Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC_CFI_552/2025

Decision

of the First Instance of the Unified Patent Court

Central Division - Milan seat

issued on 4 May 2026

concerning EP 3854403

Headnotes:

1. The person skilled in the art, outlined in Art. 56 EPC, is a notional figure who represents an average level of knowledge in a specific technical field and whose knowledge reflects the common general knowledge (CGK) at the priority date. This fictitious individual cannot be identified with any real person working in the technical domain of the invention. The skilled person is not required to possess (or disregard) a distinct affiliation, nor is it necessary; therefore, differentiating characteristics such as connections to a specific company are not admissible.

2. The person skilled in the art is an objective, rational figure who does not display fear of failure. The defendant incorrectly projects subjective attitudes onto this notional individual by likening them to Prof. XXXX. The skilled person questions information only when documented prejudice exists in relevant literature, and it is the party's responsibility to highlight proven flaws. Simply suggesting unexpected outcomes is inadequate. Recognising that risk and doubt are part of scientific progress, the skilled person would not reject a solution due to subjective concerns about possible failure.

3. The difference between an expectation of success and a mere hope of success does not depend on the researcher's subjective state of mind. There is a reasonable expectation of success when the scientific data or experiments indicate that the tested solution can yield a positive result, despite the general uncertainty arising from the necessary experimentation and the application of the scientific method. A reasonable expectation of success is therefore based on reason and knowledge of scientific data, even though the expert knows that the outcome is never certain until it is the subject of clinical trials. Therefore, it can be said that the greater the realism or reasonableness of the starting point, the greater the expectation of success. Hope for success, on the other hand, arises when the result is based on sheer assumptions or there is a contradiction in the sources, so that the outcome is considered possible but not reasonable.

CLAIMANT:

Gilead Sciences, Inc., 333 Lakeside Drive, Foster City, CA 94404, USA,

Representatives: Christine Kanz, attorney and UPC representative - Hoyng-Rokh-Monegier Steinstrasse 20, 40212 Düsseldorf (Germany), Amandine Métier, Hoyng-Rokh-Monegier Paris, 33 Rue Vivienne 75003 Paris (France), Peter van Schijndel Hoyng-Rokh-Monegier Amsterdam, Amstelplein1, 1096 Amsterdam (The Netherlands)

DEFENDANT:

Academy of Military Medical Sciences, No. 27 Taiping Road, Haidian District, Beijing 100850, China

Representatives: Camille Pecnard, Pierre-Emanuel Meynard, Charlotte Cuny, attorney-at-law and UPC representatives, Béatrice Holz, Aude Veynante Gardey and Michael Schlauch, UPC Representatives – LAVOIX, 2 Place d'Estienne d'Orves 75009 Paris (France)

PATENT AT ISSUE: European Patent no. No. 3 854 403

DECIDING JUDGE:

This decision is taken by the panel composed of

Presiding judge and judge rapporteur	Andrea Postiglione
Legally qualified judge	Marije Knijff
Technically qualified judge	Xavier Dorland-Galliot

(*The presiding judge signs this decision on behalf of the TQJ Xavier Dorland-Galliot, whose smart cart is currently unactive*)

LANGUAGE OF THE PROCEEDINGS:

English

SUBJECT MATTER OF THE PROCEEDINGS:

Revocation action. Final decision.

SUMMARY OF THE FACTS

Procedural background and proceedings before the Central Division

1. On 18 June 2025, Gilead Sciences Inc. (hereinafter "the claimant") brought the present revocation action with the UPC Central Division (Milan seat) against the Academy of Military Sciences of China (hereinafter "the defendant"), concerning nullity of the European Patent 3854403 with respect to all national designations in the contracting member states of the Agreement on a Unified Patent Court.

2. On 1 August 2025, the defendant lodged a defence to the statement for revocation and an application to amend the patent, filing one unconditional main request (hereinafter MR) and 8 auxiliary requests (AR). In the Rejoinder to the Reply, the defendant proposed further changes to the patent amendments, which were dismissed by order of March 16, 2026.

3. An online interim conference was held on 11 March 2026. The outcome of the interim conference is laid down in the procedural order issued on 16 March 2026.

4. The oral hearing was held in person in Milan on 16 April 2026. Additional documents in the form of visual aids were filed before the oral hearing. During the oral hearing, the parties maintained that they had reached an agreement whereby the costs of these first-instance proceedings (and not the value) are mutually set at 800,000 euros. Additionally, the claimant withdraws its request under Rule 119 RoP, and the defendant withdraws its request to lower the ceiling on recoverable costs.

THE PARTIES

Gilead Sciences, Inc., 333 Lakeside Drive, Foster City, CA 94404, USA, CLAIMANT

5. The Claimant is headquartered in the U.S. and is a research-based biopharmaceutical group of companies focused on the discovery and development of innovative medicines. The Claimant is a pharmaceutical company with a history in antiviral research and drug development. It has been active in producing medicines for life-threatening diseases such as hepatitis C and HIV.

Academy of Military Medical Sciences, No. 27 Taiping Road, Haidian District, Beijing 100850, China

6. Established in 1951, AMMS is the Chinese military medical research institute of the Chinese People's Liberation Army, aimed at researching and developing innovative medicines in several therapeutic domains. In December 2019, AMMS was at the forefront of the 2019 novel coronavirus ("2019-nCoV") outbreak and was among the first to determine that Remdesivir, an antiviral drug (also designed as "GS-5734"), showed promising in vitro results to treat an infection caused by 2019-nCoV.

THE PATENT

7. The patent in suit has been granted on 18 June 2025 - priority date 21 January 2020: EP 403 claims priority of CN application 202010071087 filed on 21 January 2020.

8. The decision to grant the patent was notified on 22 May 2025, and the mention of publication of the grant in the European Patent Bulletin was announced for 18 June 2025.

9. AMMS requested the unitary effect for EP 403, which was granted and registered by the EPO on 23 July 2025, with retroactive effect at the date of publication of the mention of the grant of the patent, i.e., on 18 June 2025. The patent is in force in the UPC Contracting Member States: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia, and Sweden.

10. EP403 is entitled "Use of substituted aminopropionate compounds in treatment of SARS-COV-2 infection" and relates to the treatment of SARS-CoV-2 infection with Remdesivir.

11. The patent in suit comprises 11 claims with two independent claims, namely claims 1 and 6, having respectively 4 and 5 dependent claims. These independent claims relate respectively to '*Remdesivir for use in treating a disease or an infection caused by SARS-CoV-2*' (claim 1 and related dependent claims) and a '*pharmaceutical composition comprising remdesivir for use in treating a disease or an infection caused by SARS-CoV-2*' (claim 6 and related dependent claims).

REQUESTS OF THE PARTIES

12. The claimant maintains that the patent is invalid because it is not inventive and lacks sufficient disclosure. To this last purpose, the claimant submits that the subject matter of claims 1 and 6 is not sufficiently clear and complete for it to be carried out by the skilled person, because the stereochemistry at phosphorus is not defined by the formula depicted in claims 1 and 6.

The claimant requested (SoR §155):

a) to revoke EP 3 854 403 in its entirety with effect in all the Contracting Member States of the UPC in which the patent has effect, namely Austria (AT), Belgium (BE), Bulgaria (BG), Germany (DE), Denmark (DK), Estonia (EE), Finland (FI), France (FR), Italy (IT), Lithuania (LT), Luxembourg (LU), Latvia (LV), Malta (MT), The Netherlands (NL), Portugal (PT), Romania (RO), Sweden (SE), Slovenia (SI) ; (Art. 65(2) UPCA, R. 25 RoP);

b) to order that the Defendant shall bear the legal costs of the proceedings (Art. 69 UPCA, R.118(5) RoP);

c) to order that the Defendant shall pay to the Claimant the sum of EUR 900.000,00 as an interim award of costs (Art. 69 UPCA, R. 150 (2) RoP). (R. 108. 5). (note: on the interim award of costs and on the ceiling, the parties found a mutual agreement during the OH).

13. In the reply to defence, the claimant further asked the Court:

- to dismiss the Application to amend the patent;

- in the alternative, to revoke EP 3 854 403 in its entirety in the form of the Main Request;

- in the further alternative, to revoke EP 3854403 in the form of the Auxiliary Requests 1 to 8;

- dismiss AMMS' Request to lower the ceiling of recoverable costs

14. In the rejoinder, the claimant requested the Court to:

- declare the Application to further amend the patent inadmissible.

-In the alternative, revoke the patent in its entirety in the form of Auxiliary requests A and B.

15. The defendant requested (page 92 SoD) to**:**

- dismiss GILEAD's revocation action against EP 3 854 403 and all its claims;

- rule that EP 3 854 403 is valid in all the Contracting Member States of the UPC in which the patent has effect:

a) Following the claims as amended in the Main Request (R.30 and R.49 RoP), or

b) In the alternative, based on the claims as amended following the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th or 8th Auxiliary Requests (to be considered in this order) (R.30 and R.49 RoP)

- reject the value in dispute ascertained by Gilead without any justification,

- reject Gilead's request for interim award of costs (application withdrawn: see point 12 (c) above),

- In the event AMMS is unsuccessful in the present revocation action, lower the ceiling of recoverable costs requested by Gilead to a reasonable amount (application withdrawn: see point 12 (c) above);

- order that the Claimant shall bear the legal costs of the proceedings (Art. 69 UPCA, R. 118(5) RoP).

Subordinately to:

- grant AMMS application for Leave to further amend the patent (R.50(2) and 30(2) RoP);

- rule that GILEAD's argument regarding the lack of sufficiency of disclosure of claim 1 of the Main Request (therapeutic efficacy of the claimed formulation) is inadmissible as late filed;

- rule that EP '403 is valid in all the Contracting Member States of the UPC in which the patent has effect following the claims as amended in the Main Request (R.30 and R.49 RoP), or in the alternative, based on the claims as amended following the Auxiliary Requests A or B (note: AR A and B were not allowed by the Court by order od 16 March 2026); in the further alternative, based on the claims as amended following the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th or 8th Auxiliary Requests filed with the first Application to Amend the Patent (to be considered in this order) (R.30 and R.49 RoP).

