

CASE COMMENT

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BROAD ACCESS TO UPC REVOCATION PROCEEDINGS FOR THIRD PARTIES

The Paris seat of the Central Division of the UPC recently addressed the concept of “same party” and provided first insight on whether a straw person may be admissible in bringing a revocation case.

On 4 August 2023, Meril Italy srl has brought a revocation action against Edwards Lifesciences' EP 3 646 825 before the Paris Central Division. The validity of said patent was likely to be discussed in the context of infringement proceedings filed earlier before the Munich Local Division, involving Meril's parent company and its subsidiary Meril GmbH against Edwards Lifesciences. The latter lodged a preliminary objection questioning the competence of the Central Division to rule in a proceeding involving the “same parties” and the same patent as in the parallel first filed infringement proceedings.

In an [order issued on 13 November](#) (UPC_CFI_255/2023), the Paris Central Division rejected the Preliminary objection.

The Central Division reminds that:

- a “party” must be defined in accordance with national law (Italian law in that case) pursuant to Art.46 UPCA and finds that Meril Italy Srl can be considered as a party;
- the concept of “same parties” defined by the CJEU in case C-351/96 (Drouot assurances) according to which two parties may be considered as “same parties” if their interests are identical and indissociable, does not apply, because it addressed a situation of lis pendens and risk of irreconcilable judgements which is not at stake in the case at hand. UPCA (Art. 33) provides for mechanisms to avoid irreconcilable judgements from different first instance divisions in parallel proceedings relating to the same patent.

Meril Italy Srl is not considered as a straw company. The Central Division reminds that even if prima facie evidence was submitted, the agreement with a third party to act on its behalf may only lead to the inadmissibility of the action if it has an abusive purpose in that it is meant to circumvent the provisions of the UPCA. This abusive purpose is not demonstrated in that particular case because the revocation action filed by Meril Italy Srl cannot have a “blocking” effect on the infringement action pending before the Munich Local Division, given the options under Art. 33(3) UPCA (bifurcation of the revocation action while the infringement action is stayed or proceeds), RoP 295(m) (stay can be ordered pending a parallel action) or RoP 340 (two actions on the same patent can be heard together).

The Central Division therefore confirms that a patent may be attacked by different entities, even belonging to the same group or having a commercial relationship, or even by a straw person, in different actions, as long as the provisions applicable before the UPC “give the judges the tools for handling such a situation without disregarding neither the right to take legal actions, nor the right to an efficient management of those proceedings” (para. 84 of the order).

