



UPC-CFI-0001901/ 2026

**Order of the Court of First Instance of the Unified Patent Court
delivered on 30/ 07/ 2026**

concerning a preliminary objection (R.19 RoP)

APPLICANT – (DEFENDANT in the main proceedings)]

Viatis Santé

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Represented by **Marc LAUZERAL**

RESPONDENTS – (CLAIMANTS in the main proceedings)

Merz Pharma France

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Represented by **Laëtitia BÉNARD**

PATENT AT ISSUE

SPC and Patent no. *Proprietor*

French SPC No. Merz Pharmaceuticals LLC
13C0033EP2377536

Based on

EP No. 2 377 536

COMPOSITION OF PANEL – FULL PANEL

Presiding judge & Judge-rapporteur	Camille Lignières
Legally qualified judge	Carine Gillet
Legally qualified judge	Samuel Granata
Technically qualified judge	Rainer Friedrich

LANGUAGE OF PROCEEDINGS: English

ORDER

Facts and procedure:

The preliminary objection raised by VIATRIS:

In the context of an infringement action filed by MERZ against VIATRIS before the UPC Paris Local Division on 28 May 2026, VIATRIS lodged on 6 July 2026 a preliminary objection (PO) pursuant to R. 19.1 (a) RoP, seeking:

- mainly, a stay of proceedings and a request for the Court to decline jurisdiction in favour of the Tribunal Judiciaire de Paris (“Paris TJ”), on the basis of Articles 29(1) and 29(3) of the Brussels I recast Regulation (“BR I recast”) and Rule 295 (l) RoP.
- in the alternative, a stay pending the final decision to be handed down by the Tribunal Judiciaire de Paris (Article 30 BR I recast and Rule 295(l) RoP);
- and, in the further alternative, a stay on the basis of Rules 295(b) and (m) RoP.

MERZ objects to this PO with the following arguments:

- First, MERZ considers that there is no situation of *lis pendens*, arguing that:
 - the UPC was seised first due to the filing of an application for provisional measures before the UPC Paris Local Division (“UPC Paris LD”), which is linked to the present proceedings on the merits before the same Court (Art. 60(8), Art. 62(5) and Rule 213(1) o RoP)

- In the alternative, the UPC has exclusive jurisdiction over the infringement claim (Articles 83 and 60(8) of the UPCA). The proceedings before the Paris TJ regarding a declaration of non-infringement do not impact the Court's exclusive jurisdiction, since the UPC was already seised at the pre-litigation stage, its competence prevails.

- If the Court considers that a situation of *lis pendens* exists, then it must be held that VIATRIS's application to the Paris TJ is ineffective, as it should have complied with the three-month mandatory settlement phase (Article L615-9 of the French Intellectual Property Code),

Alternatively, the Court must rule that VIATRIS adopted a fraudulent procedural strategy by bringing the case before the Paris TJ (abusive forum choice).

- Second, regarding "related actions", MERZ argues that according to Art. 30 BR I recast I, the Court "may" stay the proceedings (discretionary power) and VIATRIS bears the burden of establishing both a connection between the proceedings (1st criterion) and a genuine risk of irreconcilable judgments (2nd criterion). MERZ considers that these criteria have not been met:

-regarding the 1st criterion) the revocation and compulsory licence claims pending before the Paris TJ raise questions of validity and licensing that are legally distinct and, therefore, not identical, from the infringement claim before the UPC. As such, neither issue requires the Paris TJ to determine the same cause of action as the UPC;

-regarding the 2nd criterion) there is no genuine risk of irreconcilable judgments: a compulsory licence, if granted, would only operate prospectively and could not retroactively authorise VIATRIS' past acts of infringement. Furthermore, no reasonable, non-negligible possibility exists that SPC 033 or EP 536 will be held invalid, both having been upheld by the EPO Board of Appeal and, following the reversal of the German revocation decision, by the Bundesgerichtshof.

The claims before the Paris TJ seised by VIATRIS are as follows:

Before the national court (Paris TJ), VIATRIS requests:

Primarily,

- To revoke SPC No. 13C0033;
- To judge that the marketing of FAMPRIDINE VIATRIS LP 10 mg does not constitute an infringement of SPC No. 13C0033;

In the alternative,

- To order MERZ PHARMACEUTICALS LLC, MERZ THERAPEUTICS GmbH and MERZ PHARMA FRANCE to grant a compulsory licence to VIATRIS SANTÉ in respect of SPC No. 13C0033;
- To judge that the use of FAMPRIDINE VIATRIS LP 10 mg does not constitute an infringement of SPC No. 13C0033;

In any event:

- Order MERZ PHARMACEUTICALS LLC, MERZ THERAPEUTICS GmbH and MERZ PHARMA FRANCE to pay VIATRIS SANTE the sum of €150,000 pursuant to Article 700 of the Code of Civil Procedure
- Order MERZ PHARMACEUTICALS LLC, MERZ THERAPEUTICS GmbH and MERZ PHARMA FRANCE to pay all costs pursuant to Article 699 of the Code of Civil Procedure.

