Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

The Hague - Local Division
UPC_CFI_191/2025
UPC_CFI_192/2025

Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 18/08/2025
Concerning: R.333 review of an order regarding a preliminary objection R. 19 RoP

APPLICANTS / DEFENDANTS IN THE MAIN PROCEEDINGS

1)	**Moderna, Inc.** (Applicant) - 325 Binney Street - MA 02142 - Cambridge - US	Represented by Ruben Laddé
2)	**Moderna Belgium S.R.L.** (Applicant) - Avenue Marnix 23 - 1000 - Brussels - BE	Represented by Ruben Laddé
3)	**Moderna Denmark ApS** (Applicant) - C/O CSC (DENMARK) ApS Sundkrogsgade 21 - 2100 - Copenhagen - DK	Represented by Ruben Laddé
4)	**Moderna Sweden AB** (Applicant) - c/o Scandinavian Trust AB, Birger Jarlsgatan 12 - 114 34 - Stockholm - SE	Represented by Ruben Laddé

5)	**Moderna Switzerland GmbH** (Applicant) - Peter Merian-Weg 10 - 4052 - Basel - CH	Represented by Joachim Renken
6)	**Moderna Portugal Unipessoal LDA** (Applicant) - Rua João Chagas 10-B DTO - 1500-493 - Lisbon - PT	Represented by Ruben Laddé
7)	**ModernaTX, Inc.** (Applicant) - 325 Binney Street - MA 02142 - Cambridge - US	Represented by Ruben Laddé
8)	**Moderna Norway AS** (Applicant) - c/o CSC (Norway) AS, Wergelandsveien 7 - 0167 - Oslo - NO	Represented by Ruben Laddé
9)	**Moderna Poland SP. Z.O.O.** (Applicant) - Rondo Ignacego Daszyńskiego 1 - 00-843 - Warsaw - PL	Represented by Ruben Laddé
10)	**Moderna Netherlands B.V.** (Applicant) - Claude Debussylaan 7 - 1082 MC - Amsterdam - NL	Represented by Ruben Laddé
11)	**Moderna Biotech UK Limited** (Applicant) - 54 Portland Place - W1B 1DY - London - GB	Represented by Ruben Laddé

12)	**Moderna Italy S.R.L.** (Applicant) - Via Vittorio Veneto 54/B - CAP 00187 - Rome - IT	Represented by Ruben Laddé
13)	**Moderna Biotech Spain SL** (Applicant) - C/ Julián Camarillo 31 - 28037 - Madrid - ES	Represented by Ruben Laddé
14)	**Moderna France SASU** (Applicant) - 19 Rue Cognacq-Jay - 75007 - Paris - FR	Represented by Ruben Laddé
15)	**Moderna Germany GmbH** (Applicant) - Brienner Straße 45 a-d. c/o Design Offices Campus Königsplatz - 80333 - Munich - DE	Represented by Ruben Laddé

Applicants/Defendants 1 to 15, defendants in the main proceedings, are hereinafter referred to as "**Defendants"** or "**Moderna**" and are referred to separately as "Defendant + nr" or "Moderna + country", e.g. "Defendant 3" and/or "Moderna Switzerland" for the defendant listed at 3) above.

<u>DEFENDANTS / CLAIMANTS IN THE MAIN PROCEEDINGS</u>

1)	**Genevant Sciences GmbH** (Main proceeding party - Claimant) - Viaduktstrasse 8 - 4051 - Basel - CH	Represented by Markus Van Gardingen

2)	**Arbutus Biopharma Corporation** (Main proceeding party - Claimant) - 701 Veterans Circle - PA 18974 - Warminster – US	Represented by Markus Van Gardingen

Claimants in the main proceedings are hereinafter collectively called: "**Claimants**"

PATENTS AT ISSUE

Patent no.	*Proprietor/s*
EP2279254	Arbutus Biopharma Corporation (in case 191/2025)
EP4241767	Arbutus Biopharma Corporation (in case 192/2025)

DECIDING JUDGES

The full panel of the LD The Hague.

LANGUAGE OF PROCEEDINGS: English

SUMMARY OF FACTS AND PROCEDURE

1. By uploading statements of claim ("SoCs") dated 3 March 2025, Claimants initiated two separate infringement proceedings at the Local Division in The Hague of the Unified Patent Court ("UPC"), each concerning infringement of different patents (case UPC_CFI_191/2024 concerning EP 2 279 254 and case UPC_CFI_192/2025 regarding EP 4 241 767, hereinafter cases "**191/25**" and "**192/25**" respectively), against the same fifteen defendants. All defendants belong to the Moderna-group.

