



UPC_CFI_191/2025 and 192/2025
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 23/05/2025

Moderna, Inc. Statement
(Defendant) - of claim
325 Binney served on
Street - MA 21/04/2025
02142 -
Cambridge - US

ModernaTX, Inc. Statement
(Defendant) - of claim
325 Binney served on
Street - MA 23/04/2025
02142 -
Cambridge - US

Moderna Statement
Switzerland of claim
GmbH served on
(Defendant) - 24/03/2025
Peter Merian-
Weg 10 - 4052 -
Basel - CH

Moderna Statement
Netherlands B.V. of claim
(Defendant) - served on
Claude 27/03/2025
Debussylaan 7 -
1082 MC -
Amsterdam - NL

Moderna Statement
Biotech Spain SL of claim
(Defendant) - C/ served on
Julián Camarillo 24/03/2025
31 - 28037 -
madrid - ES

**Moderna
Germany GmbH** Statement
(Defendant) - of claim
Brienner Straße served on
45 a-d. c/o 21/03/2025
Design Offices
Campus
Königsplatz -
80333 - Munich -
DE

**Moderna France
SASU** Statement
(Defendant) - 19 of claim
Rue Cognacq-Jay served on
- 75007 - Paris - 24/03/2025
FR

**Moderna Italy
S.R.L.** Statement
(Defendant) - Via of claim
Vittorio Veneto served on
54/B - CAP 27/03/2025
00187 - Rome -
IT

**Moderna
Belgium S.R.L.** Statement
(Defendant) - of claim
Avenue Marnix served on
23 - 1000 - 21/03/2025
Brussels - BE

**Moderna
Denmark ApS** Statement
(Defendant) - of claim
C/O CSC served on
(DENMARK) ApS 26/03/2025
Sundkrogsgade
21 - 2100 -
Copenhagen - DK

**Moderna
Sweden AB** Statement
(Defendant) - c/o of claim
Scandinavian served on
Trust AB, Birger 07/04/2025
Jarlsgatan 12 -
114 34 -

Stockholm - SE

**Moderna
Norway AS** Statement
of claim
(Defendant) - c/o served on
CSC (Norway) AS, 05/05/2025
Wergelandsveien
7 - 0167 - Oslo -
NO

**Moderna
Portugal
Unipessoal LDA** Statement
of claim
(Defendant) - served on
27/03/2025
Rua João Chagas
10-B DTO -
1500-493 -
Lisbon - PT

**Moderna Poland
SP. Z.O.O.** Statement
of claim
(Defendant) - served on
25/03/2025
Rondo Ignacego
Daszyńskiego 1 -
00-843 - Warsaw
- PL

**Moderna
Biotech UK
Limited** Statement
of claim
(Defendant) - 54 served on
21/03/2025
Portland Place -
W1B 1DY -
London - GB

APPLICANT/S – DEFENDANTS IN THE MAIN PROCEEDINGSIN THE MAIN PROCEEDINGS

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|----|--|-------------------------------|
| 1) | Moderna, Inc.
325 Binney Street - MA 02142 – Cambridge
- US | Represented by Ruben
Laddé |
|----|--|-------------------------------|

- | | | |
|----|---|----------------------------------|
| 2) | ModernaTX, Inc.
325 Binney Street - MA 02142 - Cambridge
- US | Represented by Ruben
Laddé |
| 3) | Moderna Switzerland GmbH
Peter Merian-Weg 10 - 4052 - Basel - CH | Represented by Joachim
Renken |
| 4) | Moderna Netherlands B.V.
- Claude Debussylaan 7 –
1082 MC - Amsterdam - NL | Represented by Ruben
Laddé |
| 5) | Moderna Biotech Spain SL
- C/ Julián Camarillo 31 - 28037 - Madrid - ES | Represented by Ruben
Laddé |
| 6) | Moderna Germany GmbH
- Brienner Straße 45 a-d. c/o Design Offices
Campus Königsplatz - 80333 - Munich - DE | Represented by Ruben
Laddé |
| 7) | Moderna France SASU
- 19 Rue Cognacq-Jay - 75007 - Paris - FR | Represented by Ruben
Laddé |
| 8) | Moderna Italy S.R.L.
- Via Vittorio Veneto 54/B - CAP 00187 - Rome
- IT | Represented by Ruben
Laddé |

