



Action number:
UPC_CoA_288/2025
APL_15039/2025
UPC_CoA_290/2025
APL_15067/2025
UPC_CoA_291/2025
APL_15072/2025

Order
of the Appeal Court of the Unified Patent Court
of 6 October 2025
concerning an appeal against the rejection of an objection

HEADNOTE

1. Rule 19.1 of the RoP contains an exhaustive list of admissible grounds for objection (see order of 3 September 2024, UPC_CoA_188/2024, APL_21943/2024, *Aylo v Dish*, para. 32). This includes the jurisdiction of the court (R. 19.1 (a) RoP) and thus also the question of the validity of the relevant jurisdiction rules.
2. Insofar as an alleged violation of Article 47(2) of the EU Charter of Fundamental Rights and Article 6 of the ECHR does not concern any of the grounds for preliminary objection listed in Rule 19.1 of the RoP, a preliminary objection based on this is not admissible.
3. The allocation of jurisdiction to the Unified Patent Court pursuant to Article 31 of the UPC Agreement in conjunction with Article 71a et seq. Brussels Ia Regulation and Article 32 of the UPC Agreement does not constitute an interference with the division of tasks between the Court of Justice of the European Union and the national courts as regulated by Article 19 TEU and Article 267 TFEU.
4. The Administrative Committee was analogously empowered under Article 87(2) of the UPC Agreement to determine that Milan should replace London as a division of the Central Chamber with the competences specified in Annex II to the UPC Agreement.
5. The fixed fee payable for the appeal proceedings pursuant to Rule 228 of the RoP and, where applicable, the fee based on the value of the claim for the infringement action shall be payable for each appeal proceeding. This shall also apply in cases where appeals concerning the same parties raise the same issues.

KEYWORDS:

- a) Grounds for objection (Rule 19.1 RoP)
- b) Validity of rules on jurisdiction
- c) Compatibility of Art. 31 UPC Agreement with Art. 71a et seq. Brussels Ia Regulation and Art. 32 UPC Agreement with Art. 19 TEU and Art. 267 TFEU
- d) Power of the Administrative Committee to amend pursuant to Art. 87(2) UPC Agreement

e) Reduction of court fees pursuant to R. 228 of the RoP

APPELLANTS AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE

1. **Roku International B.V.**, Amsterdam, Netherlands
2. **Roku, Inc.**, San Jose, USA,

(hereinafter referred to collectively as "Roku")

represented by: Dr Andreas Kramer, lawyer, and other lawyers from the law firm Vossius & Partner Patentanwälte Rechtsanwälte mbB, Düsseldorf, Germany

RESPONDENT IN APPEAL PROCEEDINGS APL 15039/2025 AND CLAIMANT BEFORE THE COURT OF FIRST INSTANCE

Dolby International AB, Dublin, Ireland

(hereinafter: "Dolby")

represented by: Attorney Dr. Tilman Müller, law firm Bardehle Pagenberg Partnerschaft mbB Patentanwälte, Rechtsanwälte, Hamburg, Germany

RESPONDENT IN PROCEEDINGS APL 15067/2025 AND APL 15072/2025 AND CLAIMANT BEFORE THE COURT OF FIRST INSTANCE

Sun Patent Trust, New York, USA

(hereinafter: "Sun")

represented by: Dr Volkmar Henke, lawyer, Bardehle Pagenberg Partnerschaft mbB Patentanwälte, Rechtsanwälte, Hamburg

LANGUAGE OF THE PROCEEDINGS

German; with the consent of the parties, the language used in the oral proceedings was English

JUDICIAL PANEL AND DECIDING JUDGES

Panel 2,
Rian Kalden, presiding judge and legally qualified judge Patricia Rombach, legally qualified judge and rapporteur Ingeborg Simonsson, legally qualified judge

CONTESTED ORDERS OF THE COURT OF FIRST INSTANCE

Date: 18 March 2024, Munich local division, action number
of the Court of First Instance:

- ORD_69038/2024 concerning preliminary objection App_45195/2024 in the main proceedings concerning the infringement action in ACT_27821/2024 UPC_CFI_235/2024
- ORD_69030/2024 concerning preliminary objection App_47531/2024 in the main proceedings concerning the infringement action in ACT_29956/2024 UPC_CFI_254/2024 and

- ORD_69037/2024 concerning preliminary objection App_47532/2024 in the main proceedings concerning the infringement action in ACT_36560/2024 UPC_CFI_339/2024

PATENTS AT ISSUE

EP 3 490 258 (in proceedings APL_15039/2025)

EP 2 903 267 (in proceedings APL_15067/2025)

EP 3 200 463 (in proceedings APL_15072/2025)