2. In case 191/25 Moderna UK (Defendant 15) filed a preliminary objection ("PO") pursuant to R. 19 of the Rules of Procedure of the UPC ("RoP") on 22 April 2025 (App_19208/2025) requesting:
   - to allow the PO regarding the jurisdiction and competence of the Court (Rule 19.1(a) RoP);
   - to dismiss the claim with regard to Moderna UK.

   In the same case Defendants 1-14 filed another PO on 24 April 2025 as App_19773/2025, requesting:

- to allow the PO regarding the jurisdiction and competence of the Court (Rule 19.1(a) RoP UPC) and regarding the competence of the division indicated by Claimants (Rule 19.1(b) RoP UPC);
- to dismiss the claim.

3. In case 192/25 Moderna UK (Defendant 15) filed a preliminary objection ("PO") on 22 April 2025 (App_19158/2025), requesting:
    - to allow the Preliminary objection regarding the jurisdiction and competence of the Court (Rule 19.1(a) RoP);
    - to dismiss the claim with regard to Moderna UK as regards infringing acts within Poland, Spain, Monaco, Norway, Greece, Hungary, Ireland, Iceland, Turkey and Switzerland/Liechtenstein.

    In the same case, Defendants 1-14 filed a PO on 24 April 2025 as App_19821/2025, with the following requests:
    - to allow the Preliminary objection regarding the jurisdiction and competence of the Court (Rule 19.1(a) RoP) and regarding the competence of the division indicated by Claimants (Rule 19.1(b) RoP);
    - to dismiss the claim with regard to Defendants 5) (Moderna Spain), 12) (Moderna Norway) and 14) (Moderna Poland);
    - to dismiss the claim with regard to Defendants 1) (Moderna US), 2) Moderna US-TX), 3) (Moderna Switzerland), 5), 12) and 14) as regards infringing acts within Poland, Spain, Monaco, Norway, Greece, Hungary, Ireland, Iceland, Turkey and Switzerland/Liechtenstein.

4. Moderna based its request for dismissal on several grounds. Firstly, it argued that the court lacks international jurisdiction for Moderna Norway, Spain and Poland because these defendants are not domiciled in Contracting Member States (to the Agreement on a Unified Patent Court, "UPCA") and jurisdiction cannot be based on Art. 7(2) or Art. 8(1) Brussels I recast Regulation ((EU) no 1215/2012, hereinafter: "BR") in conjunction with Art. 71b(1), (2) BR, because the Claimants do not conclusively allege that these Moderna companies have committed any infringing acts within the UPC territory. This argument was not raised in the separate PO applications for Moderna UK.

5. Moderna also argued that the Local Division The Hague has no (local) jurisdiction in this case pursuant to Art. 33(1)(a) and/or (b) UPCA, to hear the case against Moderna Spain, Moderna Germany, Moderna France, Moderna Italy, Moderna Belgium, Moderna Denmark, Moderna Sweden, Moderna Norway, Moderna Portugal, and Moderna Poland because these defendants are neither domiciled nor accused of infringing acts in the Netherlands. This was not argued for Moderna UK.

6. In addition, Moderna asserted that even if one were to assume that the Court has international competence against all Defendants, it would at least lack long-arm jurisdiction for acts outside the UPC territory (i.e. for alleged infringement occurring in Poland, Spain, Monaco, Norway, Greece, Hungary, Ireland, Iceland and Turkey) allegedly committed by Moderna entities that are not based within the UPC territory. This was argued with respect to defendants Moderna US, Moderna US-TX, Moderna Switzerland, Moderna Spain, Moderna Norway, Moderna UK and Moderna Poland.

7. Lastly, only in case 191/25, Moderna additionally argued that the formal requirements for the withdrawal of the opt-out of the patent at issue were not met and consequently the UPC has no jurisdiction to hear the case with respect to any of the Defendants. The withdrawal request was only filed on behalf of Claimant 2, whereas the application for withdrawal of the opt-out for the patent at issue should have been filed by or on behalf of both Claimant 1) (Moderna clearly means Claimant 2, the patent proprietor, JR) and "*Protiva Biotherapeutics Inc.*" because that company is registered as he patent proprietor in Greece, Hungary and Austria.

8. Moderna announced that it intended to file counterclaims for revocation (which it did in the meantime, in both cases) and that it reserves the right to initiate national nullity actions in particular jurisdictions outside the UPC territory. In addition, Moderna announced that it will request that the proceedings be stayed insofar as they concern infringing acts of Moderna allegedly committed in jurisdictions that are not Contraction Member States (which it did not do (yet)).