SUMMARY OF THE OUTCOME

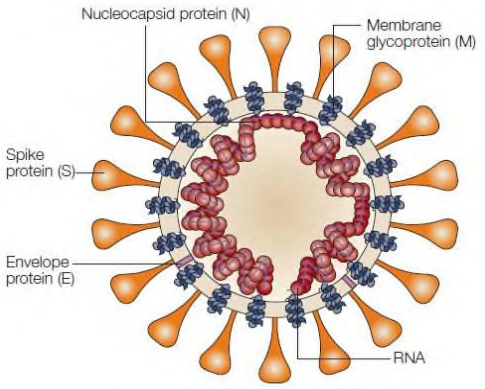
16. The Central Division concludes that the action for revocation is well-founded. The patent lacks inventive step. The attack based on insufficient disclosure is dismissed and, moreover, irrelevant following the outcome of the inventive step attack. Defendant will bear the costs of the proceedings. There is no need to adjudicate the application pursuant to R.119 RoP and the application to lower the ceiling on recoverable costs since the parties withdrew their applications.

TECHNICAL BACKGROUND OF THE PATENT IN SUIT

17. The patent is entitled "use of a substitute aminoproprionate compound in treatment of SaRS-COV2 infection" and relates to the treatment of SARS-CoV-2 infection with Remdesivir (also called GS-5734), a compound that lies within the field of virology or antivirals by RNA inhibition.

18. Coronaviridae, commonly known as coronaviruses or CoVs, are a family of enveloped, single-stranded RNA (ssRNA) viruses.

19. The family encompasses a broad spectrum of animal and human viruses. These viruses are characterized by club-like spike proteins protruding from the viral envelope. Their 25-32 kb genome contains 7-10 open reading frames (ORFs) and encodes 4 structural proteins



20. Coronaviruses are divided into four genera:

- A- CV
- B- CV divided into 4 subgenera:
    1. Embecovirus
    2. Sarbecovirus (SARS-COV-1 and SARS-COV-2)
    3. Merbecovirus
    4. Nobecovirus
- Γ-CV (affecting mainly birds)
- Δ-CV (affecting mainly birds)

21. In humans, coronaviruses are typically associated with mild respiratory disease; however, some individuals remain asymptomatic, while others develop severe respiratory disease.

22. Human coronaviruses (HCoVs) belong to two genera: α-coronavirus (HCoV-229E and HCoV-NL63) and β-coronavirus (SARS-CoV, MERS-CoV, HCoV-OC43, and HCoV-HKU1).

23. They replicate through RNA-dependent RNA polymerase (hereinafter RdRP).

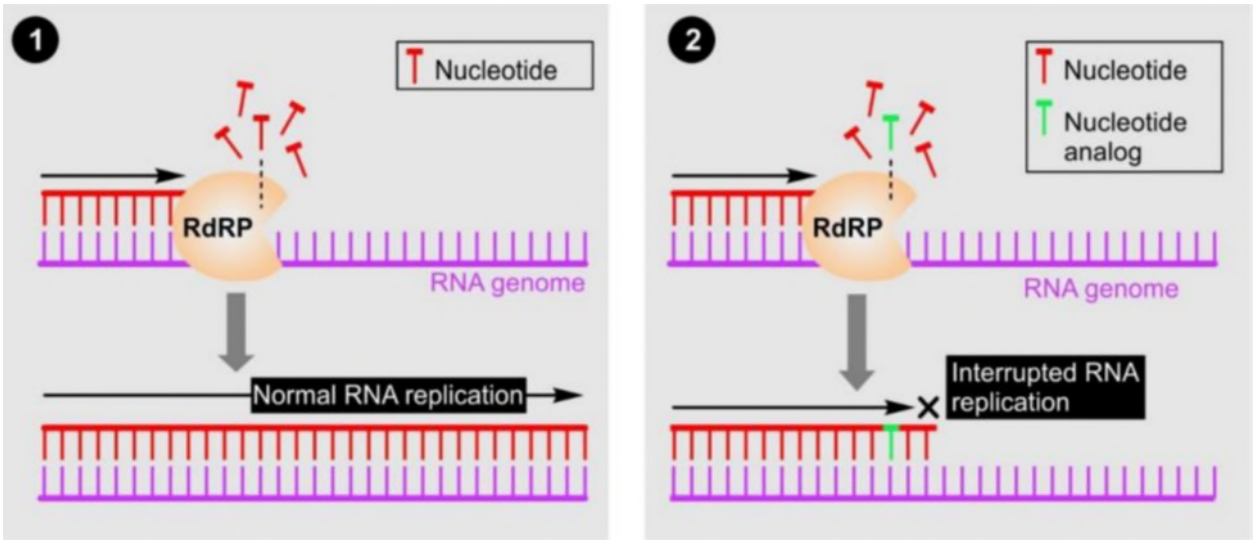
24. Coronaviruses (CoVs), including SARS-CoV-2, are thus enveloped viruses with a positive-sense single-stranded (+ss) RNA genome. This means that their genetic material consists of a single RNA strand that can be directly translated into viral proteins by the host cell's ribosome, functioning much like messenger RNA (mRNA). This allows for rapid viral replication once the virus enters a host cell.

25. Inhibition of RdRP results in the disruption of virus replication and the impossibility of replication.

26. A nucleotide analog possessed by Remdesivir (GS 5734) has a structure that closely resembles natural nucleotides that serve as the building blocks of DNA and RNA. The active metabolite of remdesivir acts as a nucleotide analog.

27. Nucleotide analogs compete with natural nucleotides for incorporation into the replicating viral RNA.

28. The RdRP is critical for the virus replication cycle. Inhibition of RdRP halts viral replication. The process can be explained figuratively as follows, and it is not disputed by the parties:



29. On 31 December 2019, the WHO China Country Office was informed of cases of pneumonia detected in Wuhan City, Hubei Province, China. The causative agent of this pneumonia was subsequently confirmed to be a virus associated with a severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2), previously named 2019 novel coronavirus (2019-nCoV).

30. The genome sequence of SARS-CoV-2 was first published on 11 January 2020 (the announcement was given on 10 January 2020; date on which Kevin Olival published on Twitter the phylogenetic tree based on a 410bp region of coronavirus RdRP sequences, including the SARS-CoV-2 RdRP).

31. On 12 January 2020, the said genome sequence, titled "Wuhan seafood market pneumonia virus isolate Wuhan-Hu-1, complete genome" was also published on GenBank (entry no. MN908947.1).

32. SARS-CoV-2 was quickly classified as a member of the family Coronaviridae, the genus Betacoronavirus, and subgenus Sarbecovirus.

33. The 2019 novel Coronavirus (2019-nCoV), [0005] is a new coronavirus strain that has never been found in humans before. On February 11, 2020, the International Committee on Taxonomy Viruses (ICTV) announced that the official name of the 2019 novel Coronavirus (2019-nCoV) is severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). On the same day, the World Health Organization (WHO) announced that the official name of the disease caused by this virus is COVID-19. The symptoms of SARS-CoV-2 virus infection are mainly pneumonia, and can be divided into simple infection, mild pneumonia, severe pneumonia, acute respiratory distress syndrome, sepsis, septic shock, and so on according to the severity of the disease. Patients with simple infection may have non-specific symptoms, such as fever, cough, sore throat, nasal congestion, fatigue, headache, muscle pain or discomfort, and elderly people and immunosuppressed people may have atypical symptoms. Patients with mild pneumonia mainly have cough, dyspnoea, and polypnea. Severe pneumonia can be seen in adolescents, adults, or children, and the main symptoms of which include increased breathing frequency, severe respiratory failure or dyspnoea, central cyanosis, drowsiness, unconsciousness or convulsion, gasp, etc.

THE TECHNICAL PROBLEM

34. Reference is made to UPC CoA 528/2024, decision issued on 25 November 2025, §11 and 12, (Amgen vs Sanofi). "*It first has to be established what the object of the invention is, i.e., the objective problem. This must be assessed from the perspective of the skilled person with their common general knowledge, as at the application or priority date (also referred to as the relevant date) of the patent. This must be done by establishing what the invention adds to the state of the art, not by looking at the individual features of the claim, but by comparing the claim as a whole in context of the description and the drawings, thus also considering the inventive concept underlying the invention (the technical teaching), which must be based on the technical effect(s) that the skilled person on the basis of the application understands is (are) achieved with the claimed invention".* The technical problem must be kept free of any specific solution approach and be formulated in such a way that it does not prejudge the question of patentability. Rather, the technical problem must be formulated in such a general and neutral manner that it does not "set the course" for the examination of inventive step.

35. The Court holds that the patent aims to solve the following technical problem: finding a drug with antiviral activity against SARS-CoV-2, to be used for the treatment of a disease caused by the

infection thereof [0008]. At the priority date, in fact, no antiviral drug was available for SARS-CoV-2 [0007]. The person skilled in the art, faced with this new virus, a close relative to the previous one, which possessed potential pandemic effects, sought a drug active against this new coronavirus. This does not imply, however, the finding of a cure for the pandemic or the disease, but only of an active antiviral agent.

36. The patent proposes to use Remdesivir, the compound represented by Formula I (or a pharmaceutically acceptable salt and/or a solvate or a hydrate thereof) as a solution and relies for this on an in vitro experiment conducted on Vero E6 cells, described in Example 1 in the patent description.

37. Conclusively, the Court, bearing in mind CoA 528/24 §11, considers that the technical problem must be assessed broadly, taking into account what the invention contributes in relation to the state of the art.

38. The claimant's argument that the problem underlying the patent would merely be testing of Remdesivir against the new coronavirus is not persuasive. Although certain paragraphs i.e. [0004] and [0006] may refer to specific solutions, a comprehensive review of the claims, not limited to individual claim features, is required. Upon careful examination of the relevant paragraphs [0005], [0007], [0008] and [0036] and the references to the "therapeutically effective amount", the Court concludes that the technical problem was the identification of an effective antiviral substance against the novel virus and not simply testing the efficacy of Remdesivir on the new virus strain.

39. The parties seem to converge on this interpretation. The claimant defines the technical problem as "providing a treatment for a disease or infection caused by SARS-CoV-2". The defendant, on the other hand, defines the technical problem in the provision of an antiviral treatment for a disease or infection caused by the 2019 new Coronavirus, since SARS-COV-2 was not identified as such at the time the (priority) patent was filed. For consistency purposes, in their submissions, AMMS will continue to refer to 2019-nCoV when discussing the new coronavirus at the priority date, but its position does not depart from GILEAD's .