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|-----|--|-------------------------------|
| 9) | Moderna Belgium S.R.L.
- Avenue Marnix 23 - 1000 - Brussels - BE | Represented by Ruben
Laddé |
| | | |
| 10) | Moderna Denmark ApS
- C/O CSC (DENMARK) ApS Sundkrogsgade 21 -
2100 - Copenhagen - DK | Represented by Ruben
Laddé |
| | | |
| 11) | Moderna Sweden AB
- c/o Scandinavian Trust AB, Birger Jarlsgatan
12 - 114 34 - Stockholm - SE | Represented by Ruben
Laddé |
| | | |
| 12) | Moderna Norway AS
c/o CSC (Norway) AS, Wergelandsveien 7 -
0167 - Oslo - NO | Represented by Ruben
Laddé |
| | | |
| 13) | Moderna Portugal Unipessoal LDA
- Rua João Chagas 10-B DTO - 1500-493 -
Lisbon - PT | Represented by Ruben
Laddé |
| | | |
| 14) | Moderna Poland SP. Z.O.O.
- Rondo Ignacego Daszyńskiego 1 - 00-843 -
Warsaw - PL | Represented by Ruben
Laddé |
| | | |
| 15) | Moderna Biotech UK Limited
54 Portland Place - W1B 1DY - London – GB | 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. “Moderna Switzerland” and “Defendant 3” for the

defendant listed at 3) above.

RESPONDENT/S – CLAIMANTS IN THE MAIN PROCEEDINGS

- | | | |
|----|--|-------------------------------------|
| 1) | Genevant Sciences GmbH
(Respondent) - Viaduktstrasse 8 - 4051 - Basel
- CH | Represented by Markus Van Gardingen |
| | | |
| 2) | Arbutus Biopharma Corporation
(Respondent) - 701 Veterans Circle - PA 18974
- Warminster – US | Represented by Markus Van Gardingen |

Respondents/Claimants in the main
proceedings are hereinafter collectively called:
“**Claimants**”

PATENTS AT ISSUE

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

DECIDING JUDGE

This order is issued by the judge-rapporteur.

LANGUAGE OF PROCEEDINGS: English

SUMMARY OF FACTS AND PROCEDURE

1. By statements of claim (“SoCs”) dated 3 March 2025, Claimants initiated two separate infringement proceedings each concerning infringement of a different patent (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 “192/95” 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 pursuant to R.19 RoP (“PO”) 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 a 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 UPC);
 - 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 UPC) and regarding the competence of the division indicated by Claimants (Rule 19.1(b) RoP UPC);
- 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 bases its request for dismissal on several grounds. Firstly, it argues that the court lacks international jurisdiction for Moderna Norway, Spain and Poland because these defendants are not based on the UPCA and jurisdiction cannot be based on Art. 7(2) or Art. 8(1) Brussels I recast Regulation (“BR”), (EU) no 1215/2012) in conjunction with Art. 71b(1), (2) BR, because 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 argues 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 in the separate PO applications for Moderna UK.

6. In addition, Moderna asserts that even if one were to assume that the Court has international competence for an case against all Defendants, it would at least lack long-arm jurisdiction for acts outside the UPCA 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 UPCA territory. This concerns 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 argues 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 the patent proprietor in Greece, Hungary and Austria.
8. In all four applications Moderna announced that it intends to file counterclaims for revocation and that it reserves the right to initiate national nullity actions in particular jurisdictions outside the scope of the UPCA. 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 member states of the UPCA.
9. Claimants replied to both PO's in action 191/25 in one submission dated 7 May 2025, requesting to dismiss the PO's. In action 192/25 Claimants also replied to both PO's with one submission dated 7 May 2025, requesting the court to dismiss the PO's.

GROUND'S FOR THE ORDER

In cases 191/25 and 192/25

10. The four PO-applications are based mostly on the same or similar grounds (the PO's in case 191/25 are based on an additional ground) and concern the same parties. A combined order will be issued regarding the four PO's for practical reasons. This order will be uploaded in all four workflows in order to close them.

PO's admissible?

11. As a preliminary point, it needs to be established whether the requests for preliminary objections were raised within the time limit set out in Rule 19(1) RoP and are thus admissible. According to R.19.1 RoP a PO must be filed within 1 month from of service of the statement of claim. The court must assess ex officio whether this requirement is met. By order of 16 April 2024 (ORD_18458/2025), Moderna's requests in both actions for the extension of the deadlines for the PO's was rejected. The JR considered that PO's are generally particular for each defendant and therefore there is no reason to align these deadlines for all fifteen defendants.
12. The defendants on which service of the SoCs in both cases was affected first, are Moderna UK, Belgium and Moderna Germany and in case 192/25 also Moderna Poland. Service on those

entities took place on 21 March 2025. Due to (national) holidays, the deadline for filing the PO for these defendants expired on 22 April 2025. The PO's in both cases on behalf of Moderna UK were filed on this date and are therefore admissible. The PO's filed on 24 April 2025 also on behalf of Moderna Belgium, Moderna Germany and Poland, are not admissible for these defendants (for Moderna Poland this only applies to action 192/25), as they are late filed. For all other defendants, on whom the service was affected later (on or after 24 March 2025), the PO's are admissible (including for Moderna Poland in action 191/25).

