



**Local Chamber Munich
UPC_CFI_249/2023**

Arrangement
**of the Court of First Instance of the Unified Patent Court Local
Chamber Munich**
**in the cost assessment proceedings concerning the interim injunction
proceedings ACT_550921/2023 UPC_CFI_249/2023 issued on 10
January 2025**

Guiding principle:

Procedural costs and expenses to be reimbursed shall not bear interest in the cost assessment procedure.

Keywords:

Cost assessment procedure, interest

Applicant:

- 1) **Edwards Lifesciences Corporation**
1 Edwards Way - 92614 - Irvine - US

represented by: Boris Kreye, Anika Boche (Bird & Bird)

Defendants:

- 1) **Meril GmbH**
Bornheimer Straße 135-137 - 53119 - Bonn - DE
- 2) **Meril Life Sciences Pvt Ltd.**
M1- M2, Meril Park, Survey No 135/2/B & 174/2, Muktanand Marg, Chala, - 396 191 -
Vapi - IN

represented by: Andreas von Falck, Beatrice Wilden (Hogan Lovells)

DECIDING JUDGE

This order was issued by the presiding judge and rapporteur Dr Matthias Zigann.

LANGUAGE OF THE PROCEEDINGS

German

OBJECT

Application by the applicant (party to the proceedings) for reimbursement of costs pursuant to Rules 150, 151 of the Rules of Procedure.

MOTIONS BY THE PARTIES

Edwards requested,

to determine the costs to be reimbursed by the defendants in the first instance interim injunction proceedings totalling EUR 206,000.00 and the costs of representation in the appeal proceedings totalling a further EUR 38,000.00 and to declare that interest is to be paid on the determined costs at five percentage points above the respective base interest rate pursuant to Section 247 of the German Civil Code from the date of receipt of the respective application.

Meril requested,

to reject the applicant's applications for the determination of costs, insofar as the applicant requests that interest be awarded on the determined costs at five percentage points above the respective base interest rate pursuant to Section 247 BGB from receipt of the respective application.

BRIEF PRESENTATION OF THE FACTS

The parties agreed out of court on an amount of EUR 195,000 to be reimbursed for the costs of representation in the first instance. In addition, court fees disbursed in the amount of EUR 11,000 are to be reimbursed for the proceedings at first instance.

For the appeal proceedings, the parties agreed out of court on the amount in accordance with the upper limit for recoverable costs of EUR 38,000.

DISPUTED POINTS

Edwards draws on the established approach to interest recovery in Germany and argues that the recoverability of interest before the UPC follows from the corresponding application of Rules 125 and 131 of the Rules of Procedure. Edwards argues that:

"Art. 68.2 UPCA provides that the injured party shall be placed as far as possible in the position in which it would have been had the infringement not occurred. The UPCA thus makes it clear that the term "damages" covers not only the loss suffered by the patent proprietor as a result of lost profits (e.g. loss of profits or loss of licence income), but also all losses in connection with the patent infringement and its enforcement. Only through a complete

compensation of the total damage, the patent proprietor is placed in the position in which he would have been had the infringement not occurred, within the meaning of Art. 68.2 UPCA.

The provision is meaningless if the patent proprietor only receives reimbursement of the actual costs of the proceedings. Without interest, the time value of the funds spent would not be taken into account and the patent proprietor would not receive appropriate compensation for the delayed reimbursement of costs. This results in a financial disadvantage for the patent proprietor, as he would have to accept real losses over a longer period of time due to lost interest profits, which he would not have incurred without the judicial enforcement of his claims.

The fact that the patent proprietor is to be protected from such losses is also made clear in No. 7 of the preamble to the Rules of Procedure, according to which "decisions on costs and/or damages shall be given at the same time or as soon as possible [after the main proceedings]". This expresses the interest of the successful party in a quick decision on the costs of the proceedings (see also p. 5 of the decision of the Judge-Rapporteur in the appeal proceedings of 18 January 2024 (App_100/2024, UPC_CoA_4/2024)). The background to this is the creation of timely compensation for financial expenses and the avoidance of further financial losses associated with this. The Rules of Procedure equate cost decisions with a decision on damages ("and/or") and confirm the existence of comparable interests.