40. The Court sees it eye-to-eye. The target of the antivirus is the same virus. In patent in suite, the technical field is only defined (cf. [0008]) as « the purpose of the present application is to find a drug with antiviral activity against SARS-CoV-2, which can be used for the treatment of a related disease caused by the infection thereof» so that there is no really issue that SARS-CoV 2 and 2019 Coronavirus identify the same strain (see also [0022], [0023] and [0024]).

THE PERSON SKILLED IN THE ART

41. The patent claim is to be interpreted from the point of view of a person skilled in the art (in CoA NanoString/10x Genomics, 26 February 2024, UPC_CoA_335/2023).

42. In the claimant's view, the skilled person can be defined as a virologist conducting searches on emerging viral diseases, in particular coronaviruses, and identifying drugs, antibodies, or vaccines for prevention and treatment thereof.

43. In the defendant's view (§91 DtR), it should be clarified that the skilled person is an independent person, with no links whatsoever to any pharmaceutical company and/or implicated in the research and development of a compound such as a specific antiviral to treat coronaviruses; has a large vision of all the possible antiviral options to treat viruses and in particular coronaviruses, whatever their

respective state of development, but knows that to this date, none has proved to be effective when administered to patients (from a medical perspective); intervenes at a very specific time, since at the priority date the fact that this virus would evolve in a global pandemic was not known, "SARS-CoV-2" had not been identified as such. AMMS observes that the new coronavirus was only known as "2019 Novel coronavirus", or "2019-nCoV", and its classification, structure, and properties were being discussed and were not clearly understood. Conclusively, the defendant sees the skilled person as a 'virologist conducting research (i) on emerging viral diseases, in particular coronaviruses, and (ii) on the identification of antiviral drugs for treatment thereof'.

44. The claimant replies that, while the Defendant elaborates on the deficiencies of the skilled person as brought forward by the Claimant (DtR, para. 90 et seqq.), the Defendant arrives at a very similar definition thereof. The only difference being that the therapeutic approaches the skilled person would be looking for, are defined more narrowly by the Defendant by excluding antibodies and vaccines as relevant treatment options for newly emerging coronaviruses. Gilead also notes that a skilled virologist would consult a clinician to assess antiviral drug use in humans. The claimant cites EPO's case law (T 1184/12), according to which the skilled person has both theoretical and practical experience and is involved in developing new treatments, not just patient care.

45. The Court notes that the skilled person is dealing with an antiviral compound and that the technical problem underlying the patent relates to a chemical compound with antiviral efficacy. The medical and epidemiological consequences related to SARS-CoV-2 will therefore remain outside the scope of these proceedings, as will any reference to alternative treatments for the disease, such as vaccines and antibodies.

46. The court sees no reason, either, why the skilled person should be defined by having (or not having) links to specific pharmaceutical companies.

47. It is well known that the person skilled in the art, outlined in Art. 56 EPC, is a notional figure who represents an average level of knowledge in a specific technical field and whose knowledge reflects the common general knowledge (CGK) at the priority date. The skilled person is an '*experienced practitioner who has average knowledge and abilities and who is aware of what the common general knowledge was in the relevant art concerned at a particular time*' (T 1787/20).

48. This fictitious individual cannot be identified with any real person working in the technical domain of the invention. The skilled person is not required to possess (or disregard) a distinct affiliation, nor is it necessary; therefore, differentiating characteristics such as connections to a specific company are not admissible. The expert's physical collocation in a company or personal affiliation does not, in fact, add or diminish anything to their knowledge at the priority date.

49. The skilled person is, in the Court's view, a virologist conducting research:

(i) on emerging viral diseases, in particular coronaviruses, and

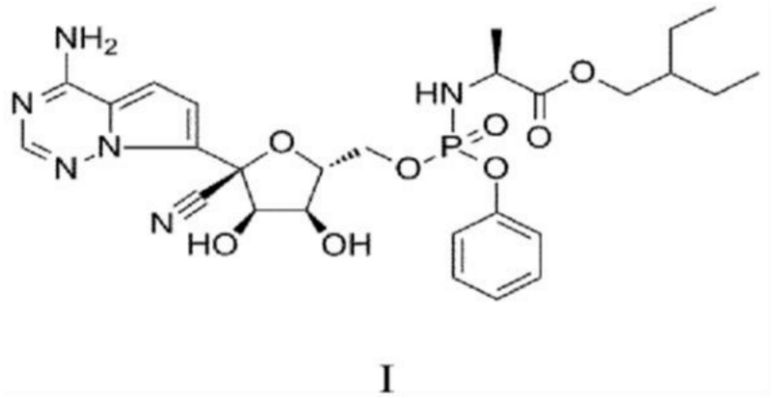
(ii) on the identification of antiviral drugs for treatment thereof.

CLAIM CONSTRUCTION

50. EP '403 describes the second use of the chemical compound (substance o composition) called substituted aminopropionate (Compound represented by Formula I), with chemical name of 2-ethylbutyl (2S)-2-[[[(2R,3S,4R,5R)-5-(4-aminopyrrolo[2,1-f][1,2,4]triazin-7-yl)-5-cyano-3,4-

dihydroxyoxolan-2-yl]methoxy-phenoxyphosphoryl]amino]propanoate, also known as Remdesivir (GS-5734), as a viral RNA polymerase inhibitor.

51. Claim 1 reads: a compound represented by Formula I (see picture hereinafter), a geometric isomer, a pharmaceutically acceptable salt, a solvate and/or a hydrate thereof,



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for use in treating a disease or an infection caused by SARS-CoV-2.

Claim 6 reads: a pharmaceutical composition for use in treating a disease or an infection caused by SARS-CoV-2, wherein the pharmaceutical composition comprises a compound represented by Formula I (see above), a geometric isomer, a pharmaceutically acceptable salt, a solvate and/or a hydrate thereof.

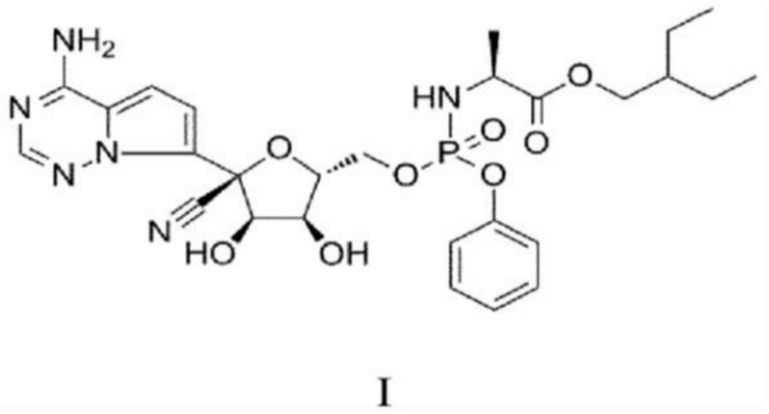
52. As the Court of Appeal has made clear (UPC_CoA_335/2023, order of 11 March 2024 – NanoString v 10x Genomics), the patent claim is not only the starting point, but the decisive basis for determining the protective scope of a European patent under Art. 69 EPC in conjunction with the Protocol on the Interpretation of Art. 69 EPC. The interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used. Rather, the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim. However, this does not mean that the patent claim merely serves as a guideline and that its subject-matter also extends to what, after examination of the description and drawings, appears to be the subject-matter for which the patent proprietor seeks protection. The patent claim is to be interpreted from the point of view of a person skilled in the art. In applying these principles, the aim is to combine adequate protection for the patent proprietor with sufficient legal certainty for third parties. These principles for the interpretation of a patent claim apply equally to the assessment of the infringement and the validity of a European patent.

53. The claim interpretation must be carried out from the point of view of a person skilled in the art. The skilled person will try to arrive at an interpretation of the claim that is technically sensible and will take into account the whole disclosure of the Patent. The Patent must be construed in a technically sensible manner, by a ‘mind willing to understand, not a mind desirous of misunderstanding’ (see, e.g., UPC_CFI_497/2024 and UPC_CFI_571/2024 (CD - Milan seat), decision issued on 23 October 2025, para. 2.2 – bioMérieux v Labrador).

54. Finally, claim construction is a matter of law (UPC_CoA 768/2024, decision issued on 20 April 2025, para. 37 - Insulet v EOFlow).

55. Independent claim 1 of the patent in suit can be reproduced in the form of a breakdown of features as follows:

[1] A compound represented by Formula I,



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a geometric isomer, a pharmaceutically acceptable salt, a solvate and/or a hydrate thereof,

[2] for use in treating a disease or an infection caused by SARS-CoV-2.

56. Dependent claims 2 and 3 specify the types of diseases caused by SARS-CoV-2, such as respiratory disease, simple infection, or sepsis, or septic shock for instance.

57. Dependent claim 4 further specifies the type of simple infection (fever, cough, or sore throat).

58. Dependent claim 5 mentions that the disease caused by SARS-CoV-2 is COVID-19.

59. Dependent claims 7 to 9 and 11 mirror characteristics of dependent claims 2 to 5, but for 'a pharmaceutical composition according to claim 6'.

60. Dependent claim 10 further specifies that the pharmaceutical composition in either of the forms according to claims 6-9 further comprises a pharmaceutically acceptable carrier or excipient, preferably, wherein the pharmaceutical composition is a solid preparation, an injection, an external preparation, a spray, a liquid preparation, or a compound preparation.

61. Remdesivir or substituted aminopropionate compound (Compound represented by Formula I), with chemical name of 2-ethylbutyl (2S)-2-[[[(2R,3S,4R,5R)-5-(4-aminopyrrolo[2,1-f][1,2,4]triazin-7-yl)-5-cyano-3,4-dihydroxyoxolan-2-yl]methoxy-phenoxyphosphoryl]amino]propanoate was already known at the priority date (21 Jan. 2020), having actively being used as antivirus. This is undisputed (R. 171.2 RoP).