13. Pursuant to R.19.7 RoP, Moderna Belgium, Moderna Germany and Moderna Poland (the latter only in case 192/25) are therefore considered to submit to the jurisdiction and competence of the court and of the LD The Hague.

International jurisdiction: Art. 7(2) or Art. 8(1) BR

14. Moderna only substantiates its objection to the UPC's international jurisdiction (pursuant to Art. 31 and 32 UPCA) with respect to defendants Moderna Spain, Moderna Poland and Moderna Norway. The other defendants, in particular also those based outside the territory of the UPC, notably Moderna US, Moderna US-TX, Moderna Switzerland and Moderna UK, are therefore considered to submit to the international jurisdiction of the UPC. For Moderna Poland the objection is only admissible in case 191/25 as set out above, there this defendant is considered to submit to the international jurisdiction of the court in case 192/25.
15. The UPC is a common court within the meaning of Art. 71a(1) BR (Art. 71a(2)(a) BR). Therefore, the UPC has (international) jurisdiction where the courts of a Contracting Member State would have jurisdiction in an action within the meaning of Art. 32(1) UPCA (Art. 71b(1) BR). 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.
16. Moderna Spain and Moderna Poland are both EU Member States and therefore the above applies directly. Moderna Norway is not an EU Member State, but both the EU and Norway are contracting parties to the Art. 5.3 revised Lugano Convention ("Lugano"), 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 this instrument to strengthen legal and economic cooperation. Lugano consequently has provisions that correspond to Art. 7(2) BR and Art. 8(1) BR as Art. 5(3) and Art. 7(1) respectively. The JR understands 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 Lugano Contracting Parties (such as Norway). This was not contested (or discussed) by the parties.
17. Claimants argue, both in the SoCs and in the replies to the objections, that all Defendants, including Moderna Spain and Moderna Poland, have infringed or threaten to infringe the patents within and outside UPC territory, and that they do so both individually and collectively.

- 17.1 For Moderna Spain it pointed out that it is the holder of the European market authorisation ("MA") for the allegedly infringing product Spikevax. As this product is

commercialised, also within UPC territory, Moderna Spain facilitated this by making the MA available. In case this does not qualify as direct infringement, it in any case therewith facilitates infringement, which may qualify as the providing of services used by a third party to infringe (cf. Art. 63 UPCA). Furthermore, Claimants point out that Moderna Spain is also one of the manufacturers for batch release of Spikevax destined for the European market.

17.2 Regarding Moderna Poland, Claimants assert, substantiated with references to the activities mentioned on Moderna Poland's website, that Moderna Poland supports the infringement of the other Moderna defendants, and that Moderna Poland is planned to be expanded to provide commercial capabilities. Those constitute an (enablement/participation in) infringement, including within the UPC territory and all selected EPC states, or at least qualify as services which are being used by a third party to infringe, according to Claimants.

17.3 Concerning Moderna Norway, Claimants, based on the public information available to them, confess that currently they do not know if this entity performs (infringing) activities outside of Norway. However, due to this lack of information and the intertwined activities of the entire Moderna group, they cannot rule this out either and there is at least a threat of infringement. Defendants have not clarified Moderna Norway's exact role.

17.4 Claimants also assert that Moderna Netherlands has a central role in the sales activities (as a 'spider in the web') 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). Moderna Spain in any case provides the necessary MA for these activities, and Moderna Poland likewise supports the commercialisation of the same product in the same countries where Moderna Netherlands infringes. Both Moderna Netherlands and Moderna Norway in any perform infringing activities in Norway with the same products.

17.5 Claimants thus argue that Moderna Poland, Moderna Norway and Spain each not only infringe individually (asserting that jurisdiction can be based on Art. 7(2) BR), but that they also infringe the patent jointly with Moderna Netherlands in their home country. Therewith they infringe the same (national parts of a European) patent with the same product, which is enough connectivity to consider them co-defendants within the meaning of Art. 8(1) BR.

18. The Defendants only dispute the international jurisdiction by arguing that Moderna Spain, Norway and Poland do not infringe the patents. The issue whether the patents are infringed, in which countries the infringement takes place and whether that infringement may (also) be attributed to those Defendants, however, falls within the scope of the examination of the substance of the action by the court having jurisdiction (Court of Appeal, Order of September 03, 2024, CoA_188/2024). For establishing international jurisdiction, Claimants have sufficiently substantiated that Moderna Spain, Moderna Poland and Moderna Norway allegedly infringe the patent in their home countries jointly with Moderna Netherlands, which is sufficient for jurisdiction of the UPC pursuant to Art. 8(1) BR (or Art. 7(1) Lugano). This ground for the objections, that was only raised for the three defendants mentioned, therefore fails.

Competence of the LD The Hague(Art. 33 UPCA)

- 17 With this ground, Moderna questions the local competence of the LD The Hague of the UPC to hear the cases vis a vis certain Defendants. Art. 33 UPCA governs the internal jurisdiction of the UPC. In the present case, one of the Defendants has its domicile in The Netherlands (Moderna Netherlands) and the other defendants have their respective seat outside the Netherlands, some in Contracting Member States (CMS), some in the European Union (EU) but outside UPC territory and others outside the EU.
- 18 Article 33(1)(b) UPCA provides that in case of multiple defendants, the local division hosted by the CMS where one of the defendants has its residence, is competent to hear the case, provided that the defendants have a commercial relationship and where the action relates to the same alleged infringement, regardless of whether the other defendants are based inside or outside the CMS or inside or outside the EU. Hence the only requirements to be met are:
 - 1) the multiple defendants have a commercial relationship and
 - 2) the action relates to the same alleged infringement.
- 19 To avoid multiple actions regarding the same infringement and the risk of irreconcilable decisions from such separate proceedings, and to comply with the main principle of efficiency within the UPC, the interpretation of "a commercial relationship" and therefore the link between the defendants should not be interpreted too narrowly. The fact of belonging to the same group (of legal entities) and having related commercial activities aimed at the same purpose (such as R&D, manufacturing, sale and distribution of the same products) is sufficient to be considered as "a commercial relationship" within the meaning of the Article 33(1)(b) (cf LD Munich 29 September 2023, UPC_CFI_15/2023, LD Paris 11 April 2024, UPC_CFI_495/2023). The JR notes that Moderna has also not disputed that all Defendants belong to the same group. That the action relates to the same alleged infringement has also been established above in the course of international jurisdiction for certain defendants. For other defendants this is not contested nor plausible. Therefore, also this ground for the objections fails.

and in case 191/25

Opt-out valid?

- 18 As Claimants explained in their reply to the PO's in case 191/2025, the relevant patent in those proceedings was opted out from the exclusive competence of the UPC On 15 May 2023. The Claimants submitted the lodged opt-out and the UPC's acknowledgment of the opt-out as exhibits. The opt-out was subsequently withdrawn on 10 December 2024 (also substantiated with an exhibit). Both the opt-out and the withdrawal were lodged on behalf of Arbutus Biopharma Corporation (Claimant 2) only, being the sole proprietor of the patent in all states for which the patent has been granted. The previous proprietor, that is apparently still incorrectly mentioned as such in the Greek, Austrian and Hungarian national registries, Protiva Biotherapeutics Inc, amalgamated with another company, to create the present patent holder, Claimant 2. on 1 January 2018 (also this fact is substantiated with an exhibit). This company therefore no longer exists. Furthermore, the Claimants point out that, in case Moderna's reasoning regarding the withdrawal of the opt-out were to be correct, then the opt-out itself would also be invalid as this was also lodged on behalf of Claimant 2 only. In that

case, the relevant patent was never opted-out in the first place. In that circumstance, the patent is, and always has been, within the jurisdiction and competence of the UPC.

- 19 According to R. 8.5 (c) RoP, there is a rebuttable presumption that the person shown in a national patent registry (or the EPO registry) as proprietor, is the proprietor of a patent. In the present case the JR is convinced by the Claimants' submissions that the registrations in Greece, Austria and Hungary, are not correct and that the present proprietor of the patent at issue as from 1 January 2018, is Claimant 2, also for these countries. The patent at issue was therefore validly opted-out and this opt-out was validly withdrawn. This ground therefore fails.

and in case 191/25 and case 192/25

lack long-arm jurisdiction

- 20 In both cases, Moderna lastly argues that even if the court has jurisdiction for all Defendants, which has been established as all the grounds for the objections are dismissed hereabove or the jurisdiction was not contested (timely), the territorial scope of that jurisdiction is limited for certain Defendants and cannot extend beyond UPC territory. This part of the preliminary objections is to be dealt with in the main proceedings.

ORDER

- I. Applications 19773/2025 and 19821/2025 are not admissible in so far as they were submitted on behalf of Moderna Belgium and Moderna Germany;
- II. Application 19821/2025 is not admissible in so far as it was submitted on behalf of Moderna Poland;
- III. 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;
- IV. On all other counts, the preliminary objections (19208/2025, 19773/2025, 19158/2025 and 19821/2025) are dismissed.

ORDER DETAILS

Order no. ORD_21852/2025 in ACTION NUMBER: ACT_10280/2025

UPC number: UPC_CFI_191/2025

And ACTION NUMBER: ACT_10284/2025 UPC number: UPC_CFI_192/2025

Action type: Infringement Action

Application No.: 19208/2025, 19158/2025, 19773/2025 and 19821/2025

Application Types: Preliminary objections (R.19 RoP)