



Action n°: UPC 337/2025

Revocation action

**Order**  
**of the Court of First Instance of the Unified Patent Court**  
**Central Division (Section Munich)**  
**issued on 8 September 2025**

CLAIMANT:

**TCL EUROPE SAS**, 9-15 rue Rouget de Lisle - 92130 - Issy les Moulineaux - France

represented by: Andreas Obermeier of Bird & Bird LLP.

DEFENDANT:

**Corning Incorporated**, One Riverfront Plaza, Corning - 14831 - New York – United States of America

represented by: Marcus Grosch of Quinn Emanuel Urquhart & Sullivan LLP.

PATENT AT ISSUE

European Patent number 3 296 274.

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 9.3(a) RoP.

SUMMARY OF FACTS AND REQUESTS

1. The Claimant brought a revocation action against the Defendant in relation to EP 3 296 274 before the Central Division (section Munich) of the Unified Patent Court ("UPC") on 22 April 2025.
2. The Defence to Revocation ("DtR") including an Application to amend the patent ("Ata") was filed by the Defendant on 9 July 2025 and received by the Claimant on 10 July 2025.
3. By application pursuant to Rule 9.3(a) of the Rules of Procedure ("RoP") dated 4 September 2025, the Claimant requests that the deadline for filing the reply to DtR and the defence to the Ata be extended by 2 weeks, i.e. until 24 September 2025 ("the Application").
4. In support of the Application, the Claimant argues that an extension is necessary to properly address the substantial new technical features introduced by the Defendant and to complete essential technical testing currently underway for multiple prior art attacks. The Auxiliary Requests filed by the Defendant contain ten distinct technical features that according to the Claimant fundamentally alter the scope of the disputed subject matter and require comprehensive technical analysis against multiple prior art references. Claimant had no reasonable basis to anticipate that Defendant would pursue this particular technical direction. The technical analysis of certain physical, thermal, and mechanical parameters of the glass composition is very time consuming. Different tests must be performed for several glass compositions which are basis for several prior art attacks, including two novelty attacks and several inventive step attacks.
5. Upon receipt of Defendant's Auxiliary Requests, Claimant immediately recognized the scope of technical verification required and without undue delay instructed qualified testing laboratories to commence the necessary analyses. This prompt action demonstrates Claimant's diligence in addressing the extensive new technical issues raised. Despite such

immediate reaction, the analysis of these parameters is still ongoing, and the results must still be discussed with technical experts. Procedural fairness requires that parties have a reasonable opportunity to respond to new issues raised during proceedings. In this situation the standard response timeframe of two months becomes inadequate.

6. The requested two-week extension for responding to Defendant's Auxiliary Requests will not affect the scheduled dates of the interim conference or the oral hearing.
7. The Defendant, upon invitation by the Court, provided its comments to the Application on 5 September 2025. The Defendant brought forward that the request for term extension filed by the Claimant does not provide details on the outstanding tests that are apparently conducted by the Claimant. It is, in particular, unclear for the Defendant which compositions from the prior art the Claimant intends to test and why these tests could not be conducted within the deadline provided by the Rules of Procedure. Further, the Defendant notes that the procedural schedule could be jeopardized as it will also need more time to analyze the testing results and - potentially - conduct its own tests to refute factual assertions.

