



Action n°: UPC 829/2024

Revocation action

Order
of the Court of First Instance of the Unified Patent Court
Central Division (Section Munich)
issued on 4 August 2025

CLAIMANT:

UPM-Kymmene Oyj, Alvar Allon katu 1 - FI-00101 - Helsinki - Finland

represented by Clemens Tobias Steins of Hoffmann Eitle PartmbB.

DEFENDANT:

International N&H Denmark ApS, Parallelvej 16 – 2800 Kongens Lyngby –
Denmark (substituted for **Virdia Inc.**)

represented by Matthew Naylor of Mewburn Ellis LLP.

PATENT AT ISSUE

European Patent number 2 611 800.

PANEL/DIVISION

Panel 1 of the Central Division (Section Munich).

DECIDING JUDGE

This Order is an order of the Judge-rapporteur András Kupecz.

LANGUAGE OF THE PROCEEDINGS:

English.

SUBJECT-MATTER OF THE PROCEEDINGS

Revocation action. Rule 36 RoP.

FACTS AND REQUEST

On 20 December 2024, the Claimant lodged an action at the Central Division (Section Munich) of the Unified Patent Court (“UPC”) requesting the revocation of EP 2 611 800.

On 14 March 2025, the Defendant lodged a Defence to revocation, including an Application to amend the patent.

Further written pleadings and evidence were exchanged between the parties in accordance with Rules 51,52 and 55 of the Rules of Procedure of the UPC (“RoP”).

On 21 July 2025, together with the Rejoinder to the Reply to the Defence to the Application to amend the patent, the Claimant made a request to allow an exchange of further written pleadings in response to Defendant’s Rejoinder to the Statement for Revocation.

The Claimant argues that it has a legitimate interest to respond and correct the erroneous statements made by Defendant in a short, concise submission which is limited to new arguments advanced by Defendant in the Rejoinder to the Reply to the Defence to Revocation. Admitting this submission into the proceedings would according to Claimant not negatively affect the timeline in view of the provisionally scheduled interim conference on 21 November 2025 and the oral hearing scheduled for 15 January 2026. On this basis, the Claimant requests:

the Judge Rapporteur to exercise their discretion provided under Rule 36 RoP to allow an exchange of further written pleadings in response to Defendant’s Rejoinder to the Statement for Revocation

By letter of 28 July 2025, after having been invited to comment on the admissibility of Claimant’s application by the judge-rapporteur (preliminary order dated 23 July 2025), the Defendant submitted that the Claimant’s request for an exchange of further written pleadings should not be allowed, and requests that their submissions at sections 1 and 2 of their 21 July 2025 letter are disregarded by the Court and not admitted into proceedings.

GROUNDINGS FOR THE ORDER

The application is admissible but is rejected because it is not well-founded.

1.

Pursuant to Rule 36 RoP, on a reasoned request by a party lodged before the date on which the judge-rapporteur intends to close the written procedure, the judge-rapporteur may allow the exchange of further written pleadings, within a period to be specified.

An application under Rule 36 RoP was made by the Claimant before closure of the written proceedings and was made by way of reasoned request and is therefore admissible. The judge-rapporteur notes that the further written pleadings were submitted together with and as part of the reasons for the request. This makes it (unnecessarily) difficult for the Court and for the other party to identify what the reasons are for the request to allow further pleadings (as required by Rule 36 RoP) and what constitutes the substance of the further pleadings. It would have been better if the Claimant had first and separately presented the reasons why a further exchange of pleadings was necessary in this case. However, this is not a reason not to admit the request.

2.

For a revocation action, the RoP provide for a written procedure which consists of the lodging of the Statement for revocation, a Defence to revocation and, optionally, a Reply to the Defence to revocation and a Rejoinder to the Reply (Rule 43 RoP). If an Application to amend the patent is made, the RoP also provide for (a maximum of) two rounds of written submissions (Rule 55 in connection with Rule 32 RoP). In addition, parties shall set out their full case as early as possible in the proceedings (7 Preamble RoP). This procedural framework aims at allowing the Court to conduct the proceedings in an efficient manner (Preamble recital 4). On the other hand, the Court has to conduct the proceedings on the basis of proportionality, flexibility, fairness and equity having due regard to the legitimate interests of all parties (Preamble recitals 3 and 5).

Against this background, Rule 36 RoP gives the judge-rapporteur the discretion to (exceptionally) allow the exchange of further written pleadings, in particular if this is required by the principles of due process, in particular the principles of fairness, equity and efficiency and the right to be heard (cf. CoA order of 24 July 2025, UPC_CoA_579/2025, *OTEC/STEROS*, CoA order of 1 November 2024, UPC_CoA_520/2024 App_57474/2024, *Scandit/Hand Held Products*).

