



Milan - Central Division - First
Instance - central division

UPC_CFI_552/2025
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 04/09/2025

APPLICANT/S

- 1) **Gilead Sciences, Inc.** Represented by Christine
(Applicant) - 333 Lakeside Drive - 94404 - Kanz
Foster City - US

RESPONDENT/S

Academy of Military Medical Sciences Statement of revocation served on
07/07/2025
(Defendant) - No. 27 Taiping
Road, Haidan District -
100850 - Beijing - CN

PATENT AT ISSUE

Patent no.

Proprietor/s

EP3854403

Academy of Military Medical Sciences

DECIDING JUDGE: judge rapporteur

LANGUAGE OF PROCEEDINGS: English

ORDER

1. This procedural order addresses the issues raised in applications nos. 34350/25, 35601/25, 35787/25 and 35898/25 in UPC_CFI 552/2025.
2. On 20 June 2025, Gilead Sciences Inc. (333 Lakeside Drive, Foster City, California, USA) filed an application with the Unified Patent Court (Central Division, Milan) for the revocation of European Patent 3854403, granted on 18 June 2025.
3. The patent in question (EP'403) relates to the use of the active ingredient Remdesivir in treating diseases caused by MERS and SARS-COV-1 infections, and is owned by the Military Academy of Sciences of the People's Republic of China, located at 27 Taiping Road, Beijing 100850.
4. In its request for a unitary effect, filed on 17 July 2025, the Military Academy of Sciences of the People's Republic of China indicated Lavoix (Bayerstrasse 83, Munich) as the European representative, in accordance with Article 6.2 EPR.
5. According to Rule 6.2 EPR and Article 41(d) of the EPC, when requesting a unitary effect for a filed patent, the name and personal details of the patent representative must be provided, including their address, house number, and telephone number.
6. Consequently, on 17 July 2025, Lavoix, represented by Anne Francastel, submitted a request for a unitary effect to the EPO electronically, nominating itself as the patent representative.
7. The Registrar then served the statement of claim on Lavoix in accordance with Rule 271(5)(c) of the Rules of Procedure (RoP).
8. Lavoix subsequently emailed the central division of the Unified Patent Court to dispute the validity of the service. Also GILEAD SCIENCES requested clarification of the service's validity by filing the application no. 34350-25.
9. On 29 August, application no. 35787/25 was filed too, in which Lavoix again contested the service, this time within the internal management system of the UPC.
10. Meanwhile, the claimant applied for a default judgement (application no. 35601/25), assuming that the deadline for the defendant to appear in the proceedings had expired.
11. Lavoix responded with a new application, no. 35898/25, opposing the request for a default decision.
12. The JR notes that only validly formulated objections within the proceedings by authorised lawyers (art. 48 UPCA) can be considered by the Court; emails sent to the Registrar cannot be considered.
13. Application no. 35787/25, filed by Lavoix on behalf of the defendant, clearly indicates that the defendant has granted Lavoix power of representation (see screenshot above):

FOR:

Academy of Military Medical Sciences

Defendant

Represented by **Camille PECNARD and Pierre-Emmanuel MEYNARD**
Attorneys-at-law, UPC Representatives

And by **Béatrice HOLTZ and Aude VEYNANTE GARDEY**
French and European Patent Attorneys, UPC Representatives

LAVOIX – 2 place d'Estienne d'Orves 75009 Paris, France
cpecnard@lavoix.eu

14. It appears that the service has achieved its purpose of reaching out to the defendant.

15. Lavoix maintains that the objection was raised as a precautionary measure by the patent representative, since the substantive party would otherwise not have had the opportunity to raise the issue of the invalidity of service within the proceedings. Therefore, the patent representative could act '*motu proprio*' to raise the issue of the invalidity of the notification.

The JR does not agree with this pleading.

16. Unless the patent holder has conferred such power on them, the patent representative cannot substantially represent the defendant in court (even though they are entitled to do so by Art. 48 UPCA and 134 EPC) let alone mount a defence of their own accord. They cannot, therefore, raise defences and objections before the UPC, even as a precautionary measure, in name and on behalf of the patent holder.

The defendant's rights do not require any precaution.

17. Service of the statement initiating proceedings is aimed at informing the defendant of legal action against them, via traceable instruments governed by precise legal rules. Service is valid when it can be assumed that the defendant has been served with the claim. This is achieved when the document is received by the addressee via traceable means (e.g. post).

18. If the documents reach the defendant, the service is validly performed; if they do not reach the defendant, service is invalid. In the latter case, no precautions are required from the part of those who merely act as patent representatives before the EPO.