9. Claimants replied to both POs in action 191/25 in one submission dated 7 May 2025, requesting to dismiss the POs. In action 192/25 Claimants also replied to both POs with one submission dated 7 May 2025, requesting the court to dismiss the POs.

10. On 23 May 2025, in cases ACT_10280/2025 and ACT_10284/2025, the Judge Rapporteur ('JR') issued a Procedural Order (ORD_21852/2025, 'PO Order'). On 27 May 2025, Moderna uploaded two (identical) applications (App 25212/2025 in case 191/2025 and App_25215/2025 in case 192/2025) requesting rectification of the PO Order pursuant to R. 353 RoP (concerning the rectification of clerical mistakes, errors in calculation and obvious slips). By order of 4 June 2025 the PO Order was rectified with respect to the admissibility of three Moderna entities. Subsequently, the operative part of the PO Order reads as follows:

    I. The decision concerning long-arm jurisdiction with respect to defendants Moderna US, Moderna US-TX, Moderna Switzerland, Moderna Spain, Moderna Norway, Moderna UK and Moderna Poland, will be dealt with in the main proceedings;
    II. On all other counts, the preliminary objections (19208/2025, 19773/2025, 19158/2025 and 19821/2025) are dismissed.

11. On 6 June 2025, Defendants filed a R. 9 application to review a case management order pursuant to R. 333 RoP as App_27016/2025 in case 191/2025 (the "R.333 Application"), requesting to have the PO Order reviewed by the entire panel. In the alternative or in addition, to allow appeal against the decision (of the panel) on the preliminary objections. As grounds for revisions Moderna mentions that the PO Order:

    (B.I) does not take into account the burden of proof for infringing acts within the UPC territory

    (**B.II**.) does not reflect the fact that holding a European market authorisation ("MA") for Spikevax for (use by) other entities within a group structure does not qualify as an act of patent infringement but rather as a mere unlawful act for which the Court has no competence and

    (**B.III.**). the Judge Rapporteur wrongly stated that the requirements of Article 8(1) BR (and Article 7(1) [this should be 6(1) of the Lugano Convention] are met.

    B.I-III refer to parts of Moderna's R.333 Application. In its submission Moderna substantiates these general statements as regards Moderna Norway and Moderna Spain only.

12. The Claimants were given the opportunity to respond, which they did, requesting the court to maintain the PO Order in full and to deny Defendants leave for appeal of the decision on review.

13. Although the Defendants for reasons of simplicity – encouraged and welcomed by the JR – filed the R.333 application in one workflow only (and thus necessarily officially in one case, 191/25 only), the Claimants and the Registry correctly pointed out that for CMS and court fee reasons, the request also needs to be uploaded for case 192/25 and hence a second workflow needs to be started. Moderna were given the opportunity to upload the R.333 request formally in the CMS for case 192/25 which it did on 17 July 2025 as App_33094/2025.

GROUNDS

14. The R.333 Application is admissible as it was filed within the time frame of R.333.2 and the PO Order is in this case - for reasons of procedural economy and because the Claimants do not object - qualified as a case management order that is open for review by the panel (cf. the Court of Appeal of the UPC ("CoA") Order of 21 March 2024, UPC_COA_486/2023, Netgear/Huawei).

15. The Claimants correctly point out that a R.333 Application should be reasoned and '*shall set out the grounds for review and the evidence, if any, in support of the grounds'* (R.333.1 and 2 RoP). The scope of the review, which is marginal in nature (cf LD Brussel order of 19 juli 2024 in UPC_CFI_376/2023). Review is also limited to and by the submitted grounds and supportive evidence and the asserted reasons for which the panel should come to a different decision (cf. CoA 25 September 2024, Mammut / Ortovox, par. 74 and CoA 9 October 2024, SharkNinkja / Dyson, par. 14 and 15 with reference to case law of the Court of Justice, which concerns appeals but equally applies to legal remedy of revision by the panel).

16. Since the PO applications were limited to certain Defendants and in addition the reasoning in the R.333 Application is further limited in subjects, and is in fact only substantiated for Moderna Norway and Spain, it is established that Moderna does not request review of the (reasoning of the) PO Order concerning:

    - The validity of the opt-out in case 191/25
    - The referral of the decision on the long-arm jurisdiction to the main action
    - International jurisdiction regarding Defendants other than Moderna Spain and Moderna Norway
    - The internal competence of the local division The Hague of the UPC.