62. A patent claim aimed at a new use of a drug centres on the suitability of a known substance for a particular therapeutic purpose, i.e., a new technical effect of a known compound targeted to healing a different clinical situation. This means that the essential subject matter of claims 1 and 6 is the property inherent within the substance that enables it to achieve a new specified therapeutic effect. In other words, the claim is fundamentally concerned with the identification of a characteristic or capability of the compound that is relevant and effective for a new medical application. This applies regardless of whether the wording of the patent claim is directed to the use of the drug or its preparation for a specific purpose (swiss-type), or explicitly to substance protection for a specific purpose, like in claims 1 and 6. Accordingly, these claims each protect the suitability of the substance for a specific medical use and thus, ultimately, a property inherent in the substance. EPO Case law, therefore, treats all claims whose wording is directed to the use of a drug, to its preparation, or to limited substance protection in the same manner.

63. Claims 1 and 6 as granted are directed to a further medical use and have been drafted as a purpose-limited product claim in the format according to Article 54(5) EPC. In accordance with the established EPO practice, the Court observes that for claims directed to a further medical use, attaining the claimed therapeutic effect is regarded as a functional technical feature of the claim (see e.g. T 609/02, Reasons 9).

64. In the present case, this therapeutic effect is the treatment of SARS-COV-2 or COVID-19 (claim 5), and as noted in the assessment of the technical problem, the two definitions refer to the same virus indistinctly.

65. AMMS has extensively debated the fact that, at the time the patent was granted, the disease was known as SARS-CoV-2 and not COVID-19.

66. The Court does not consider the differences in the parties' definition of the technical problem to be of any relevance, also in the domain of claim construction. The functional technical feature of the claim addresses the same virus. Different terminology does not make a difference for claim interpretation or for the assessment of inventive step. The description and the drawings may show that the patent specification defines terms independently and, in this respect, may represent a patent's "own lexicon" (see, e.g., UPC_CFI_252/2023 (CD Munich), decision issued on 17 October 2024, para. 8.4 - Nanostring vs President and Fellows of Harvard College).

67. Description and the drawings must always be used as explanatory aids for the interpretation of the patent claim. So, based on dependent claim 5 and on [0022] 'In some embodiments, the disease caused by SARS-CoV-2 described herein is COVID-19' and [0023] 'the official name of the term "2019 novel Coronavirus (2019-nCoV)" is severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)', it is crystal-clear to the person skilled in the art that SARS-COV-2 and COVID-19 relate to the same virus.

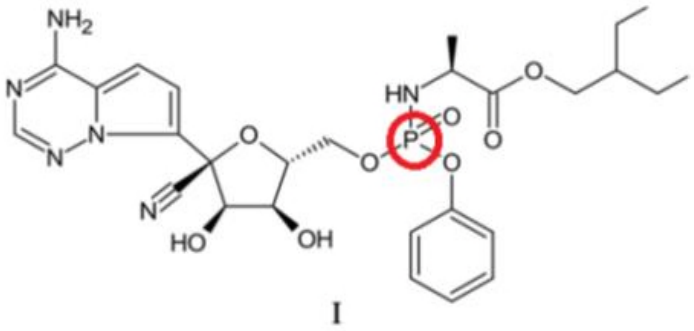
68. The issue is clarified in the patent's own lexicon as set out in the description: 'the official name of the term "disease caused by 2019 novel Coronavirus (2019-nCoV)" is COVID-19' [0024].

69. However, the claimant notes that the claims of the patent in suit refer to SARS-CoV-2 while the priority document refers to 2019-nCoV. Thus, should the Court consider there to be a difference between 2019-nCoV and SARS-CoV-2, the claimed priority would be invalid leading in particular to lack of novelty in view of Holshue/HRM 14 and Lescure/HRM 15 and also in view of the marketing authorization obtained by the claimant for remdesivir on 3 July 2020 after the positive outcome opinion of the European Medicines Agency, i.e. prior to the filing date of the patent in suit (16 October 2020).

70. This observation is unsubstantiated. The person skilled in the art, reading the patent as a whole, will consider, without hesitation, that the term "disease caused by SARS-CoV-2" present in claim 1 of the Patent in suit derives directly and unambiguously from the term "2019-nCoV" present in the priority document.

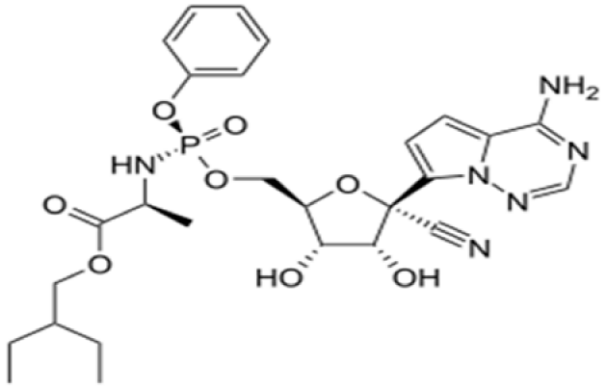
FEATURE 1 – INSUFFICIENT DISCLOSURE

71. The compound Remdesivir, also known as GS-5734, is an antiviral compound that inhibits viral RNA-dependent RNA polymerase (RdRP) and has the formula indicated in Fig. I.



I

72. The claimant maintains that Formula 1 in claims 1 and 6 presents a stereochemistry of the phosphorus which is not defined, meaning that Formula 1 encompasses two molecules: Remdesivir (with the Phosphorus in the conformation below) :



and its diastereoisomer (which means: the same molecule with the phosphorus in the other conformation).

73. Claimant alleges that the Main Request is insufficiently disclosed for two reasons:

a. The skilled person would find examples and descriptions of EP 403 only about the synthesis of the Remdesivir and nothing about its geometric isomers encompassed in Formula I, which would constitute an undue burden for the person skilled in the art.

b. The patent would not teach how a disease or infection caused by SARS-CoV-2 would be treated successfully by using one of the many preferred pharmaceutical compositions listed in claim 10.

74. The Court notes that Art. 138(1)(b) of the European Patent Convention (EPC) requires that the patent must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

75. Sufficiency has to be examined based on the patent as a whole, thus based on the claims, the description and the drawings, from the perspective of the person skilled in the art with his common general knowledge at the filing or priority date. The test to be applied is whether the skilled person can reproduce the claimed subject matter based on the patent without any inventive effort and without undue burden. An invention is sufficiently disclosed if the patent specification shows the skilled person at least one way – and in case of functional features: one technical concept – of performing the claimed invention (UPC_CoA_528/2024 and UPC_CoA_529/2024, 25 November

2025, Amgen v Sanofi/Regeneron). The Düsseldorf Local Division on 28 January 2025 (UPC_CFI_355/2023, Fujifilm v Kodak) reiterated that the subject matter of a patent claim must be sufficiently disclosed in the patent as a whole, including the examples. It is the patent that has to demonstrate the workability of the claimed subject-matter. However, as the invention has to be disclosed sufficiently clear and complete for it to be carried out by the skilled person, the skilled person´s common general knowledge must also be taken into account when considering the question of sufficiency. In a case of a second medical use claim, the claimed "use", which is based on a therapeutic effect, is part of the claim. Therefore, the use (including the therapeutic effect) has to be sufficiently (reproducibly) disclosed in the patent (as a whole).

76. The defendant presented Exhibit 48 (on page 1653, left-hand column, lines 15 to 20). This document illustrates that the isomeric separation (chiral HPLC) is a "common" separation step (i.e. part of the common general knowledge) that a person skilled in the art would very easily consider, implementing the synthesis and the separation of the 2 isomers.

77. The description of the patent in suit (cf. [0026] to [0032]) presents different embodiments of preferred pharmaceutical formulations of the invention. Based on those examples and his general knowledge, the person skilled in the art could clearly know how to:

- prepare the preferred pharmaceutical formulations (with one of the two isomers, including in Formula I, the other one, or a mixture of the two isomers),

- and how to treat therewith a disease or infection caused by SARS-CoV-2.

78. In conclusion, given the technical information provided in the patent in suit and in view of the common general knowledge of the skilled person, the Claimant, who carries the burden of presentation and proof, has not succeeded in raising serious doubts substantiated by verifiable facts about the sufficiency of disclosure of the subject matter claimed in the patent in suit.

INVENTIVE STEP

79. In its statement of defence, the defendant requested an unconditional amendment to the claims by removing in all of them (independent and dependent) the reference to 'a geometric isomer'. The assessment of inventive step will be carried out on the claims resulting from the MR (see point 15 above). Pursuant to R. 50.2 in conjunction with R. 30.1 RoP, in fact, the patent proprietor is permitted to defend their patent in an amended form against a revocation claim. Claim amendments must be both compliant with Art. 123 and 84 EPC, and valid.

80. The MR removes the expression "a geometric isomer" which was redundant with the drawing of formula I, which already included two isomers due to the drawing of the chiral phosphorus. It was indeed clear for the person skilled in the art that claim 1 of the granted patent included the two isomers of Formula 1. The person skilled in the art could have derived the object of claim 1 of MR directly and in an unambiguous way from the content of the patent as granted, which included the two isomers of formula I. So, Art. 123(3) EPC does not apply, and clarity under Art. 84 EPC is ensured. The amendment is deemed admissible. Nonetheless, the MR is not allowable, as it fails to overcome the objection concerning the lack of inventiveness.

81. The benchmark for assessing the inventive step of a patent has been established by the Court of Appeal (CoA). Specifically, the CoA set out this standard in its decision issued on 25 November 2025,

in the case referenced as UPC_CoA 464/24). This decision provides the authoritative guidance for evaluating inventive step within patent proceedings before the UPC.