#### GROUND FOR THE ORDER

8. The (admissible) application is rejected because it is not well-founded.
9. Based on Rule 9.3(a) RoP, on a reasoned request by a party, the Court has the discretionary power to extend a time period referred to in the RoP.
10. The RoP contain a balanced time frame for submissions in the written procedure (cf. UPC\_169/2024 (LD Hamburg) order of 25 July 2024, *Xiaomi/Daedalus*). This regime ensures that the proceedings can be concluded swiftly and fairly, and that sufficient time is allowed for preparation of the oral hearing which, normally, is to be held within one year (cf. UPC\_CFI\_191/2025 (LD the Hague) order of 13 August 2025, *Genevant c.s./Moderna*). Accordingly, it is settled jurisprudence that the Court should use its discretionary power to deviate from the time periods provided for in the RoP with caution and in justified exceptional cases (cf. e.g. *Genevant c.s./Moderna*, cited above; UPC\_CFI\_466/2025, (LD Düsseldorf) order of 3 September 2025, *Dai Nippon/Zapp*; UPC\_CFI\_363/2023 (LD Düsseldorf) order of 20 January 2024, *Seoul Viosys/expert e-Commerce*; UPC\_CFI\_412/2023 (CD Paris), order dated 9 February 2024, *ITCiCo/BMW*).
11. When deciding whether to extend a time period, the interests of the parties involved (including the right to a fair hearing) and the interests of the Court and the public in the efficient conduct of proceedings must be weighed, taking into account the circumstances of the individual case. Special circumstances – which must be raised and where necessary proven by the party requesting the extension – may justify an extension of a time period (cf. *Genevant c.s./Moderna*, *ITCiCo/BMW*, cited above). The timing of a request may be a relevant circumstance (cf. *Dai Nippon/Zapp*, cited above).
12. Against the background of the above principles, the Claimant has not brought forward convincing reasons that justify an extension of the time period in accordance with Rule 9.3(a) RoP in deviation from the regular time period regime.

13. The complexity of the case and the fact that experiments are being done by the Claimant (in support of for several prior art attacks, including two novelty attacks and several inventive step attacks), which the Claimant wants to comprehensively analyse and discuss with its experts, *per se* do not justify an extension of the time period. The regime provided for in the RoP has been specifically designed for patent cases, which can typically be complex and regularly involve producing technical (experimental) evidence in support of (several) prior art attacks. The same applies to the allegedly unforeseen “technical direction” caused by the introduction of new claim features. The introduction of auxiliary requests, including new claim features, is expressly provided for in the RoP. Accordingly, the time period for replying to the DtR and defence to an Ata is two months (Rule 51 RoP), which is (together with the DtR) the longest time period for a written submission in revocation proceedings.
14. Even assuming (for the benefit of the Claimant) that the testing is essential and that the Claimant acted diligently and promptly in instructing the laboratories to start the testing, the Court is not convinced that there are special circumstances justifying an exception to grant the requested extension. The Claimant has not provided (sufficiently concrete) information about the nature, timing and regular time and effort required to carry out the tests to support the conclusion that it would have been – objectively – impossible or very difficult to complete the testing in due time for a party taking all reasonable care. Especially taking into account the fact that the Application has been made by the Claimant only shortly before expiry of the time period, it would have been up to the Claimant to, in the Application, not only explain that instructions to commence the testing were given promptly, but also to provide facts and a conclusive reasoning as to the concrete steps it has taken to ensure that the testing would be completed in due time, or why this could not be done (i.e. that, taken together, would justify the conclusion that the Claimant acted diligently overall, cf. *Dai Nippon/Zapp*, cited above).
15. Finally, the fact that the requested two-week extension for responding to Defendant’s Auxiliary Requests as such will not affect the scheduled dates of the interim conference or the oral hearing is not a reason to grant the request. Moreover, should an extension be granted, it cannot be ruled out that the Defendant could be entitled to an extension for their next submission based on the principle of equality of arms, which could still jeopardise the procedural schedule. Furthermore, the procedural schedule, which was agreed with the Claimant well after it had received the DtR, also takes into account the necessary preparations of the Court.
16. In conclusion, there are no convincing reasons that justify an extension of the time period for submitting the DtR and Ata as requested. Accordingly, the request is rejected.

#### ORDER

- The Claimant’s request to extend the deadline for filing the reply to DtR and the defence to the Ata by 2 weeks, i.e. until 24 September 2025 is rejected.
- Any further requests are rejected.

Issued 8 September 2025  
KUPECZ  
Judge-rapporteur

ORDER DETAILS

Order no. ORD\_36193/2025 in ACTION NUMBER: ACT\_17987/2025  
UPC number: UPC\_CFI\_337/2025  
Action type: Revocation Action  
Related proceeding no. Application No.: 36126/2025  
Application Type: Generic procedural Application