The claims before the UPC Paris LD, brought on the merits by MERZ, are as follows:

Pursuant to Article 32(1)(a) UPCA, Rule 13 RoP and Rule 213(1) RoP, the Claimants request the Court to:

A) Confirm and maintain the provisional measures granted by the Court of Appeal in its Order dated 27 April 2026 (case UPC_CoA_917/2025), pursuant to Rule 213(1) RoP.

B) Find that French Supplementary Protection Certificate No. 13C0033 based on European Patent No. 2 377 536 is infringed by the Defendant through the making, offering, placing on the market and/or using, as well as importing and/or storing for those purposes, of the generic product “FAMPRIDINE VIATRIS LP 10 mg, comprimé à libération prolongée”.

C) Permanently enjoin, pursuant to Article 63(1) UPCA, the Defendant, in the territory of France, up to and including 25 July 2026, from:

Making, offering, placing on the market or using, or importing or storing for those purposes, the generic products “FAMPRIDINE VIATRIS LP 10 mg, comprimé à libération prolongée” and any pharmaceutical composition falling within the scope of French Supplementary Protection Certificate No. 13C0033, including any sustained release 4-aminopyridine composition for use in a method of increasing walking speed in a patient with multiple sclerosis, wherein said composition is administered twice daily in a dose of 10 milligramsof 4-aminopyridine.

Timeline of the relevant proceedings:

-31 July 2025: MERZ brought proceedings before the UPC Paris LD seeking a preliminary injunction against VIATRIS on the basis of SPC 033.

-16 April 2026: VIATRIS brought an action before the Paris TJ seeking revocation and a declaration of non-infringement against MERZ on the basis of SPC 033.

-28 May 2026: MERZ brought an action on the merits for infringement against VIATRIS before the UPC Paris LD on the basis of SPC 033.

Legal framework

Art.31 UPCA:

The international jurisdiction of the Court shall be established in accordance with Regulation (EU) n° 2015/2012¹ (“Brussels I recast Regulation” or “BR I recast”)

Art. 29 and Art. 30 BR I recast:

Article 29 (“*lis pendens*”)

1. Without prejudice to Article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)

2. In cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised in accordance with Article 32.

3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30 (“*related cases*”)

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where the action in the court first seised is pending at first instance, any other court may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

UPC case law (CoA order 17 September 2024, UPC_CoA_227/2024, MALA v NOKIA)

Headnotes 3: The request for a stay pursuant to Art. 30 of the Brussels I recast Regulation is to be regarded as a preliminary objection within the meaning of R. 19 RoP.

§24 of the CoA order (MALA v NOKIA): “Pursuant to Art. 30 of the Brussels I recast Regulation, the UPC may stay proceedings where a related action is pending in a national court. The objective of this provision is to minimise the possibility of parallel proceedings before different courts (recital 21 of Regulation (EU) No 1215/2012) and to improve coordination of the exercise of judicial functions within the European Union and to avoid conflicting and contradictory decisions, even where the separate enforcement of each of them is not precluded (see Tatry, paragraphs 52, 53 and 55).”

In the present case

The preliminary objection was lodged on 6 July 2026 within the time period set out by R.19.1 of the Rules of Procedure (RoP) and is therefore admissible.

Lis pendens as provided for in Article 29 BR I Recast:

According to VIATRIS, the Paris TJ is the court first seised, whereas, according to MERZ, the UPC Paris LD is the court first seised on the basis of the date on which the application for provisional measures was filed, as this constitutes a preliminary step that leads to the bringing of the action on the merits in accordance with Rule 213 RoP. Under this rule, if an action on the merits is not brought within a specified time limit following this application, the provisional measures cease to have effect.

MERZ adds that the application for provisional measures (prior to an action on the merits) is “equivalent to a document instituting the proceedings” within the meaning of Article 9 of Regulation 4/2009² and the date of their application for provisional measures before the present Division must therefore be taken into account when establishing that the UPC Paris LD was the first court seised.

² Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations – Article 9

The judge rapporteur does not agree with MERZ's assertion that the UPC Paris LD was the first court seised, as the application for provisional measures and the action on the merits are two distinct proceedings, each governed by specific rules and each pursuing a different objective. The action for provisional measures initiated on 31 July 2025 is now closed. Moreover, an application for provisional measures is not necessarily followed by the filing of an action on the merits. VIATRIS is incorrect when referring to the ECJ in *Winderwill* to argue that bringing an application for provisional measures is equivalent to an act instituting an action on the merits before the same court (CJUE 12 March 2026, C-516/24, ECLI:EU:C:2026:185 *Winderwill*). Indeed, the *Winderwill* case concerned an application for legal aid in order to be able to bring the said action before the court: this is not comparable to an application for provisional measures, which is a separate action from the infringement action on the merits.

