guarantee provided by a significant EU bank which is under the direct supervision of the European Central Bank, to be chosen by the Claimant.
- Rejects the request for a decision by default to be given against claimant if claimant fails to provide adequate security within the time limit set by the Court.
- Grants leave to appeal for both parties.

# Security for costs (art. 69.1 UPCA, R. 158.1)

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UPC\_CFI 239/2023, 13 Feb. 2024 (Arkyne v. Plant-e )

- Plant-e based in a Contracting Member State (cf. Nanostring) → no formal unenforceability
- Cautio based on material unenforceability “in exceptional circumstances only”
- Plant-e admitted its financial capacity in terms of cash-flow limited  
→ Granting cautio would have prevented Plant-e from taking action through the UPC
- In NL and other Contracting Member States cautio would have been impossible
  - UPC would thus distinguish itself from several national courts if cautio would be granted
  - Would not be in line with UPCA, which is to facilitate enforcement of rights by SME’s
- Conclusion: balance of interest in favour of Plant-e → security for costs denied

# Security for costs (art. 69.1 UPCA, R. 158.1)

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## UPC\_CFI 239/2023, 13 Feb. 2024 (Arkyne v. Plant-e )

Plant-e are both established and located in the Netherlands, which is a Contracting Member State. The UPC is deemed to be a court of a Member State for the purposes of the Brussels I Regulation<sup>7</sup> (see Art. 71a Brussels I). Its decisions and orders are directly enforceable in the Netherlands in accordance with Art. 82 UPCA, Art. 71d Brussels and R. 354.1 RoP. A cautio in this case is hence not justified because of the risk that a possible cost order in favour of Bioo will not be directly enforceable. This contrasts with the situation decided by the CD Munich<sup>8</sup> – thus far the only UPC decision where a security for costs has been granted – on which Bioo relies. In that case the relevant claimant was domiciled outside the EU and no treaty regarding the execution of judgments was in place.

Beside the formal possibility to directly enforce a UPC cost order on a claimant, certain other considerations may play a role in the cautio decision. In this case Bioo's argument that there is a risk of material unenforceability because of the financial position of Plant-e which warrants a cautio in its favour, is rejected. As a rule, the court finds that a cautio based solely on (expected) material unenforceability should be awarded in exceptional circumstances only. Access to justice is, as mentioned above, an important right throughout the EU (and elsewhere). Especially for SMEs, enforcement of their patents through the UPC may be severely hampered if they not only have to bear substantial costs for their own counsel but are in addition ordered to provide security for the defendant. Requiring a cautio from claimants can thus also conflict with the high level of protection for IP rights holders envisaged by the Enforcement Directive.

been negotiated or are being negotiated. On the other hand, Plant-e has pointed out that its financial capacity in terms of cash-flow is limited, which means that the granting of a cautio would put a such strain on its resources that it would be prevented from taking effective action against Bioo through the UPC for patent infringement. It argues that Bioo's (the alleged infringer's) application is an attempt to circumvent such rights.

Lastly the court takes into consideration that according to Dutch national procedural law<sup>9</sup> it is not possible to give a cautio vis-a-vis plaintiffs domiciled or residing in the Netherlands (and hence in the EU) under any circumstances, and also if there is good reason to doubt the possibility of recovery of a potential cost order due to the financial situation of the claimant. The UPC would distinguish itself from several national courts if a cautio was granted to a party resident in the EU. In this case the court is convinced that the SME claimant's argument that imposing a cautio would effectively prevent it from enforcing its patent right through the UPC, whereas it can enforce its right in several national courts within the EU without a cautio (such as in The Netherlands). This does not appear to be in line with one of the stated objectives of the UPCA, which is to facilitate the enforcement of patent rights by SMEs:

CONSIDERING that the fragmented market for patents and the significant variations between national court systems are detrimental for innovation, in particular for small and medium sized enterprises which have difficulties to enforce their patents and to defend themselves against unfounded claims and claims relating to patents which should be revoked;<sup>10</sup>

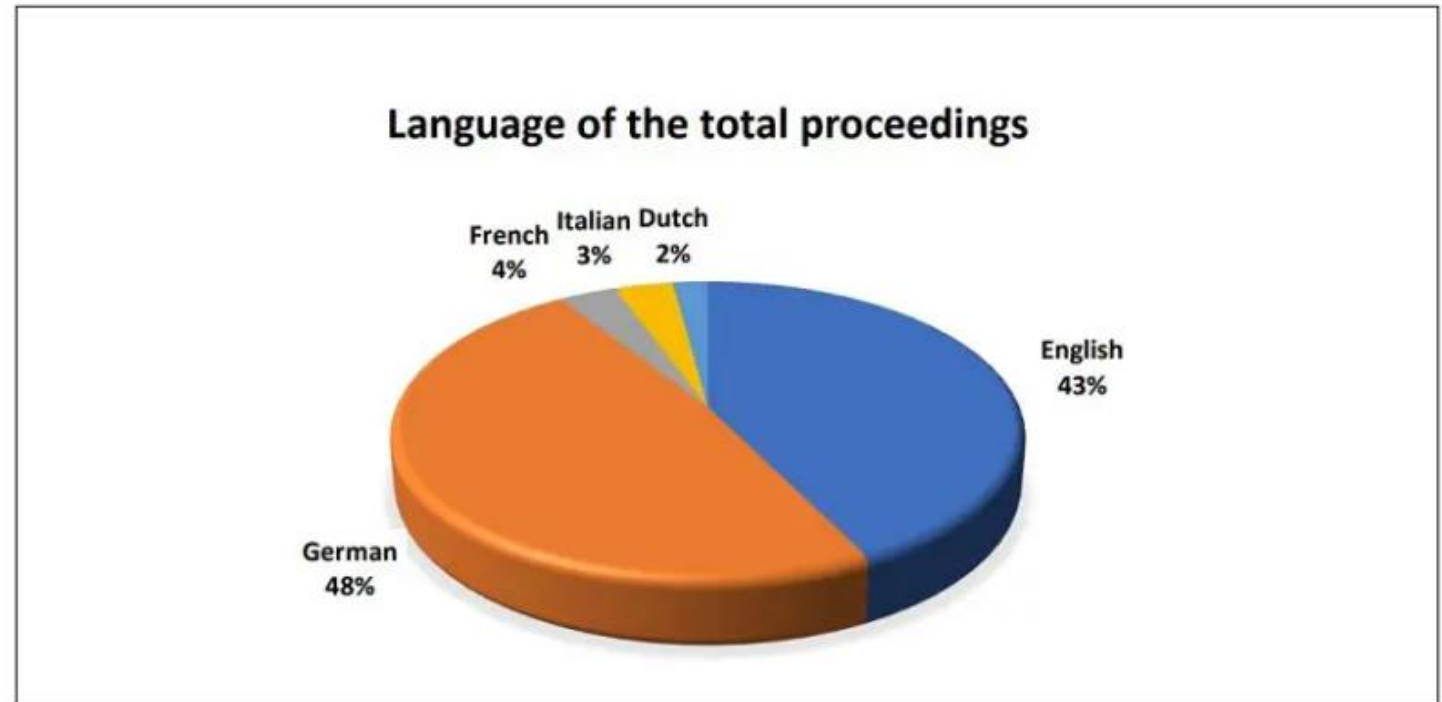
The balance of interest in these circumstances is thus in favour of Plant-e. The result of this is that each party must bear its own legal costs until a final decision and cost order is made. Bioo has not argued that exceptional circumstances exist that would warrant a cautio in this case, such as an abuse of rights. That exceptional circumstances exist in this case is also not apparent.

# Change of Language to that of the patent

Art. 49(5) UPCA and R. 323 RoP

	Division	Language(s)
Local Division	Vienna (AT)	German, English
	Brussels (BE)	Dutch, French, German, English *
	Copenhagen (DK)	Danish, English
	Helsinki (FI)	Finnish, Swedish, English
	Paris (FR)	French, English *
	Düsseldorf (DE)	German, English *
	Hamburg (DE)	German, English *
	Mannheim (DE)	German, English *
	Munich (DE)	German, English *
	Milan (IT)	Italian, English *
	The Hague (NL)	Dutch, English
	Lisbon (PT)	Portuguese, English
	Ljubljana (SI)	Slovenian, English
Regional Division	Nordic-Baltic (SE, EE, LT, LV)	English