ORAL PROCEEDINGS

The joint oral proceedings for all cases (R. 302.3 RoP) took place on 1 July 2024. FACTS

1. In the three proceedings, Dolby (ACT_27821/2024) and Sun (ACT_29956/2024, ACT_36560/2024) are suing the two defendants (hereinafter referred to as Roku for both) before the Munich local division for alleged infringement of the patents at issue.
2. Roku has filed a preliminary objection in all proceedings and has essentially requested that the action be dismissed as inadmissible, or alternatively, that the present proceedings be suspended and the following question on the interpretation of EU law be referred to the Court of Justice of the European Union: "Is it compatible with Article 267 TFEU that the Unified Patent Court, established by individual Member States by means of an international agreement, is entrusted with the application of Union law in the field of patent law in place of the courts of the Member States and is subject to the supervision of the ECJ through preliminary ruling proceedings in accordance with Article 21 of the UPC Agreement?" Dolby and Sun have each requested that the preliminary objection be dismissed.
3. In the contested orders, the judge-rapporteurs dismissed Roku's preliminary objections and allowed the appeal. The contested orders were essentially justified as follows:
 - Insofar as Roku bases its preliminary objection on Rule 19.1(a) of the RoP and justifies it with the incompatibility of the UPC Agreement with primary law of the European Union, the (alleged) violation of the right to a lawful judge and the lack of standing of the respective claimant, the preliminary objection is inadmissible, but in any case unfounded.
 - Rule 19.1(a) of the RoP only mentions the lack of jurisdiction of the UPC as a ground for opposition. In this respect, reference is made only to Articles 31, 32 and 83 of the UPC Agreement. The validity and applicability of the aforementioned articles is assumed, as it were.
 - The question referred by Roku to the Court of Justice of the European Union is not directly relevant to the question of the UPC Agreement's jurisdiction.
 - The Munich local division has local jurisdiction pursuant to Art. 33(1)(a) of the UPC Agreement.
 - The fact that some of the alleged infringements by Roku Inc. were committed before the entry into force of the UPC Agreement is irrelevant to the question of jurisdiction.
 - Roku unsuccessfully argues that it cannot be ruled out that the composition of various chambers would have been different if there were a central chamber based in London. The composition of individual panels of a (permanent and pre-established by law) court does not affect the right to a lawful judge. Only if the specific

judges called upon to decide the case were not independent and/or impartial could this constitute a violation of Article 47(2) of the EU Charter of Fundamental Rights and Article 6 of the ECHR. The latter is not claimed by Roku.

- The conditions for the Central Chamber to have jurisdiction are not apparent. In this respect, no violation of the right to a lawful judge can be identified.
- Sun has effectively withdrawn from the opt-out.

4. Roku has lodged appeals against these orders.

APPLICATIONS OF THE PARTIES

5. Roku requests, in summary, that the contested order be set aside, that the preliminary objections be upheld and that the actions be dismissed as inadmissible, or, in the alternative, that the present proceedings be suspended pursuant to Article 21 of the UPC Agreement, Article 38(2) Annex I to the UPC Agreement, and to refer the question of the compatibility of the UPC Agreement with EU law to the European Court of Justice, in particular the question set out in paragraph 2.
6. In proceedings APL_15067/2025 and APL_15072/2025, Roku requests that only one court fee be set for both proceedings.
7. Dolby and Sun jointly request that the appeal be dismissed in its entirety and that Roku be ordered to pay the costs of the appeal proceedings.

ARGUMENTS OF THE PARTIES

8. Roku challenges the contested orders, repeating and expanding on the arguments presented in the first instance. Roku does not challenge the view of the local division regarding local jurisdiction, the question of jurisdiction with regard to acts of infringement prior to the entry into force of the UPC Agreement, standing to sue and the effectiveness of the opt-out.

REASONS:

9. The admissible appeals have no success.

I. Subject matter of the appeals

10. The grounds for appeal do not address the issues set out in paragraph 8. These issues are therefore not the subject of the appeal (Rule 226(b) of the RoP in conjunction with Rule 233.3 of the RoP).

II. Merits of the appeals

1. Prerequisites for international jurisdiction

11. The local division correctly considered the preliminary objections to be admissible insofar as they are based on the ground of lack of jurisdiction. As the Court of Appeal has already ruled (order of 3 September 2024, UPC_CoA_188/2024, APL_21943/2024, *Aylo v Dish*, para. 32),

Rule 19.1 of the RoP contains an exhaustive list of admissible grounds for objection. This includes the jurisdiction of the court (Rule 19.1(a) of the RoP).