    > The short reference to Article 33(1)(b) sentence 2 UPCA under the heading 'Requirements of Article 8 BR not met' in the R.333 Application, par. 20: "*The latter one must be considered when interpreting Article 33(1)(b) sentence 2 UPCA in the light of Article 8 BR*", is not considered a "reasoned ground for review" of the PO Order regarding the 'local' jurisdiction of the LD The Hague.

    For these issues, the PO Order is confirmed because it is not challenged.

17. For Moderna Spain the assumed jurisdiction is based on both Art. 7(2) and Art. 8(1) BR in the PO Order and for Norway on the corresponding articles of the revised Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial

matters, hereinafter the "Lugano Convention". Moderna argues that these articles cannot confer jurisdiction on the court for these entities. The panel dismisses these arguments and confirms the PO Order, for the following reasons.

18. The UPC is a court common to several European Union ("EU") Member States pursuant to Art. 71a BR. As specified in Art. 71a(1), such common court is deemed to be a court of a Member State when exercising jurisdiction in matters falling within the scope of the BR, i.e. civil matters. The present cases are infringement actions (Art. 32(1) UPCA) which fall within the scope of the BR. The UPC therefore has (international) jurisdiction where the courts of a Contracting Member State would have jurisdiction.

19. Under Art. 7(2) BR, the courts of a Contracting Member State have jurisdiction in an infringement action within the meaning of Art. 32(1)(a) UPCA against a person domiciled in an EU Member State where the harmful event occurred or may occur in that Contracting Member State. Pursuant to Art. 8(1) BR, a person domiciled in an EU Member State may also be sued where he is one of a number of defendants, in the courts for the place where one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings.

20. Moderna Spain is domiciled in an EU Member State and therefore the above applies directly.

    The same applies to, and was considered in the PO Order regarding Moderna Poland, where jurisdiction was at issue originally but this is not disputed in the R.333 Application.

    Moderna Norway is not domiciled in an EU Member State, but both the EU and Norway are contracting parties to the revised Lugano Convention, which was concluded to extend the principles laid down in Regulation (EC) No 44/2001 (the predecessor of the BR) to the Contracting Parties to the Lugano Convention to strengthen legal and economic cooperation. The Lugano Convention consequently has provisions that correspond to Art. 7(2) BR and Art. 8(1) BR as Art. 5(3) and Art. 6(1)[1], respectively. It can be assumed that the jurisdiction rules of the BR that apply to the UPC, also apply to the assessment of jurisdiction of the UPC in proceedings concerning persons domiciled in Contracting Parties to the Lugano Convention (such as Norway). This was not contested (or even discussed) by the parties and is also not a subject of the R.333 Application.

Moderna's ground B.I: the burden of proof for infringing acts within the UPC territory

21. Defendants dispute the international jurisdiction by arguing that the assessment that Moderna Spain and Moderna Norway (threaten to) infringe the patents within UPC territory is incorrect. According to established case law, the decision whether the patents are infringed with the allegedly infringing products, in which countries the infringement takes place and whether that infringement may (also) be attributed to certain co-Defendants, falls within the scope of the examination of the substance of a case by the panel of the court having jurisdiction (CoA, September 2024, CoA_188/2024). For establishing international jurisdiction, it is sufficient for the Claimants to allege in a substantiated way either that Moderna Spain and Moderna Norway infringe the same patents (one of which is a bundle patent, the other has unitary effect) with the allegedly infringing product "Spikevax" (the same product) in their home countries (the

[1] erroneously referred to as 7(1) in the PO Order

same territory) collectively with Moderna Netherlands within the meaning of art. 8 BR / 6(1) Lugano Convention), or alternatively that these entities (threaten to) infringe the same patent with unitary effect or (national leg of) a European patent with the same product in UPC territory (Art. 7(2)BR/5(3) Lugano Convention). During the assessment of the jurisdiction in PO proceedings, the Defendants can provide arguments to the contrary. It is then for the court to determine whether the alleged infringement is plausible to establish jurisdiction. The threshold thereto is, contrary to what Moderna alleges, considerably lower than for the establishment of infringement in the main proceedings.