82. The steps are explained below:

a. It first has to be established what the object of the invention is, i.e. the objective problem. This must be assessed from the perspective of the person skilled in the art, with their common general knowledge, as at the application or priority date (also referred to as the effective date) of the patent. This must be done by establishing what the invention adds to the state of the art, not by looking at the individual features of the claim, but by comparing the claim as a whole in the context of the specification and the drawings, thus also considering the inventive concept underlying the invention (the technical teaching), which must be based on the technical effect(s) that the person skilled in the art, on the basis of the application, understands is (are) achieved with the claimed invention.

b. In order to avoid hindsight, the objective problem should not contain pointers to the claimed solution.

c. The claimed solution is obvious when at the effective date the person skilled in the art, starting from a realistic starting point in the state of the art in the relevant field of technology and wishing to solve the objective problem, would (and not only "could") have arrived at the claimed solution.

d. A starting point is realistic if the teaching thereof would have been of interest to a person skilled in the art who, at the effective date, wishes to solve the objective problem. This may for instance be the case if the relevant document of prior art already discloses several features similar to those relevant to the invention as claimed and/or addresses the same or a similar underlying problem as that of the claimed invention.

e. The person skilled in the art has no inventive skills and no imagination and requires a pointer or motivation (in German: "Anlass") that, starting from a realistic starting point, directs them to implement a next step in the direction of the claimed invention. As a general rule, a claimed solution must be considered not inventive/obvious when the person skilled in the art would take the next step, prompted by the pointer or as a matter of routine, and arrive at the claimed invention.

83. Identifying the state of the art is a logical step that follows the definition of the technical problem and precedes the assessment of inventive step: the person skilled in the art enters the stage when the objective technical problem had already been formulated and, once he/she understands the problem, he/she compares it with what is already known and disclosed in the same technological field—that is, with the prior art—and attempts to develop a possible solution to the problem.

84. The state of the art is defined by Art. 54(2) EPC, which states: "*The state of the art shall be deemed to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, prior to the filing date of the European patent application*." Therefore, the prior art includes all documents known and accessible as of the filing date (or the claimed priority date) and relevant to the field in question; contributions from unrelated technical fields may also be relevant, provided they are reasonably capable of providing the person skilled in the art with useful guidance for improving the invention.

85. The skilled person already has an average level of knowledge in the relevant sector, the so-called common general knowledge (hereinafter CGK). The content of specialized journals (or "standard

journals") does not, as a rule, coincide with the general common knowledge of the skilled person: in fact, it does not normally fall within the "active" knowledge of the person of average skilled in the, especially when its identification requires in-depth and/or targeted research beyond what the practitioner in the relevant field is accustomed to. The European Patent Office (EPO) Board of Appeal, in decision T 676/94, noted that the extent to which the contents of specialised journals are considered as part of the knowledge of the person skilled in the art might be dependent upon the particular circumstances of each case. Specifically, it was recognised that when a skilled person works with particular starting materials, it is reasonable to expect that they would consult the relevant documentation associated with those materials. Consequently, studies published in specialised journals could become part of the CGK, given their relevance and connection to the materials at hand. Therefore, when confronted with a problem, a skilled person will investigate it by consulting pertinent scientific literature, updating his/her knowledge.

86. Furthermore, the person skilled in the art should also be presumed to have had access to everything in the state of the art, in particular the same documents cited in the search report, and to have had at their disposal the normal means and capacity for routine work and experimentation (EPO Guidelines G-VII, 3 – April 2025 version).

87. In the case at bar, combining the technical problem with the CGK and the state of the art, the inventive step question is, therefore, whether a person skilled in the art, seeking to remedy the newly discovered SARS-CoV-2 (technical problem), would obviously turn to Remdesivir based on the documents available at that priority time and on their CGK. "Documents" refers to both those already known to the PSA as belonging to CGK and those belonging to the state of the art, since disclosed and publicly available at the priority date.

88. The parties have submitted many papers reflecting the state of the art. The person skilled in the art prioritizes the most recent and detailed sources, as scientific progress requires ongoing reassessment of previous knowledge; thus, experts select up-to-date and comprehensive documents. The person skilled in the art, a virologist with knowledge of antiviral drugs, would first and foremost seek information on the virus's structure and its morphology.

89. He/she would then learn that on 11 January 2020, the virus's RNA was sequenced, placing it within the coronavirus family, being it a virus of the species β-coronavirus with 95/98% of RNA similarities with the already known SARS-COV-1 coronavirus, the RNA virus responsible for respiratory infection and of the first coronavirus outbreak some years before. Disclosures on the internet are, in fact, generally regarded as part of the state of the art within the meaning of Art. 54(2) EPC.

90. It was common knowledge that only six coronaviruses were previously known to infect humans (229E, NL63, OC43, HKU1, MERS-CoV, SARS-CoV), making SARS-CoV-2 the seventh confirmed human-infecting coronavirus.

91. He/she would know that viruses are grouped based on similarities such as the nature of their nucleic acid genome, envelope presence, overall size, and even capsid uniformity (see i.e. EXH 65 JORDAN) and that human coronaviruses (HCoVs) belong to two genera: alphacoronavirus (HCoV-229E and HCoV-NL63) and betacoronavirus (SARS-CoV, MERS-CoV, HCoV-OC43, and HCoV-HKU1), that β-coronavirus were further divided into four different *subgenera* (Embecovirus, Merbecovirus, Nobecovirus, Sarbecovirus) and each subgenus gathers one or more species of virus, that all of them have non-structural proteins (nsps), that perform essential functions in viral RNA replication and transcription such as the RNA-dependent RNA polymerase (RdRp).

92. The skilled person would get to know at the priority date, with reference documents at hand:

- that emerging viral diseases typically have very few, if any, effective treatment options. As such, treatments designed and approved for other diseases are administered to patients with emerging viral syndromes empirically based on limited clinical or laboratory data (Sheahan, Sims, Leist, Schäfer and others, in HRM 13 published on 10 January 2020),
- that since 2018 (JORDAN EXH 65 and AGOSTINI HRM 16) the world of virology was active in overcoming the traditional paradigm "one virus one drug", exploring whether there might be clinically relevant nucleoside analogs effective against multiple respiratory infections, given that the CoV nsp14 exoribonuclease (ExoN) had complicated development of antiviral nucleosides due to its proofreading activity,
- that the NSP12 of 2019-new CoV shared approximately 96% homology with that of SARS-CoV-1 and 85 % with MERS-CoV and the NSP14 of 2019 SARS-CoV shares 95% homology with SARS-CoV-1 and 80% analogy with MERS, suggesting that the core functions (RNA) might be similar, even though differences at specific sites (i.e. NiRAN subdomain) might determine varying sensitivity to viral RdRps inhibitors (LOU pages. 3 and 4 in EXH 63),
- that already back in 2017 (Shehan, Sims, Graham, a.o. HRM 11), the compound known as Remdesivir showed efficacy against a broad battery of Coronaviruses: "*Here we show that a nucleotide prodrug GS-5734, currently in clinical development for treatment of Ebola virus disease, can inhibit SARS-CoV and MERS-CoV replication in multiple in vitro systems including primary human airway epithelial cell cultures with submicromolar IC50 values. GS-5734 was also effective against bat-CoVs, prepandemic bat-CoVs and circulating contemporary human CoV in primary human lung cells, thus demonstrating broad-spectrum anti-CoV activity. In a mouse model of SARS-CoV pathogenesis, prophylactic and early therapeutic administration of GS-5734 significantly reduced lung viral load and improved clinical signs of disease as well as respiratory functions. These data provide substantive evidence that GS-5734 may prove effective against endemic MERS-CoV in the Middle East, circulating human CoV, and possibly most importantly, emerging CoV of the future".*
- that still in 2018 (Agostini HRM 16) seventeen researchers acknowledged that Remdesivir proved prophylactic and therapeutic efficacy in a mouse model of SARS-CoV infection, as well as *in vitro* activity against multiple other human and zoonotic Coronaviruses. The paper pinpointed the ability of GS-5734 to inhibit CoVs—expanded to include group 2a-CoVs—in the setting of intact nsp14 proofreading activities.
- that Remdesivir was solidly considered in early 2020 a broad-spectrum antiviral nucleotide prodrug with potent in vitro antiviral activity against a diverse panel of RNA viruses such as Ebola virus (EBOV), Marburg, MERS-CoV, SARS-CoV, respiratory syncytial virus (RSV), Nipah virus (NiV), and Hendra virus and that RDV as well as IFNb had superior antiviral activity: "*We recently reported that therapeutic RDV improves disease outcomes and reduces viral loads in SARS-CoV-infected mice… we show that RDV provides superior antiviral activity against MERS-CoV in vitro and in vivo as compared with LPV/RTVIFNb. In addition, RDV was the only treatment to significantly reduce pulmonary pathology (EXH 13 page 1 and 7). Moreover, Remdesivir (RDV, GS-5734) was considered 'a broad-spectrum antiviral with potent in vitro efficacy against multiple genetically unrelated RNA viruses... As with our SARS-CoV studies with RDV, here we provide similar evidence for MERS-CoV with diminished weight loss,*

improved pulmonary function, and reduced virus replication with both prophylactic and therapeutic RDV' (HRM 13 page 10).

93. The skilled person at the priority date would notice that HRM 09 and HRM 10 were published only ten days earlier.

94. In fact, in early January 2020, immediately following the onset of the epidemic and in the period prior to the filing date of CN 202010071087, Prof. Sheahan published a commentary (HRM 09) addressing the issue of the potential use of Remdesivir as an active ingredient capable of antiviral activity against the new SARS-CoV-2.

95. In addition, also the editorial written by Professor Sheahan and submitted as HRM 10 would have warranted consideration, particularly as it was published within the same timeframe and the two documents referred to each other.

96. The Court agrees that these documents may be characterized as a "reasonable starting point" or a "closest prior art" depending on the approach adopted regarding the issue of inventive step (whether it would be the holistic approach outlined by the Court of Appeal in their recent decisions, or, as argued by the parties, the so-called problem-solution approach). In fact, the two approaches are supposed to lead to the same outcome.

97. According to the so-called problem-solution-approach (PSA), the assessment of inventive step is carried out on a comparison between the claimed solution and the document(s), found in the prior art, that exhibits the greatest degree of similarity to the content of the patent. This document, commonly referred to as the "closest prior art," constitutes, in the method, the 'most promising starting point' for evaluating the merit of the solution.