12. The local division correctly assumed that the conditions for international jurisdiction of the UPC Agreement under Article 31 of the UPC Agreement in conjunction with Articles 71a and 71b of Regulation (EU) No 1215/2012 (hereinafter: Brussels Ia Regulation) are met in this case.
 13. According to Art. 31 of the UPC Agreement, the international jurisdiction of the court is determined in accordance with the Brussels Ia Regulation or, where applicable, on the basis of the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention). The provision thus refers to Articles 71a and 71b of the Brussels Ia Regulation.
 14. According to Article 71a(1) of the Brussels Ia Regulation, for the purposes of this Regulation, a court common to several Member States as referred to in paragraph 2 ("common court") shall be considered a court of a Member State if, under the agreement establishing it, the common court exercises jurisdiction in matters falling within the scope of this Regulation. Pursuant to Article 71a(2)(a) of the Brussels Ia Regulation, the Unified Patent Court (UPC) is such a court.
 15. Pursuant to Article 71b(1) of the Brussels Ia Regulation, a common court shall have jurisdiction if the courts of a Member State party to the agreement establishing the common court would have jurisdiction under this Regulation in a field covered by that agreement.
 16. Dolby and Sun have conclusively argued that such an infringement giving rise to the jurisdiction of the UPC has taken place.
2. *Incompatibility of Article 31 of the UPC Agreement in conjunction with Article 71a et seq. Brussels Ia Regulation and Article 32 of the UPC Agreement with Article 19 TEU and Article 267 TFEU as grounds for opposition under Rule 19.1 of the RoP?*
- a) *Incompatibility of Article 31 of the UPC Agreement as a ground for opposition under Rule 19.1 of the RoP*
17. Roku successfully challenges the view expressed in the contested orders that incompatibility of Article 31 UPC Agreement in conjunction with Article 71a et seq. of the Brussels Ia Regulation with Article 19 TEU and Article 267 TFEU cannot be invoked as a ground for objection under Rule 19(1) of the RoP.
 18. Since the validity of the rules on jurisdiction is a prerequisite for the UPC to assume jurisdiction, contrary to the opinion of the local division, the alleged invalidity of Article 31 UPC Agreement in conjunction with Article 71a et seq. of the Brussels Ia Regulation must be examined in the context of a preliminary objection.
 19. National courts are obliged to examine the validity of a Union act (in this case, Articles 71a and 71b of the Brussels Ia Regulation) either of their own motion or on the basis of the grounds for invalidity put forward by the parties (see ECJ, judgment of 3 July 2019, *Eurobolt*, C-644/17, ECLI:EU:C:2019:555, para. 28). This obligation also applies to the UPC, which, pursuant to Art. 1 UPC Agreement, is subject to the same obligations under EU law as any national court of the contracting member states. It would be contrary to this obligation if such an examination were reserved for the main proceedings.

20. The UPC Agreement must interpret its own substantive and procedural law in accordance with EU law and, in cases where it conflicts with a provision of EU law with direct effect and an interpretation in conformity with EU law is not possible, disregard it of its own motion (see ECJ, judgment of 19 December 2024, *K GmbH*, C-65/23, EU:C:2024:1051, para. 53, UPC Agreement Court of Appeal, order of 20 August 2025, *expert/Viosys*, UPC_CoA_380/2025, APL_20125/2025, para. 37).

21. Dolby and Sun unsuccessfully argue that Rule 19.1 of the RoP serves to clarify certain specific issues, which are typically straightforward and procedural in nature, at the earliest possible stage of the proceedings, before the court has to deal with substantive patent law issues. This means that the complex examination of an infringement of Article 19 TEU and Article 267 TFEU. It is true that Rule 19.1 of the RoP serves the purpose of clarifying at an early stage that the court has jurisdiction. However, this purpose would be defeated if the validity of the rules governing jurisdiction could not be examined in opposition proceedings.

b) Ineffectiveness of Article 32 of the UPC Agreement as a ground for opposition under Rule 19.1 of the RoP

22. The same applies insofar as Roku bases the preliminary objection on the invalidity of Art. 32(1) UPC Agreement. Art. 32 UPC Agreement grants the UPC exclusive jurisdiction over the actions that form the subject matter of the proceedings at issue here.

3. Incompatibility of Articles 31 et seq. UPC Agreement in conjunction with Articles 71a et seq. Brussels Ia Regulation and Article 32 UPC Agreement with Article 19 TEU and Article 267 TFEU

23. Contrary to Roku's view, the allocation of jurisdiction to the Unified Patent Court pursuant to Article 31 UPC Agreement in conjunction with Article 71a et seq. Brussels Ia Regulation and Art. 32 UPC Agreement does not interfere with the division of tasks between the Court of Justice of the European Union and the national courts as established by Art. 19 TEU and Art. 267 TFEU.