## The language battle: English vs. German



# Change of Language to that of the patent

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Art. 49(5) UPCA and R. 323 RoP

*“Art. 49(5) UPCA: At the request of one of the parties and after having heard the other parties and the competent panel, the President of the Court of First Instance may, on grounds of fairness and taking into account all relevant circumstances, including the position of parties, in particular the position of the defendant, decide on the use of the language in which the patent was granted as language of proceedings. In this case the President of the Court of First Instance shall assess the need for specific translation and interpretation arrangements”*

# Change of Language to that of the patent

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## Art. 49(5) UPCA and R. 323 RoP

- Plant-e v. Arkyne, from NL to English: Yes
  - Both parties have good command of English
    - One of their working languages
    - Language of exchanges prior to infringement action
  - Being sued in language defendant does not master is important inconvenience
    - Translations represent considerable time and costs
    - Even if facilitating solutions (i.e. machine translations) can be used
  - Plant-e did not put forward a particular reason for not agreeing to change of language
- Curio v. 10x, from German to English: No
  - Both parties equally confronted with foreign language (both being US)
    - Curio failed to prove it's an SME
  - Not relevant that English is more convenient for the UPC

# Change of Language to that of the patent

Art. 49(5) UPCA and R. 323 RoP

- Aarke v, Sodastream, from German to English: Yes
  - Aarke is a (Swedish) SME and much smaller than Sodastream
  - Although German is foreign to both parties, using German would create an imbalance
  - Nationality and native language of judges not relevant
- Oppo v. Panasonic, from German to English: No
  - Order not available
  - But appeal is pending → CoA will hopefully provide more guidance

# Bifurcation

## The law

**Art. 33.4:** Actions referred to in Article 32(1)(b) and (d) shall be brought before the central division. If, however, an action for infringement as referred to in Article 32(1)(a) between the same parties relating to the same patent has been brought before a local or a regional division, these actions may only be brought before the same local or regional division.

**Art. 33.5:** If an action for revocation as referred to in Article 32(1)(d) is pending before the central division, an action for infringement as referred to in Article 32(1)(a) between the same parties relating to the same patent may be brought before any division in accordance with paragraph 1 of this Article or before the central division. The local or regional division concerned shall have the discretion to proceed in accordance with paragraph 3 of this Article.

- In other words, “the parties” may not themselves bifurcate the proceedings if an action for infringement is commenced first (Art. 33.4), but where a revocation action is commenced first, the patentee may commence infringement action in a different division (i.e. bifurcate) (Art. 33.5)
- Does 33(4) apply if infringement action started in central division?

# Bifurcation

## The law

**Art. 33.3:** A counterclaim for revocation as referred to in Article 32(1)(e) may be brought in the case of an action for infringement as referred to in Article 32(1)(a). The local or regional division concerned shall, after having heard the parties, have the discretion either to:

- (a) proceed with both the action for infringement and with the counterclaim for revocation and request the President of the Court of First Instance to allocate from the Pool of Judges in accordance with Article 18(3) a technically qualified judge with qualifications and experience in the field of technology concerned.
- (b) refer the counterclaim for revocation for decision to the central division and suspend or proceed with the action for infringement; or
- (c) with the agreement of the parties, refer the case for decision to the central division.

- In respect of counterclaims for revocation Court has three options (a) keep and add TQJ, (b) bifurcate with optional stay, or (c) refer entire case to CD with agreement of parties
- Unclear how this would be applied in Art. 33(5) cases if the patentee has essentially filed in a separate division. Sanofi provides some guidance.
- Perception has been that Court will generally would opt for (a) or (c) (i.e. avoiding bifurcation)

# Bifurcation

## The law

### **Rule 37 – Application of Article 33(3) of the Agreement**

1. As soon as practicable after the closure of the written procedure the panel shall decide by way of order how to proceed with respect to the application of Article 33(3) of the Agreement. The parties shall be given an opportunity to be heard [Rule 264]. The panel shall set out in its order brief reasons for its decision.
2. The Panel may by order take an earlier decision if appropriate having considered the parties' pleadings and having given the parties an opportunity to be heard [Rule 264].
3. Where the panel decides to proceed in accordance with Article 33(3)(a) of the Agreement, [Court shall appoint a TQJ].
4. [May stay if bifurcated]
5. [Communication with CD if not stayed]