Art. 68.2 UPCA and No. 7 of the Preamble to the Rules of Procedure therefore show that the member states of the UPCA have also provided for reimbursement of interest in the context of the determination of costs under Rules 150 et seq. of the Rules of Procedure, even if there is no express provision in this section. This is an unintended regulatory gap which is corrected by a corresponding application of Rules 125 and 131 of the Rules of Procedure."

Meril is of the opinion that the costs claimed by Edwards for reimbursement are not subject to interest. Edwards is not entitled to interest on the amount awarded because there is no legal basis for such a claim. Neither in the Agreement on a Unified Patent Court (UPCA) nor in the Rules of Procedure (RP) is there a legal basis which would allow the requested interest to be awarded. An analogous application of Rules 125 and 131 of the Rules of Procedure is ruled out because these two provisions only concern proceedings for the determination of damages and compensation. However, interest is not mentioned with regard to the cost fixing procedure, so that this is deliberately not provided for.

REASONS FOR THE ORDER

1. Responsibility

A decision on costs is to be made by the judge-rapporteur in accordance with Rule 156.2 of the Rules of Procedure.

2. Ground and height

The defendants have pay the costs of the applicant to bear the costs. The obligation to bear the costs is undisputed in terms of reason and amount.

3. Interest

With regard to the interest on the costs incurred requested by Edwards for determination, the eligibility for reimbursement in the cost determination procedure must be denied. There is no legal basis for this. Neither the Agreement on a Unified Patent Court

nor the Rules of Procedure provide for interest on fixed costs in cost assessment proceedings.

A corresponding application of Rules 125 and 131 VerfO, which regulate the procedure for determining damages and compensation and expressly provide for interest, is ruled out. There is no unintended regulatory gap. On the contrary, the two cited provisions show that the legislator was aware of the problems of time delay and inflation. Nevertheless, the legislator did not provide for interest on the reimbursement of costs. Accordingly, Rule 131.2.a of the Rules of Procedure provides for the specification of interest in the context of an application for the determination of damages, while the corresponding Rule 151 of the Rules of Procedure concerning an application for the determination of costs lacks a corresponding provision.

Rather, in interim injunction proceedings, the successful party can apply for provisional reimbursement of costs and enforce them immediately (Rule 221 No. 1 d of the Rules of Procedure). This possibility also exists before the Court of Appeal (Rule 242 No. 2.a VerfO).

In the present case, it can be left open whether an interest loss actually incurred can be liquidated elsewhere, for example in the context of the calculation of damages. This is because, as explained above, only the reimbursement of costs is to be decided in the cost assessment proceedings.

4. Pursuant to Rule 157 of the Rules of Procedure, an appeal may only be lodged with the Court of Appeal against the costs decision of the Judge-Rapporteur in accordance with Rule 221 of the Rules of Procedure. Pursuant to Rule 221 of the Rules of Procedure, a party adversely affected by one of the decisions referred to in Rule 157 of the Rules of Procedure may submit an application for leave to appeal to the Court of Appeal within 15 days of notification of the relevant decision of the court. Accordingly, there is no provision for the single judge to authorise an appeal.

ARRANGEMENT

1. The respondents must pay the applicant a total of EUR 244,000.00 within 20 days of service of this order.
2. The remainder of the applicant's application is rejected.

INFORMATION ON THE APPOINTMENT

party adversely affected by one of the decisions referred to in Rule 157 of the Rules of Procedure may apply to the Court of Appeal for leave to appeal within 15 days of service of the relevant decision of the court (Rule 221.1 of the Rules of Procedure).

INFORMATION ON ENFORCEMENT (ART. 82 EPGÜ, ART. ART. 37(2) EPGS, R. 118.8, 158.2, 354, 355.4 VERFO)

A certified copy of the enforceable decision or order is issued by the Deputy Registrar at the request of the enforcing party, R. 69 RegR.

DETAILS OF THE ARRANGEMENT

Order no. ORD_4627/2024 in ACTION NUMBER: Not provided


UPC number: UPC_CFI_249/2023

Related proceeding no. Application No.: 550921/2023

Application Type: Application for provisional measures (RoP206)


Signed in Munich on 10 January 2025

**Matthias
ZIGANN**

 Digitally signed by
Matthias ZIGANN Date:
2025.01.10
13:06:46 +01'00'

Dr Zigann Presiding
Judge

**Anja
Mittermeier**

 Digitally signed by Anja
Mittermeier
Date: 2025.01.10
13:09:17 +01'00'

For the Deputy Chancellor: