

# Kluwer Patent Blog

## Patent case: Insulet Corp. vs. A. Menarini Diagnostics S.R.L., UPC

Bart van Wezenbeek (Hoffmann Eitle) · Thursday, January 23rd, 2025

In proceedings for provisional measures, the Applicant is required to provide cumulatively reasonable evidence to satisfy the Court with a sufficient degree of certainty that: (i) the Applicant is entitled to initiate proceedings under Art. 47 UPCA; (ii) the patent is valid; (iii) its rights are being infringed or that such infringement is imminent. Additionally, the balance of interests must be in favour of the Applicant. Therefore, the absence of any one of these requirements is sufficient to warrant dismissal of the application.

Auxiliary requests to amend the patent pursuant to Rule 30.2 RoP are inadmissible in proceedings for provisional measures. The auxiliary request to amend the patent is expressly admitted only in the defence to a counterclaim for revocation or in the defence to revocation and it may therefore be lodged only in the main proceedings, before the court with jurisdiction to issue a final decision on the validity of the patent.

The phrase “amend its case” in Rule 263.2 RoP refers to any modification of the case by the introduction of a new claim or the substitution of the original claim (“change its claim”). This is therefore a different instrument from the application to amend the patent, which is governed by Rule 30.2 RoP. In proceedings for provisional measures, the former is inadmissible if it constitutes an attempt to introduce a request to amend the patent.

Case date: 22 November 2024

Case number: CFI 400/2024ORD 56587/2024APP 40442/2024

Court: UPC Local divisions of the Court of First Instance Milan

A full summary of this case has been published on [Kluwer IP Law](#)

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