# Bifurcation

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## Amgen v Sanofi

- Sanofi filed revocation action at MCD, and Amgen filed infringement action at MLD against Sanofi and Regeneron
- Question arose as to whether Sanofi should have filed revocation action per Art. 33(4), but debate as to who had filed first (CMS!)
- MCD found that Sanofi had filed first (by 30 minutes!), and therefore Art. 33(4) was not applicable (“*has been brought before a local or a regional division*”) i.e. bifurcation by the patentee
- Regeneron filed counterclaim in MLD infringement proceedings

# Bifurcation

## Amgen v Sanofi

MLD Order of 2 February 2024 (ORD\_392/2024) (Decision of the full panel)

- Joint request to bifurcate the MLD proceedings, and refer CC to MCD.
- *“While it is true that there are usually advantages in having the infringement action and the [CC] heard together by the same panel, the circumstances of this case require a different decision.”*
- *“a referral of the counterclaim to the [MCD] is the most practical solution to avoid inconsistent decisions and duplication of work on validity”*
- *“Unanimous requests by all parties will be granted unless strong counterarguments require a different decision.”*
- *“This Panel cannot find a single strong counterargument. Indeed, this panel considers that, in the circumstances of this case, a referral of the [CC] to the [MCD] is the most practical solution to avoid inconsistent decisions and duplication of work on validity.”*

MLD shows clear willingness to bifurcate where it *“is the most practical solution to avoid inconsistent decisions”*

# Bifurcation

## Amgen v Sanofi

MCD Order of 27 February 2024 (ORD\_10396/2024 & ORD\_10396/2024) (JR András Kupecz)

- Joint request to hear the revocation action and CC together [R340 / R302.3 / R334(i)?]
- All pleadings, applications (incl. application to amend), arguments etc deemed to have been filed in both sets of proceedings [i.e. total alignment of all issues]
- Sanofi & Regeneron to make identical submissions, and Amgen to make identical submissions in both cases going forward.
- Costs may be addressed separately

In circumstances where there were two (related) invalidity proceedings pending before the MCD, the Court found a practical solution with a 'one pot' approach, bringing the two cases into alignment

# Bifurcation

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However, in other instances the Court has been unwilling to bifurcate

## **Plant e-Knowledge v Arkyne (Hague LD Order of 15 February 2024, ORD\_8243/2024. Order of the full panel)**

- PeK brought infringement action. Arkyne brought counterclaim for revocation
- Parties agreed to joint hearing (Art. 33.3(a))
- *“Such a joint hearing of the infringement action and the counterclaim seems to be appropriate in particular for reasons of procedural expediency and avoids the risk of delay that might be involved with bifurcating. It is also preferable because it allows both issues – validity and infringement – to be decided on the basis of a uniform interpretation of the patent by the same panel composed of the same judges. This is also in conformity with the preference of both parties.”*

# Bifurcation

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## *N.V. Nutricia v Nestle (DLD Order of 19 December 2023, ORD\_589338/2023. Order of the full panel)*

- NVN brought infringement action. Nestle brought counterclaim for revocation.
- Court took decision before closure of written procedure; justified on basis that “*is still under construction*” and “*some members of the panel are currently only employed on a part-time or case-by-case basis*”
- “*Such a joint hearing of the infringement action and the counterclaim seems to be appropriate in particular for reasons of efficiency. It is also preferable because it allows both issues – validity and infringement – to be decided on the basis of a uniform interpretation of the patent by the same panel composed of the same judges. Although validity and infringement issues in the chemical/pharmaceutical field can be demanding, the panel is composed of judges who are very experienced in patent law and familiar with difficult issues in this context. The assignment of the TQJ, who is experienced in the technical field in question, ensures that the Local Division is undoubtedly capable of deciding both matters.*”
- See also *Kaldewei v Bette (DLD)*, *myStromer v Revolt (DLD)*

# Bifurcation

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And in some cases, the Court has still not decided how to proceed

## ***Edwards v Meril***

- Edwards brought infringement action against Meril IN (parent) and Meril DE in MLD
- Meril IT brought revocation action in PCD. PO rejected on basis that they were not the *same parties*
- Meril IN/DE brought counterclaim for revocation in MLD

## MLD Order of 14 March 2024 (ORD\_11028/2012, ORD\_11151/2024 and ORD\_12541/2024) (JR Kokke)

- Parties were amenable to bifurcation, with the CC being referred to PCD
- *“In view of related actions concerning the same patent, namely the Paris revocation action and the counterclaims (CC’s) for revocation in the present action, and decisions taken in the Paris action, it was discussed how to avoid irreconcilable decisions. A possible referral of the CC’s to the CD Paris (R.37 /Art. 33.3b), ‘bifurcation’ and the possibility of a joint hearing of the Paris revocation action and the CC (R.340 and R.37/Art. 33.3a), were discussed.”*
- *“In view of the bifurcation being conditional on/related to the decision on a joint hearing, the R. 37 decision of this panel (ORD\_1340/2024) can consequently also not be taken at this moment.”*

# Bifurcation

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## Edwards v Meril

### PCD Order of 22 March 2024 (JR Catalozzi)

- Interim conference addressed whether the CC and the revocation action could be heard together (R340)
- *“The judge rapporteur informed the parties that a communication will be established with the panel in charge of said counterclaims actions on this topic”*

# Stay of the proceedings

UPC\_CFI\_263/2023, 8 Jan. 2024 (Carrier v. BITZER)

- 29 June 2023: BITZER filed revocation action → so decision expected in summer 2024
- 20 November 2023 Carrier files statement of defence
- 1 December 2023 Carrier files request to stay proceedings in light of EPO opposition
- Ar. 33(10) UPCA and R. 295 RoP:  
UPC may stay proceedings when rapid decision from EPO is expected
- UPC: what is “rapid”?
  - Weighing of interests, in particular
    - Interest of having UPC decision within appropriate time
    - Costs for parallel proceedings
- No stay of proceedings: Carrier failed to provide concrete proof of expected date EPO decision
  - So also no proof of EPO decision in near future

# Competency

*Edwards Life Sciences Corporation ./ Meril Italy srl*

## 1. Line of argumentation

*Scope of Article 33 (4) UPCA: 'same parties'. The literal interpretation*

29. The Applicant has stated that on 1 June 2023 it has filed an infringement action under the patent in suit before the Munich Local Division of the Unified Patent Court (registered as APP\_459987/2023 UPC\_CFI\_15/2023) against the parent company of the Respondent, Meril Life Sciences Pvt. Ltd. (referred to as Meril India) and its subsidiary Meril GmbH (referred to as Meril Germany, together referred to as Meril), while a separate revocation action has been filed before this Seat by the Respondent on 4 August 2023.

## 2. Line of argumentation

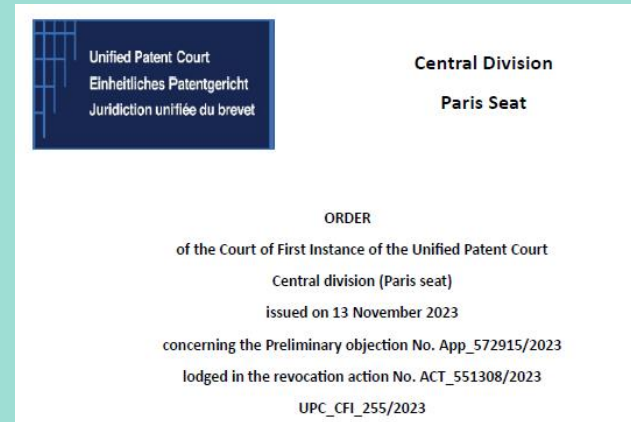
*Scope of Article 33 (4) UPCA: 'same parties'. The argument based on Article 29 Brussels Recast I*

44. The Applicant has stated that the expression 'same parties' mentioned in Article 33 (4) UPCA has to be interpreted broadly and relates to the judgement delivered by the Court of Justice of the European Union on 19 May 1998, case C-351/96 - *Drouot assurances v Consolidated metallurgical industries and others*, on the interpretation of Article 21 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ('Brussels Convention').