It follows that the infringement action before the present UPC Division was introduced on 28 May 2026.

Although the Paris TJ was the first to be seised of the matter in relation to the proceedings on the merits brought before the UPC Paris LD, Article 29 BR I Recast does not apply to the situation under consideration, as the two cases do not have the same subject-matter nor the same cause of action. The Paris TJ will have to rule on an action for revocation of SPC 033 and a claim for a "declaration of non-infringement" introduced by VIATRIS, and, in the alternative, on an application for a compulsory licence, whilst the UPC Paris LD will have to rule on an infringement action based on the SPC 033.

Consequently, the actions in question cannot be considered to have the same subject matter since the core of each action differs and the actions do not have the same aims.

Concerning MERZ's arguments about the inadmissibility of VIATRIS's action before the Paris TJ on the grounds of failure to comply with the three-month prior time limit laid down in Article L615-9 of the French Intellectual Property Code, the Court states that it is not for the UPC to determine whether the seisure of the national court is admissible or not under Article L615-9 of the French Intellectual Property Code. The Judge-rapporteur notes that, in accordance with French case-law, the claimant may be exempted from this time limit in certain factual circumstances, which must be assessed by the national court. At this stage, for the Court to assess the order in which the courts were seised, VIATRIS is only required to demonstrate that they effectively seised the Paris TJ on 16 April 2026. It is sufficient that VIATRIS provided the Court with a copy of the summons delivered to MERZ (exhibit PC275).

"Related cases" as provided for in Article 30 BR I recast:

The two cases are, however, "related" within the meaning of Article 30 of the Brussels I recast Regulation, as they concern the same parties, the same SPC and the same facts relating to the marketing of the product Fampridine by VIATRIS.

Under Article 30 of the Brussels I recast Regulation, "even if the conditions are met, the provision does not require the Court to decline jurisdiction. It provides that the Court "may" do so". (UPC_CoA_188/2024, 3 September 2024, AYLO v DISH, § 29).

Against this background, the present Division must assess the need to stay proceedings or to decline jurisdiction in favour of the Paris TJ, by evaluating the facts of the case.

If the Paris TJ were to revoke SPC 033, this would certainly impact the infringement claim relating to that same SPC before the present Division – the main subject of these proceedings – should these proceedings result in an injunction ordering the cessation of all marketing of the infringing product.

However, it is highly likely that the final decision before the UPC – which aims to deliver its decisions within 12 months (see the preamble to the Rules of Procedure, point 7), will be handed down prior to the decision of the Paris TJ, as the timeline before the national court depends on the parties' conduct during the proceedings, whereas the procedural rules of the UPC establish a strict and mandatory principle regarding time limits.

According to Rule 28 RoP, the date of the oral hearing is set once the Statement of Defence is filed, which in the present case is scheduled for 11 September 2026. According to point 7 of the Preamble (RoP), it is expected that the oral hearing will take place by the end of May 2027 at the latest (i.e. within one year after the SoC dated 28 May 2026). VIATRIS cannot legitimately claim that a stay of proceedings is necessary, given that it was the party that referred the matter to the national court following the provisional measures proceedings before the UPC and, given that it withdrew any challenge to the validity of SPC 033 before the UPC's CoA. In these circumstances, granting a stay of proceedings would unduly delay the proceedings before the UPC, whereas one of the UPC's objectives is the speed and efficiency of its proceedings (point 4 of the preamble to the Rules of Procedure).

In light of the foregoing, the Court considers that the UPC's decision will be handed down before that of the Paris TJ; and if SPC 033 is subsequently revoked by the national court, the parties will draw all the necessary conclusions, and VIATRIS will then be in a position to market its generic product even if an injunction prohibiting its marketing is granted in the context of the present dispute. Such an injunction would no longer have any effect due to the invalidation of the SPC.

In these circumstances, the stay is not justified and shall not be granted.

On the alternative request for a stay of proceedings based on Rules 295(b) and (m) RoP

For the same reasons as those set out by the Court regarding "related cases", it is in the interests of the proper administration of justice to refuse the stay of proceedings requested by VIATRIS under Rules 295(b) and (m) RoP.

On these grounds, the Court orders the following:

- The preliminary objection raised by VIATRIS is entirely rejected,
- The request for a stay under R. 295 RoP is rejected,
- The costs will be taken into account in the main proceedings.

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY (Rule 20(1), 3rd sentence RoP) concerning the next steps in the proceedings:

- The time period for lodging the Statement of Defence shall not be affected by the present decision.

Issued in Paris, on 30 July 2026.

C.Lignieres, Judge-rapporteur

 Date :
2026.07.30
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INFORM ATION ABOUT APPEAL: An appeal may be brought against the present order pursuant to Rule 220.2 RoP. (R.21.1 RoP, last sentence)

ORDER DETAILS

Date of issue: 30/07/2026

UPC number: UPC-CFI-0001901/2026

Action type: Infringement Action

Order type: Preliminary Objection R. 19 RoP