98. Moving from this perspective, inventive step is assessed by breaking down and comparing the technical features discernible from the two documents: on the one hand, the closest prior art; on the other, the patent under examination. The features relevant to achieving the technical objective pursued (remaining novelty) are then identified. Upon completion of the analysis, the extent of the technical difference between the patented invention and the prior art taken as a reference is determined (in other words, the technical result/advantage produced by the technical effect of the missing features). This analysis must be conducted with regard to the technical problem and from the perspective of a person skilled in the art at the time of reading the closest prior art, verifying whether, starting from it and seeking an improvement of a specific technical effect, they would have received suggestions ("pointers") in the direction indicated by the patent. The interpreter, under the perspective of the skilled person, is called upon to check whether it was obvious for the skilled person to combine these two documents in order to solve the objective technical problem: in this regard, the point is not whether the skilled person could have arrived at the invention by adapting or modifying the closest prior art, but whether the skilled person would have done so because the prior art provided motivation to do so in the expectation of some improvement or advantage (the "could-would" approach). Even an implicit prompting or an implicitly recognizable incentive is sufficient.

99. It is well known, however, that a problematic aspect of the problem-solution approach lies in the risk that the selection of relevant technical features (to define the difference between the known solution and the patented one with respect to a given problem) may be unconsciously influenced by knowledge of the solution itself. This risk exposes the method to hindsight and contradiction to Art. 56 EPC: "*An invention shall be considered to involve an inventive step if, in the light of the prior art, it is not obvious to a person skilled in the art*", which excludes any hindsight. In other words, the very

knowledge of the result achieved by the patent may lead to selecting, among the many available technical features, precisely those that turned out to be relevant to the comparison between the two solutions, with a possible distortion of the analysis.

100. The holistic approach adopted by the Unified Patent Court (see Amgen v Sanofi, UPC_CoA 528/24 and 529/24 judgment of November 25, 2025 cit.), thus, starts with the identification of the technical problem within the patent and proceeds to evaluate its solution based on the description, read in conjunction with the drawings and claims, as criteria for reading and interpreting the patent (Art. 69 EPC). Thereafter, the contribution of the patented invention relative to the prior art is identified. The judge reconstructs the inventive concept (or technical teaching) underlying the invention not through an atomistic examination of individual features, but by considering the claim as a whole, within the context of the description and drawings. This reconstruction is carried out from the perspective of a person skilled in the art, as of the priority date, based on common general knowledge and available documents, and is grounded in the technical effects that the person skilled in the art understands to be achieved by the claimed invention. To avoid hindsight bias, the objective problem shall/should not contain indications pointing toward the claimed solution. Finally, the Court compares the solution with the prior art to verify whether, for a person skilled in the art, the described solution could be considered obvious in light of the available background knowledge.

101. In a holistic approach, prior art pointers are less central, but stronger pointers lower the inventive step threshold. Inventiveness is evaluated by considering what a skilled person, in the inventor's position, would actually do—not just could do—based on practical cues from prior art or logical starting points.

102. In the case at hand, for the purposes of evaluating the requirement of inventive step, documents HRM 09 and HRM 10 must be considered as the realistic starting point. These documents explicitly reference the coronavirus identified in Wuhan, subsequently named SARS-CoV-2, and directly address the technical challenges faced by the PSA. They also outline a targeted solution, highlighting the potential efficacy of Remdesivir for treating this virus (and others) within the same viral family. Additionally, they support the validity of the proposed solution by emphasizing that the genetic similarities among coronaviruses, especially concerning the RNA-dependent RNA polymerase (RdRP) enzyme, provide a rationale for considering remdesivir as a broad-spectrum antiviral due to its capacity to disrupt the viral replication process.

103. HRM 09 and 10 are the realistic starting points also because they reflect the culmination of scientific research next to the priority date.

104. This Central Division, sitting in Paris in UPC_CFI 189/24 and 434/24, has already stated that a realistic starting point must be a document “of interest” or “reasonable” for solving the objective problem. It indicated that realistic starting points, in general, “*must be pieces of evidence which disclose the main relevant features as those disclosed in the challenged patent*” and “*which address the same or a similar underlying problem*”. The Court went further in stating that “*Indeed, only this evidence may be considered ‘of interest’ for solving the underlying problem*”.

105. The article in HRM 09 corresponds to this feature. It briefly addresses the emerging epidemiological emergency resulting from the discovery in Wuhan of a new virus belonging to the Group 2b SARS-like strain of coronavirus, characterized by the onset of severe pneumonia. The article makes reference to HRM 013 (*Comparative therapeutic efficacy of remdesivir and combination lopinavir, ritonavir and interferon beta against MERS-COV*) published on the same date (10.01.2020) as well as to HRM 012 (*Broad spectrum antiviral Remdesivir inhibits human endemic*

and zoonotic δ-coronaviruses with highly divergent RdRp) and therefore encompasses the whole set of knowledge so far reached by a distinguished group of virologists. It then highlights the efficacy of Remdesivir, a drug developed in 2017 by Gilead in collaboration with the University of North Carolina and Vanderbilt Medical School, also in the treatment of SARS-CoV-1. Sheahan concludes by noting: "*Previous publications show that remdesivir works against SARS and SARS-like viruses found in bats, as well as all other coronaviruses we have tested it against. Thus, it is likely to work against coronaviruses that are emerging now in Wuhan, as well as those that may emerge in the future. We have extensive experience studying these kinds of viruses and are positioned for rapid response to outbreaks like the one in China* (emphasis added)".

106. HRM 10 is an editorial released on the microbiology community on the same date, January 10, 2020. It titles: "preparing for future pandemics, today with broad-spectrum antivirals". HRM 10 refers to the newly discovered virus: "*A new coronavirus is believed to be the cause of an outbreak of viral pneumonia in Wuhan, China (#WuHanPneumonia), with potential spread to Hong Kong. Since the initial case reported on December 12, 2019, there have been at least 44 cases, 11 of which are severely ill 2. Unfortunately, with the ease of global travel, increased human contact with wild and domestic animals, land use changes, and development, etc., the emergence of novel diseases is no longer unusual. In the past 20 years, we have seen the two largest Ebola virus outbreaks on record, the spread of the Zika virus to the Americas, and the emergence of three new human coronaviruses, including SARS in 2002 and MERS in 2012…Since 2015, we have been collaborating with Gilead Sciences and Mark Denison's Lab at Vanderbilt to prepare for future pandemics (*emphasis added*), currently focusing on broad-spectrum antivirals to accelerate the preclinical development of remdesivir (GS-5734), a nucleoside analog antiviral. Our recent paper in Nature Communications (reference to HRM 013) details the in vitro and in vivo efficacy of remdesivir against the MERS coronavirus and its superior antiviral efficacy compared to a combination therapy currently being evaluated in a human clinical trial in the Kingdom of Saudi Arabia. Since Remdesivir is effective against many genetically distinct coronaviruses, encompassing family-wide genetic diversity including zoonotic viruses poised for emergence, the drug is likely to be effective against currently emerging coronaviruses such as MERS and the newly identified virus in Wuhan, as well as future ones."* (emphasis added).

107. The genome sequence of the new SARS-CoV-2 virus was published on January 11, 2020.

108. Therefore, at the priority date, the skilled person was aware:

- that the SARS-CoV-2 virus was a coronavirus like 229E, NL63, OC43, HKU1, MERS-CoV and SARS-CoV-1,
- that the closest known relative to SARS-CoV-2 was SARS-CoV-1,
- that all Coronaviruses (including SARS-CoV-1) possessed an equivalent RNA-dependent RNA polymerase (RdRp) segment, which had been considered in the past a suitable target for Remdesivir. This consideration can be found, for example, in Brown et al./HRM 12 which explains why Remdesivir is so broadly active against coronaviruses. It explains that the RdRP enzyme of all coronaviruses is highly conserved and that key functional motifs within the RdRP protein – especially those associated with nucleotide interaction – are particularly stable. Pruijssers (HRM 30) clarifies in fact that the structural conservation of the RdRP within the Coronaviruses is functional to their own survivance ability (page 2 HRM 30: "*NIs demonstrate a relatively high barrier to resistance emergence because the structural conservation of the binding site of their polymerase targets is high among virus families, and*

resistance mutations generally incur a fitness cost for the enzyme and the virus"). This concept is also to be inferred from Agostini (HRM 16) "*The resistance mutations decrease viral fitness of MHV in vitro and attenuate pathogenesis in a SARS-CoV animal model of infection. Together, these studies define the target of GS-5734 activity and demonstrate that resistance is difficult to select, only partial, and impairs fitness and virulence of MHV and SARS-CoV, supporting further development of GS-5734 as a potential effective pan-CoV antiviral*".

109. The expert in the field would have been interested in this pan-Cov antiviral, disclosed by HRM 09 and HRM 10, and would have turned to HRM 012, (referenced in HRM 09 and HRM 010) and would have learnt that Remdesivir showed significant antiviral activity to all Coronaviruses, due to the fact that Remdesivir targets RdRP, and RdRP is highly preserved among all genera (and subgenera) of Coronaviruses.

110. A starting point is realistic if the teaching thereof would have been of interest to a skilled person who, at the relevant date, wishes to solve the objective problem. "*This may, for instance, be the case if the relevant piece of prior art already discloses several features similar to those relevant to the invention as claimed and/or addresses the same or a similar underlying problem as that of the claimed invention*" (UPC_CoA 25.11.25 § 131).

111. The Court concludes that HRM 09 and 10 were, combined, a realistic starting point for the skilled person. (*There can be more than one realistic starting point and the claimed invention must be inventive starting from each of them*" (UPC_CoA 25.11.25 § 131). The Court observes that in the problem-solution approach, they would still be considered the "closest prior art", since the same considerations outlined above also apply to this approach.

112. AMMS highlights that the skilled person faced many alternative options. Here, too, it should be emphasized that the process of assessing inventive step does not examine what the party (could) have considered as an alternative, but rather which of the possible alternatives the party (would) have chosen and why. Furthermore, AMMS's process of selecting different starting points based on alternatives is clearly influenced by hindsight, because it refers to compounds that proved to be ineffective and that had not previously shown any signs of being promising, at least not to the same extent as the selected ones.

113. In the case at hand, in fact, the goal of the skilled person was to find a compound that could be effective against the specific virus that emerged in Wuhan. Based on this argument, the solution proposed by HRM 09 and HRM 10 is explicitly problem-related, as the documents—dated a few days prior to the priority date—clearly indicate that the Remdesivir, as an inhibitor of the RdRP, would be the answer to the problem. In light of this indication, the existence of abstract alternatives becomes irrelevant in the eyes of the skilled person.