22. In this case the Claimants have sufficiently substantiated that Moderna Spain and Moderna Norway allegedly infringe the national leg of the European patents in their home countries connectively with Moderna Netherlands. Collective adjudication of these allegedly infringing actions is necessary to avoid the risk of irreconcilable judgments. This is sufficient to establish jurisdiction of the UPC pursuant to Art. 8(1) BR (or Art. 6(1) Lugano Convention) in conjunction with the undisputed Art.4 BR jurisdiction for Moderna Netherlands which, also undisputedly, allegedly infringes in the Netherlands and in all other European countries at issue, including Spain and Norway. It is also clear that this is not a case where Moderna Spain and Norway are included with the sole object of ousting the courts of Spain and Norway (see Solvay/Honeywell para 22, Painer para 78 and Kalfelis paras 8 and 9), but to avoid the risk of irreconcilable decisions. Contrary to what Moderna argues, it is not a requirement of Art. 8 BR that the alleged collective infringement takes place within UPC territory.

> **Moderna's grounds B.II**.) holding an MA for other entities within a group structure does not qualify as an act of patent infringement and
> (**B.III.**). the requirements of Article 8(1) BR (and Article 7(1) [this should be 6(1) of the Lugano Convention) are not met

23. Claimants assert, both in the SoCs and in the replies to the objections, that all Defendants, including Moderna Spain and Moderna Norway, have infringed or threaten to infringe the patents within and outside UPC territory, and that they do so both individually and collectively with, in any case, Moderna Netherlands.

24. The Claimants assert that Moderna Netherlands has a central role in the sales activities and has successfully offered to supply (and sold) Spikevax in the past, and more recently in 17 European countries, including Norway. It qualifies this activity as (threatened) infringement in those countries (as far as the patents at issue are in force there) by Moderna Netherlands. Moderna did and does not contest this central role of Moderna Netherlands.

25. For Moderna Spain the Claimants pointed out that it is the holder of the MA for Spikevax. This is not in dispute. As the product is commercialised, also within UPC territory, Moderna Spain must make the MA available to other Moderna entities. Moderna argues that 'holding an MA for other entities within a group structure does not qualify as an act of patent infringement but rather as a mere unlawful act for which the Court has no competence'.

26. The Claimants pointed out that Moderna Spain does not merely 'hold' the MA, but also makes use of it and has allowed other Defendants to use its MA to offer, place and use Spikevax on the European market, including within the UPC territory, which, according to Claimants does qualify as infringement. In case this does not qualify as direct infringement (case law regarding the qualification of such acts differs in various Contracting Member States), such acts in any case qualify as the facilitating of infringement, which may well qualify as the providing of

services used by a third party to infringe (cf. Art. 63 UPCA), for which acts the UPC has competence . Furthermore, Claimants point out that Moderna Spain is also one of the manufacturers for batch releases of Spikevax destined for the European market and hence also infringes the patent in Spain by producing the product.

27. As Moderna Netherlands also allegedly infringes in Spain with the same product, Moderna Spain and Moderna Netherlands are both alleged to infringe the same (national parts of a European) patent with the same product in the same country, which is enough connectivity to consider them co-defendants within the meaning of Art. 8(1) BR. The Court is competent to hear the case against Moderna Netherlands based on Art. 4 BR. Competence to hear infringement by Moderna Spain in any case in Spain, follows from Art. 8(1) BR.

28. Defendants do not contest that both Moderna Netherlands and Moderna Norway (threaten to) perform infringing activities in Norway with the same products. Therewith competence of the court based on art. 6(1) Lugano Convention is given. The fact that Moderna contests that Moderna Norway (threatens to) perform(s) infringing acts in UPC territory, would be relevant to establish jurisdiction bases on Art. 5(3) Lugano Convention, but as jurisdiction can be established based on connectivity, the latter is superfluous.

29. Whether the alleged acts constitute actual infringing acts, needs to be assessed in the main action. Again, the above assertions by claimants are in no way so far-fetched that they can be deemed to be entered with the sole object of ousting the courts of Spain and Norway (see Solvay/Honeywell para 22, Painer para 78 and Kalfelis paras 8 and 9).

ORDER

Having heard the parties, the full panel of the court:

1. confirms the PO order of the JR of 23 May 2025, as rectified on 4 June 2025
2. dismisses the request for interim appeal to this decision.

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Granata	Samuel Rocco M Granata Digitally signed by Samuel Rocco M Granata Date: 2025.08.18 09:25:35 +02'00'
Kokke	Margot Elsa KOKKE Digitally signed by Margot Elsa KOKKE Date: 2025.08.18 13:34:07 +02'00'

ORDER DETAILS

Order no. ORD_34976/2025 in ACTION NUMBERS: ACT_10280/2025 and ACT_10284/2025
UPC numbers: UPC_CFI_191/2025 and UPC_CFI_192/2025 (respectively)
Action type: Infringement Actions
Application No.: App_27016/2025 and App_33094/2025
Application Type: RoP 333