Furthermore, it must be taken into account that the judge-rapporteur, during the written procedure, cannot be expected to have familiarized themselves with all aspects contained in the briefs in detail, and will typically only start dealing with the various aspects of the case in more detail during the interim procedure in order to prepare the oral hearing (cf. LD Mannheim 1 April 2025, UPC_CFI_132/2024, *Total Semiconductors/Texas Instruments*).

In the present case, the Claimant has not argued that the exchange of further pleadings is required by the principles of due process. The Claimant alleges that Defendants' arguments are "erroneous" and constitute "new arguments", but it does not follow from these assertions that the Claimant's procedural rights are in jeopardy in the absence of an exchange of further written pleadings. In particular, in accordance with the regular procedural schedule as foreseen in the RoP, the Defendant has the last word in the Rejoinder. The Claimant can subsequently address any relevant issues at the oral hearing. The Claimant has not argued that and why the statements made by the

Defendant cannot be properly addressed at the oral hearing. The fact that submitting further pleadings during the written procedure might be the most convenient point in time to do so, that submissions are short and concise and that allowing a further round of submissions would not affect the further schedule of the proceedings are, as such, no reasons for allowing an exchange of further pleadings.

That the Claimant's fundamental procedural rights are at stake, or that the further exchange of pleadings must be admitted for another valid reason, also cannot be deduced from the reasons provided by the Claimant. First of all, the Claimant does not refer to any new facts or evidence (such as for example a new experiment regarding an alleged embodiment, see CoA *OTEC/STEROS* referred to above). Instead, the Claimant alleges that in relation to added matter, the Defendant relies on a new claim interpretation, new parts of the application as originally filed and a wrong interpretation of certain EPO case law. For inventive step, it would be a late addition to Defendant's case that "section 2.2 and 5.2 of the Defence to the SfR (SoD) should be read together with the inventive step analysis provided at section 5.4 of the SoD". Defendant contests that these submissions are late and new and submits that these are rather a refinement of existing lines of argument responsive to the arguments made by the Claimants.

Weighing the arguments of both parties and taking into consideration that responding to the other party's arguments can to a certain extent justify "new" arguments, the Claimant has not provided sufficient reasons that justify an exchange of another round of written pleadings. The Claimant will have the opportunity to address and rebut any relevant arguments at the oral hearing. For the sake of completeness, the judge-rapporteur notes that the Defendant's Rejoinder shall be limited to the matters raised in the Claimant's Reply (Rule 52 RoP, last sentence). The Court may, also after hearing the parties at the oral hearing, and also of its own motion, disregard any fact, evidence or argument that has not been submitted in due time (Rule 9.2 RoP).

3.

The Claimant, failing to explain why this would justify a further exchange of pleadings, included some statements related to the admissibility of the allegedly late-filed novelty attack based on Table Ia (Permeate E) and Table IVa (Permeate) of WO'236 and Exhibit HE R800-32 to which the Defendant replied. The judge-rapporteur notes that this issue will be dealt with during the interim procedure, and at the latest at the oral hearing.

4.

The Defendant has in its letter dated 28 July 2025, in defiance of the Court's explicit instructions in the preliminary order dated 23 July 2025, also submitted comments regarding the Claimant's Rejoinder to the Reply to the Defence to the Application to amend the Patent. These comments will be disregarded by the Court (Rule 9.2 RoP). It is not necessary to hear the Claimant on this.

5.

The parties are hereby informed that the judge-rapporteur intends to close the written procedure on 7 August 2025.

ORDER

- The Claimant's request to allow an exchange of further pleadings is rejected.
- The Claimant's submissions dated 21 July 2025, to the extent that they relate to or contain further pleadings (notably part 2), are disregarded.
- The Defendant's comments dated 28 July 2025 regarding the Rejoinder to the Reply to the Defence to the Application to amend the Patent are disregarded.
- A decision on the admissibility of the novelty attack based on Table Ia (Permeate E) and Table IVa (Permeate) of WO'236 and Exhibit HE R800-32 is deferred to the interim or oral procedure.
- Any other requests made in the submissions dated 21 and 28 July 2025, respectively, are rejected.

Issued 4 August 2025

Judge-rapporteur
KUPECZ

ORDER DETAILS

Order no. ORD_33542/2025 in ACTION NUMBER: ACT_67479/2024

UPC number: UPC_CFI_829/2024

Action type: Revocation Action

Related proceeding no. Application No.: 33353/2025

Application Type: Generic procedural Application

INFORMATION ABOUT REVIEW BY PANEL

Any party may request that this Order be referred to the panel for a review pursuant to R. 333 RoP. Pending review, the Order shall be effective (R. 102.2 RoP)