114. AMMS further argues that the choice of Remdesivir would have been a significant step forward in the state of the art, and the person skilled in the art would not have had (at that point) a reasonable expectation of success, but rather a sheer hope of success. This observation is, contrary to the previous one, consistent with the above-mentioned holistic approach, since it addresses the inventive step by considering what the invention objectively adds to the state of the art, thus also considering the inventive concept underlying the invention.

115. The remark misses the point, though. AMMS highlights that mutations in viruses may lead to functional differences due to the (to some extent still unknown) exonuclease (ExoN) proofreading function of nsp14, which can lead to excision of the nucleoside analog. Therefore, even a single point

mutation in this region may alter sensitivity to a specific nucleoside analog (LOU Exh. 63 page 5) so that the person skilled in the art would be reluctant to choose a technical solution whose outcome he could not predict, aware that antiviral inhibitors may not be effective even within the same family of viruses.

116. AMMS further refers to Prof. Canard statements (Exh. 62 and 92 respectively), an expert who co-authored at least three research documents on Remdesivir, and who pointed out the differences in the structure of SARS CoV 1 and SARS CoV 2 in terms of Spike (and therefore of infectiousness) and in the proofreading system of the viruses, so that "*as of 21 January 2020, from the sequence and structure conservation analysis of nsp12 within the CoV family it was not reasonably possible to conclude that 2019-nCoV would be sensitive to Remdesivir* (page 8)". Prof. Canard concludes "*the take home message is that, although there is a probability that a give compound active on Coronaviruses A would be active on Coronaviruses B, there are several uncertainties and unexpected discrepancies indicating that the predictability of a given drug efficacy does not rely only on the sequence and structure of the RdRP*".

117. The Court differs. Matter-of-factly prof. Canard confirms that Remdesivir has proved active on the new virus and that "*On 20 January 2020, it was possible to note these differences (such as F766 and others), but one could not conclude that they would not lead to a difference in remdesivir sensitivity. In particular, the sequence differences specific to 2019-nCoV RdRp could be mapped in, or in the immediate vicinity of, two motifs that had been previously associated with nucleotide fidelity check*" (page 2, 2nd declaration of Prof. Canard Exh. 92).

118. The person skilled in the art is an objective, rational figure who does not display fear of failure. The defendant incorrectly projects subjective attitudes onto this notional individual by likening them to the individual Prof. Canard. The skilled person questions information only when documented prejudice exists in relevant literature, and it is the party's responsibility to highlight proven flaws. Simply suggesting unexpected outcomes is inadequate. Recognising that risk and doubt are part of scientific progress, the person skilled in the art would not reject a suggested solution due to subjective concerns about possible failure.

119. For a person skilled in the art to rule out a suggested solution, there must be proven prejudice. Once the suggestions are scientifically valid, the skilled person evaluates them objectively and without hesitation or fear of failure. In T 1715/15, the Board of Appeal found that the person skilled in the art could be regarded as (objectively) both cautious and conservative in attitude (see I.D.8.1.3) but also tasked with advancing the prior art through routine adaptations or trials (see also T 688/14, T 2697/16, and T 1289/22). Moreover, the skilled person would never go against an established prejudice. However, they would readily seek appropriate, obvious changes, modifications, or adjustments that involve little trouble or work and no risks or only calculable risks, especially for the sake of obtaining a more practical or convenient product or of simplifying a procedure (T 455/91, OJ 1995, 684; see also T 500/91, T 387/94, T 441/93, T 1102/00, T 867/13).

120. AMMS has not presented evidence to the Court that the alleged uncertainties regarding a possible negative outcome had been overcome through any research activity. In fact, the work conducted before the patent application was limited to in vitro testing, which constitutes a purely routine activity. AMMS's expert doubts about the possibility of using Remdesivir as a treatment for the new virus have remained purely speculative.

121. Following the EPO Guidelines G VII-13: "*In the field of biotechnology, a solution is considered obvious not only when the results are clearly predictable, but also when there is a reasonable*

expectation of success. For a solution to be obvious, it is sufficient to establish that the skilled person would have followed the teaching of the prior art with a reasonable expectation of success", the Court notes that expectation of success does not equal certainty of success.

122. The difference between an expectation of success and a mere hope of success does not depend on the researcher's subjective state of mind. There is a reasonable expectation of success when the scientific data or experiments indicate that the tested solution can yield a positive result, despite the general uncertainty arising from the necessary experimentation and the application of the scientific method. A reasonable expectation of success is therefore based on reason and knowledge of scientific data, even though the expert knows that the outcome is never certain until it is the subject of clinical trials. Therefore, it can be said that the greater the realism or reasonableness of the starting point, the greater the chances of success. Hope for success, on the other hand, arises when the result is based on sheer assumptions or there is a contradiction in the sources, so that the outcome is considered possible but not reasonable. Bearing in mind T 207/94, the "hope to succeed" is merely the expression of a wish, whereas a "reasonable expectation of success" presupposes a scientific appraisal of available facts.

123. In the case at hand, the skilled person had a high expectation of success. After reading HRM 09 and 10, the person skilled in the art received a clear and compelling recommendation for Remdesivir. No publications refuted this; some offered more cautious interpretations but did not challenge the underlying reasoning.

124. He/she would know that Remdesivir's binding site was located on a RNA segment which was conserved in the new coronavirus and knew that a broad spectrum antivirus that proved to be effective towards different viruses belonging to the same family, because of the conservation of RdRP in alla Coronaviruses, would also be effective on the new virus (whose RdRP and the NiRAN domain itself were respectively 98,23% and 93,75% similar to SARS CoV 1 - see declaration 1 of Prof. Canard page 7).

125. Additionally, he/she would not be deterred by discrepancies in the RdRP. Although the NiRAN domain has mainly been researched in nidoviruses, it was identified in SARS-CoV using a reverse genetic system (JORDAN page 8). Proof is that in SARS-CoV-2, 7 of 368 amino acids change in the NiRAN domain (1.9%), while only 2 of 564 amino acids change in the RdRP domain (0.35%). Coronavirus RdRP is, therefore, highly conserved. And even though JORDAN in 2017 described the mechanism of GS-5734 as still unclear or 'elusive', he still acknowledged that "*the characterization of the broad antiviral spectrum of GS-5734 was further extended to another ssRNA virus family: Coronaviridae. It was demonstrated that GS-5734 inhibits both SARS-CoV and MERS-CoV…it was effective against other human and bat CoV…in a mouse model of SARS-CoV infection, prophylactic and early therapeutic administration of GS-5734 reduced lung viral load and improved clinical signs of disease as well as respiratory function. Although there is limited data to confirm the proposed mechanism of action of GS-5734 against each virus, it is generally assumed that the molecule targets the RdRp function of the viral polymerase*".

126. He/she would also know that the Exon domain was not a deterrent. Agostini (HRM 016) shows the effectiveness of Remdesivir to circumvent even the Exon proofreading activity: "*Combined, the results indicate that GS-5734 interferes with the nsp12 polymerase even in the presence of intact ExoN proofreading activity and that resistance can be overcome with increased, nontoxic concentrations of GS-5734, further supporting the development of GS-5734 as a broad-spectrum therapeutic to protect against contemporary and emerging CoVs*." Pruijssers (HRM 030) proves that Remdesivir can circumvent the Exon defence: "*Increased potency of remdesivir against CoV lacking*

ExoN catalytic activity suggests that the drug is sensitive to proofreading by ExoN, albeit to a markedly lower extent than other NIs". And at the priority date, Remdesivir had, matter-of-factly, already proved to be effective both against SARS-CoV-1 and MERS-CoV, two viruses that possess Exon proofreading activity.

127. The skilled person would conclusively have moved in the same direction of AMMS: he would have conducted an in vitro experiment and thus verified the initial hypothesis. The next step was therefore strongly suggested by the state of the art. It is known that the expectation of success is inversely proportional to the complexity of the technical problem to be solved, and if a solution is already in sight, the complexity of the technical problem is consequently minimized.

128. To summarize: the Central Division concludes that a skilled person, presented with the technical problem defined by the invention—specifically, the identification of Remdesivir as an antiviral agent for the newly emerged COVID-19 coronavirus infection—and having been presented with HRM 9 or HRM 10, would have, albeit exercising appropriate caution, considered GS-5734 a strong incentive to verify whether these (clear) suggestions were correct. The suggestions enabled the person skilled in the art to have a high expectation of success since those documents explained why remdesivir could work against SARS-CoV-2 and the (in vitro) tests to verify this are routine work. The minor differences in the amino acids that constitute the site where remdesivir exerts its antiviral action would not have deterred the expert in the field from pursuing the suggested solution. The expert in the field is a virologist with average knowledge and knows that differences of less than 5% in structure fall within the range of normal variations in viral structure. In fact, he/she knew that a similarity of over 95% in viral structure (apart from the Spike protein, which relates solely to the virus's infectiousness) was highly promising for the efficacy of an antiviral substance that had proven effective against both SARS-CoV-1 and MERS. Nor would he have been alarmed by the F766 amino acid change in 2019-nCoV (compared to Y766 in SARS-CoV) because, as mentioned, even minor changes in the RdRP were within the realm of foreseeable and acceptable risk.

129. He/she would have considered the difference in the spike protein even less significant. Prof. Canard noted in his first opinion that "*tiny molecular differences (few nucleotides in the Spike protein) could have enormously different epidemiologic and pathogenic consequences";* so, the main differences between the Spike Protein in SARS-CoV-1 and SARS CoV 2 would reflect in a higher infectiousness of the new virus, with no reflection on the Remdesivir domain of action. The epidemiologic consequences are out the scope of the research of the skilled person, who is looking for an antiviral compound and not to a solution to a possible pandemic (see point 35 above).