## 3. Line of argumentation

*Scope of Article 33 (4) UPCA: 'same parties'. The argument based on the 'straw company' theory*

56. The Applicant has also brought up a different argument based, apparently, on the fact that the Respondent is a straw company and, as such, it could not be considered as an independent legal entity and its actions should be attributed to the parent company.



## 4. Line of argumentation

*Scope of Article 33 (4) UPCA: 'same parties'. The argument based on the uniform administration of justice*

70. The Applicant has argued that a broad interpretation of the term 'same parties' is also in line with the intention of the UPCA and, in particular, with the purpose to achieve uniform administration of justice and to avoid irreconcilable judgements within its divisions.

### ORDER

For these grounds, having heard the parties on all aspects of relevance for the following order, the judge-rapporteur

- rejects the Preliminary objection;
- rejects the request for security for the legal costs.

# Connection Joinder

## The law

### **Rule 340 – Connection Joinder**

1. In the interests of the proper administration of justice and of avoiding inconsistent decisions, where more than one action concerning the same patent (whether or not between the same parties) is pending before:

(a) different panels (whether in the same or different divisions); or

(b) different panels of the Court of Appeal,

the panels may by agreement, at any time, after hearing the parties, order that two or more actions shall, on account of the connection between them, be heard together. Article 33 of the Agreement shall be respected.

2. The actions may subsequently be disjoined.

- Discretionary power to have matters heard together where it is in the interests of the proper administration of justice and of avoiding inconsistent decisions
- Same panel or two panels sitting together?

# Connection Joinder

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## The law

### **Rule 302 – Plurality of claimants or patents**

1. The Court may order that proceedings commenced by a plurality of claimants or in respect of a plurality of patents be heard in separate proceedings.
2. Where the Court orders a separation of proceedings the Court shall decide on the payment of a new court fee or court fees in accordance with Part 6.
3. The Court may order that parallel infringement or revocation proceedings relating to the same patent or patents and before the same local or regional division or the central division or the Court of Appeal be heard together where it is in the interests of justice to do so.

### **Rule 334 – Case management powers**

Except where the Agreement, the Statute or these Rules provide otherwise, the judge-rapporteur, the presiding judge or the panel may: ....

- (i) consolidate any matter or issue or order them to be heard together;

# Connection Joinder

## Edwards v Meril

- Edwards sought to have the PCD and MLD proceedings heard together pursuant to R340

### PCD Order of 27 February 2024 (App\_7184/2024) (Order of the full panel)

- *“Regardless to any considerations about the scope of Rule 340 ‘RoP, the application of that Rule does not appear to be actual , as no hearing seems to have been set in the two proceedings.”*

### PCD Order of 22 March 2024 (JR Catalozzi)

- *“The judge rapporteur informed the parties that a communication will be established with the panel in charge of said counterclaims actions on this topic”*

# Dates of service

- UPC\_CFI\_1/2023, 24 Aug. (Amgen v. Sanofi)
  - 1 June 2023: Sanofi filed revocation action with CD Munich against Amgen re EP 797
  - 1 June 2023: Amgen filed infringement action with LD Munich against Sanofi based on EP 797
  - Question: Is CD Munich competent to hear revocation action?
    - Art. 33.4 UPCA: If infringement action is pending, revocation action has to be brought before that court
  - UPC: CD Munich is competent, Sanofi filed 11.26 AM and Amgen only at 11:45 AM
- UPC\_CoA\_320/2023, 13 Oct. 2023 (Sanofi/Regeneron v. Amgen)
  - Statement of Claim also validly served if Annexes submitted later
    - Provided that SoC “at least state with certainty the subject matter and cause of action”
  - Terms for objections and SoD only commence on date that Annexes are available

# Dates of service

- UPC\_CFI\_62/2023, 27 Sep. 2023 (Philips v. Belkin)
  - Service on group of 6 defendants
    - 3 Belkin entities and 3 private persons
    - Different means and dates of service → different dates for filing SoD
    - Philips argues that earlier service attempts should be deemed valid service
  - UPC: 1<sup>st</sup> defendant = director of 4<sup>th</sup> defendant → service on 1<sup>st</sup> = service on 4<sup>th</sup> defendant
  - UPC: no legal relationship or circumstances to assume earlier service for other defendants

# Questions?