19. If service is invalid, also the decision rendered in a proceeding started with an invalid service will be void. Rule 356 RoP deals with this issue, stating that if a default judgment is issued against someone who has not been properly served, they may apply to the court within one month of being notified of the judgment to have the decision overturned or removed.

20. The patent representative is not entitled to figure out a defence strategy for the patent holder on their own.

21. The patent representative should, nevertheless, inform the patent holder of the service. The patent holder may then decide which strategy to pursue in the proceedings, i.e. whether to appear in court and subsequently object to the service on the basis that it does not comply with the proceedings' rules or just remain outside the proceedings.

22. However, regardless of a formal entrance of the defendant in the proceedings, service is considered to have been legally achieved when a solicitor acts as the defendant's legal representative in the proceedings. This is what Lavoix did in the document filed on 29 August 2025, opposing the decision by default.

23. The patent representative cannot represent the patent holder before the UPC with the powers under Art. 48 UPCA unless they have been granted power of attorney by the defendant (see R. 361). A defendant cannot confer powers of defence if they are not aware of the content of the claim. According to Rule 285, a representative who claims to be representing a party shall be accepted as such by the Court unless his power of representation is challenged.

24. This Court does not doubt that the patent representative might have received from the patent holder also the powers of a legal representative in these proceedings. Predictably, the same firm handling patent representation might also be responsible for legal defence. But the defendant cannot plead ignorance of the statement of claim at this stage.

25. Moreover, when service is provided by the UPC Registrar, the parcel is accompanied by a unique code that enables only the legal team of the party to access the documents. This code also enables the legal team to file documents in the proceedings. By accessing the case files with this code, Lavoix unmistakably operated like a solicitor with an attorney's powers.

26. Moreover, service has been carried out following the RoP.

27. Chapter II (Rules 270 et seq.) of the UPC Rules governs how procedural documents are to be served to defendants.

28. In Chapter II RoP, Rule 271 and Section 1, in general, govern service within the Contracting Member States (CMS), whereas Section 2 (Rules 273 et seq.) governs notifications outside the borders of the CMS.

29. Lavoix's argument that the notification to the defendant should have been carried out in accordance with Section 2 because the defendant has its registered office in China is misleading.

30. The distinction between serving documents pursuant to Section 1 or Section 2 of the RoP is based on the place of service, not on the defendant's headquarters. The rules literally speak of 'service within the CMS' and 'outside the CMS', meaning that what matters is where service must be carried out, not who must be served.

31. The company's headquarters abroad (outside the CMS) are only relevant (leading to the carrying out of service according to the Hague Convention of 1965) if there is no authorized patent representative in the CMS or if the document to be served is not among those mentioned in Rule 271 (i.e. a statement of infringement).

32. Contrary to Lavoix's submissions, when service can be carried out on a patent representative based in the CMS, it is, for all intents and purposes, internal service within the CMS, governed by chapter II section 1 of the RoP.

33. Thus, according to Rule 271.6, the statement of revocation is deemed to have been validly served to the defendant when the letter containing the statement of revocation and the unique access code was received by the patent representative. So, service was completed on 7 July 2025.

34. The defendant, therefore, has until 8 September 2025 to file a statement of defense in the proceedings.

35. Consequently, the claimant's request for a default judgment is currently inadmissible and must be eventually re-lodged if the defendant fails to take action within the time limit set out in the rules of procedure (R. 355.1(a)).

36. The JR therefore does not consider it necessary to invite the defendant to comment on the request for a default judgment (Appl. 35601/25) as it is flatly inadmissible (R. 355.3).

By issuing this order, the judge has also responded to applications nos. 34350/25, 35898/25 and 35787/25, which can now be closed.

FOR THESE REASONS

The Judge Rapporteur

- declares the request for a default judgment filed by the plaintiff on 27 August 2025 inadmissible, closing appl. 35601/25.

- orders the closure of applications 34350/25, 35787/25 and 35898/25.

Milan, 4 September 2025

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY

R. 331.4 The Registry shall serve any case management orders on the parties as soon as practicable after the decision of the judge-rapporteur, presiding judge or panel.

ORDER DETAILS

Order no. ORD_36084/2025 in ACTION NUMBER: ACT_29152/2025

UPC number: UPC_CFI_552/2025

Action type: Revocation Action

Related proceeding no. Application No.: 34350/2025, 35601/2025, 35787/2025, 35898/2025

Application Type: Generic procedural Application, Rop 9, Request of a decision by default