130. High expectation of success can also be inferred from document HRM 11 published in year 2017 (Sci Transl Med. 2017 June 28), in which a group of scientists (Timothy P. Sheahan, Amy C. Sims, Rachel L. Graham, Vineet D. Menachery, Lisa E. Gralinski, James B. Case, Sarah R. Leist, Krzysztof Pyrc, Joy Y. Feng, Iva Trantcheva, Roy Bannister, Yeojin Park, Darius Babusis, Michael O. Clarke, Richard L. Mackman, Jamie E. Spahn, Christopher A. Palmiotti, Dustin Siegel, Adrian S. Ray, Tomas Cihlar, Robert Jordan, Mark R. Denison, and Ralph S. Baric) states: "*Emerging viral infections are difficult to control as heterogeneous members periodically cycle in and out of humans and zoonotic hosts, complicating the development of specific antiviral therapies and vaccines. Coronaviruses (CoVs) have a tendency to spread rapidly into new host species, causing severe disease. SARS-CoV and MERS-CoV successively emerged, causing severe epidemic respiratory disease in immunologically naive human populations throughout the globe. Broad-spectrum therapies capable of inhibiting CoV infections would address an immediate unmet medical need and could be invaluable in the treatment of emerging and endemic CoV infections. Here we show that a nucleotide prodrug, GS-5734, currently in clinical development for the treatment of Ebola virus disease, can*

*inhibit SARS-CoV and MERS-CoV replication in multiple in vitro systems, including primary human airway epithelial cell cultures, with submicromolar IC50 values. GS-5734 was also effective against bat-CoVs, prepandemic bat-CoVs, and circulating contemporary human CoVs in primary human lung cells, thus demonstrating broad-spectrum anti-CoV activity (*emphasis added*). In a mouse model of SARS-CoV pathogenesis, prophylactic and early therapeutic administration of GS-5734 significantly reduced lung viral load and improved clinical signs of disease as well as respiratory function. These data provide substantial evidence that GS-5734 may prove effective against endemic MERS-CoV in the Middle East, circulating human CoV, and possibly most importantly, emerging CoV of the future (*emphasis added*)*".

131. Eventually, as a third (and last) line of defense, the defendant seeks to undermine the significance of the documents submitted by the plaintiff on the grounds that they originate from scientific and academic circles heavily influenced by Gilead's involvement. Such a publication would be 'promotional' and 'commercial in nature' aimed rather at sponsoring GS-5734 than at scientific divulgation.

132. This objection does not hold water. A scientific opinion becomes part of the state of the art when published, unless later refuted by valid evidence or replaced by new discoveries in the relevant domain.

133. A researcher who publishes unsubstantiated scientific opinions prone to promotional or commercial interests risks being deemed unreliable and losing all future (and past) credibility in any domain of research. Prof. Tim Sheahan is an assistant Professor at the Department of Epidemiology of the Gillings School of Global Public Health, University of North Carolina at Chapel Hill. He has published over 50 peer-reviewed articles and has been part of The Lancet COVID-19 Commission. His credibility cannot be undermined on the basis of speculation.

134. Prof. Canard's differing perspective on the broad-spectrum efficacy of Remdesivir does not challenge Shehan's arguments or authority; rather, it reflects a more cautious approach to the potential impact of (minor) changes in the sequence. As Canard notes, "*Remdesivir was also reported to inhibit various Coronaviruses, and this activity had been tentatively related to the homology of the coronavirus RdRps. However, as I stated in my First Expert Statement (paragraph 20), it is well known in the field that in very homologous polymerase sequences, a single amino-acid change can translate to full resistance, as exemplified by resistance mutations in, e.g., HIV reverse transcriptase in which the single mutation M184V confers resistance to the nucleotide analogue Lamivudine without correlation between resistance and active site conformation state. This major uncertainty was well known from the skilled person, in particular since Brown et al. states "For antiviral drugs that interact and interfere with RdRp function, variation in amino acid sequence and resultant protein structure can have profound effects on susceptibility".*

135. Additionally, it is well known that pharmaceutical research is heavily funded by pharmaceutical companies. To dismiss a publication as lacking credibility simply because the research was funded by a (competitor) pharmaceutical company goes against the very logic of the system.

THE AUXILIARY REQUESTS

136. No auxiliary requests were able to respond to Gilead's inventive step objection (see point 80). The main request, aimed to resolve an objection related to insufficient disclosure, is, therefore, not

allowable, since the amended main request is invalid and not patentable (R. 50.2 RoP). The same applies to the auxiliary requests.

137. The Court does not consider it necessary, therefore, to address in detail the auxiliary requests due to lack of relevance. None of these appears, undisputedly, to be sufficient to meet the inventive step requirement set out in R. 30.1 (b) and 50.2 RoP.

OUTCOME

138. It follows that independent claims 1 and 6 of the MR (because of the unconditional amendment to the claims) - see point 79 - are not inventive. The patent cannot be upheld, even based on the dependent claims, or based on the ARs.

139. Both unconditional and conditional applications to amend the patent are not allowable.

140. Therefore, the patent in suit is revoked in its entirety with effect on the territory of all Contracting Member States to the Agreement on a Unified Patent Court.

COSTS

141. The defendant, AMMS, is liable for the costs of the proceedings as the unsuccessful party in accordance with Article 69.1 UPCA.

142. The parties have mutually agreed to fix the costs of the proceedings at € 800,000. Reference is made to point 4 above.

143. The defendant is required to pay this amount to the claimant upon the claimant's submission of a specific application under R. 150 RoP. The Court therefore limits itself to ruling on the party liable for costs and the amount of costs agreed upon by the parties.

VALUE OF THE PROCEEDINGS

144. The Court sets the value of the proceedings at € 20,000,000. The value of the proceedings does not affect the legal costs set out in point 141, which is based on the parties' agreement.

145. The claimant requests that the value in dispute be set at €20 million (7 SoR), according to R. 104 lit. i) and R. 370(6) sentence 1 RoP. The claimant argues that the value in dispute must reflect the objective interest pursued by the filing party at the time of filing the action. Additionally, it is submitted that the Court may consider the guidelines established by the Administrative Committee. The claimant maintains that the value for the recovery of costs should be determined with reference to the value of the patent subject to revocation. For substantiation, Gilead submits Doc. 38 HRM, which states: 'For Europe, the sales of Veklury® amounted to $284,000,000 in 2024, approximately €240,000,000. Based on this information and considering the remaining lifetime of the patent in suit, the amount of €20,000,000 is justified.'

EXH 38 shows:

Veklury				
Veklury – U.S.	108	364	892	972
Veklury – Europe	80	181	284	408
Veklury – Rest of World	150	175	623	805
	337	720	1,799	2,184

146. AMMS rebuts, considering this value disproportionate. The defendant argues that R. 152.3 RoP requires the value of a revocation claim to be assessed, not ascertained. Taking into account R. 370.6 RoP, AMMS contends that the proven costs of the proceedings should correspond to the cost of the patent application, totalling €6,800 (page 89-227 DtR).

147. Document HRM 38 provides a breakdown of Gilead's profits. The document was not disputed by the defendant (R. 171.2 RoP), who, in general terms, described it as 'out of context for a revocation action' and not proof-bearing, arguing that there would be no immediate consequence for a claimant in a revocation action to incorrectly assess the value in dispute, as there are no additional value-based fees.

148. This defence is speculative. The information extracted from HRM 38 shows, however, that 'Veklury sales decreased 53% to $337 million in the fourth quarter 2024 compared to the same period in 2023, primarily due to lower rates of COVID-19 related hospitalisations, particularly in the United States.' HRM 38 further shows that in the fourth quarter 2024, revenue increased 6% to $7.6 billion compared to the same period in 2023, primarily due to higher sales in HIV, Oncology, and Liver Disease, partially offset by lower sales of Veklury® (Remdesivir). Veklury sales decreased 18% to $1.8 billion in the full year 2024 compared to 2023, primarily driven by lower rates of COVID-19-related hospitalisations.

149. The Court considers HRM 38, therefore, as bearing legal evidence. AMMS did not submit any document or argument capable of debunking the data presented in HRM 38. The value of the case was sufficiently substantiated by Gilead, whereas AMMS did not refute the factual data underlying the claimant's submission.

150. The Guidelines of the Administrative Committee for the determination of the court fees and the ceiling of recoverable costs of 24 April 2023 Section 2 lit. b) specify that the value of the patent should be decisive, where appropriate, based on the relevant turnover of the parties.

151. The sales figures for Veklury® in Europe have exceeded $200 million, demonstrating the substantial economic significance of the patent subject to revocation. In light of this, the determination of the value of the proceedings at €20 million is both justified and consistent with the financial data presented. This valuation reflects the objective interests pursued by the claimant and aligns with the guidelines that recommend basing the value of the patent on relevant turnover. Therefore, the value set is coherent with the evidence and arguments submitted by the parties.

DECISION

- European patent 3854403 is revoked, revocation applies to the territories of all contracting member states of the Unified Patent Court Agreement.

- The applications for amendment of the patent, including both main and auxiliary requests, are dismissed.
- The defendant shall bear the legal costs incurred by the claimant pursuant to Art. 69.1 UPCA. These costs have been set by agreement of the parties at €800,000.
- The value of the case is set at €20 million.
- adjudication on R.119 RoP and on lowering the ceiling of recoverable costs is no longer necessary.

Issued in Milan on 4 May 2026

Presiding Judge and judge rapporteur Andrea Postiglione	ANDREA POSTIGLIONE Firmato digitalmente da ANDREA POSTIGLIONE Data: 2026.05.04 17:41:19 +02'00'
Legally qualified judge Marije Knijff	Marije Knijff Digitally signed by Marije Knijff Date: 2026.05.04 18:30:45 +02'00'
Technically Qualified Judge Xavier Dorland-Galliot	ANDREA POSTIGLIONE Firmato digitalmente da ANDREA POSTIGLIONE Data: 2026.05.04 17:40:52 +02'00'
Deputy-Registrar Marco Ginestro	Digitally signed Ginestro Marco 2026-05-04 18:16:47 +0200 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet

INFORMATION ABOUT APPEAL

An appeal against the present Decision may be lodged at the Court of Appeal, by any party which has been unsuccessful, in whole or in part, in its submissions, within two months of service of the decision (Art. 73(1) UPCA, R. 220.1(a), 224.1(a) RoP).

INFORMATION ABOUT ENFORCEMENT

Art. 82 UPCA, Art. 37(2) UPCS, R. 118.8, 158.2, 354, 355.4 RoP: An authentic copy of the enforceable decision will be issued by the Deputy-Registrar upon request of the enforcing party, R. 69 RegR.

INSTRUCTION TO THE REGISTRY

A certified copy of the decision shall be sent to the European Patent Office as soon as the decision on the revocation action has become legally binding.