24. According to Article 19(1), second sentence, TEU, the Court of Justice of the European Union ensures that the law is observed in the interpretation and application of the Treaties. Pursuant to Article 267(1)(a) TFEU, it shall rule on their interpretation by way of preliminary rulings. If such a question is raised before a court or tribunal of a Member State and that court or tribunal considers that a decision on the question is necessary to enable it to give judgment, it may, pursuant to Article 267(2) TFEU, refer the question to the Court of Justice for a ruling. The Court of Justice of the European Union and the courts of the Member States thus ensure that this legal order is upheld (see Opinion 1/09 of the Court of Justice of the European Union of 8 March 2011, EU:C:2011:123 [hereinafter Opinion 1/09], paragraph 66).

25. Roku unsuccessfully argues that the UPC is not a court of a Member State, but rather an international court. Pursuant to Article 1(2) of the UPC Agreement, the UPC is a common court of the contracting Member States (see Court of Appeal, order of 3 September 2024, APL_21943/2024, UPC_CoA_188/2024, *Aylo/Dish*, para. 10). It is true that the Unified Patent Court is a court established on the basis of an international agreement – the UPC Agreement – and thus on the basis of international law.

26. However, as the Court of Justice of the European Union has already ruled in relation to the Benelux Court of Justice, there is no reason why a court common to several Member States cannot refer questions to it for a preliminary ruling (judgment of 4 November 1997, *Parfums Christian Dior*, C-337/95, ECR 1997, I-6013, EU:C:1997:517, paragraphs 21-23; judgment of 14 June 2011, *Miles and Others*, C-196/09, EU:C:2011:388, paragraph 40; judgment of 6 March 2018, *Achmea*, C-284/16, ECLI:EU:C:2018:158, paragraph 47).
27. However, the Court of Justice of the European Union rejected the 2009 draft agreement on the European and Community Patent Court as incompatible with the provisions of the EU Treaty and the TFEU because it provided for a preliminary ruling that reserved the possibility of referral to the Court of Justice within the scope of this agreement to the patent court and deprived the national courts of this possibility (Opinion 1/09, para. 81). However, the decisive factor here was the consideration that the position of the patent court under the draft agreement submitted to the Court of Justice would have been different from that of the Benelux Court of Justice. It was emphasised that the Benelux Court of Justice is a joint court of several Member States and thus belongs to the court system of the Union, and that its decisions are therefore subject to appropriate mechanisms to ensure the full effectiveness of Union law (Opinion 1/09, para. 82).
28. The same applies now to the Unified Patent Court established on the basis of the UPC Agreement. This is because, unlike the draft agreement objected to by the Court of Justice of the European Union, the agreement was concluded solely by EU Member States, without the participation of the Union or third countries (see Opinion of the Legal Service of the Council of the European Union, 21 October 2011, 15856/11, para. 27). Opinion 1/09 of the Court of Justice of the European Union clearly states that the creation of such a joint court of several Member States is permissible in any case (see Opinion of the Legal Service of the Council of the European Union, 21 October 2011, 15856/11, para. 28).
29. For the UPC to be classified as a court common to several Member States, it is sufficient that the UPC has the task of ensuring the uniform application of the legal provisions common to the Member States of the Treaty and that it has a sufficient connection with the court systems of the Member States of the Treaty (see judgment of 14 June 2011, *Miles and Others*, C 196/09, EU:C:2011:388, paragraph 41; judgment of 6 March 2018, *Achmea*, C-284/16, ECLI:EU:C:2018:158, paragraph 48). Contrary to Roku's view, such a connection with the court systems does not require the UPC, like the Benelux Court of Justice, to rule as an intermediate instance in proceedings pending before national courts. The *Achmea* and *Miles* decisions of the European Court of Justice do not indicate the contrary. In those cases, the ECJ denied the existence of a court common to several Member States because there was no comparability with the Benelux Court of Justice, as the courts under review had "no such links with the court systems of the Member States" (emphasis added). This makes it clear that a decision as an intermediate instance is not necessary; rather, a comparable connection to the court system of the Member States is sufficient.
30. In this respect, the UPC is comparable to the Benelux Court of Justice. This is because it has sufficient links with the court systems of the Member States. The fact that the UPC is a common court of the contracting Member States has been expressly clarified by the contracting Member States in Article 1 of the UPC Agreement.

. This alone is sufficient for it to qualify as a common court of the contracting member states (cf. for the case of derivation from the constitution of a member state: ECJ, *Achmea*, para. 44). In accordance with this, the UPC is considered a common court of the contracting Member States under Article 71a of the Brussels Ia Regulation for the purposes of the Regulation as a court of one of the contracting Member States – and thus part of its legal system – if the UPC exercises jurisdiction in matters falling within the scope of the Brussels Ia Regulation on the basis of Article 32(1) UPC Agreement.

31. The connection with the court system of the Member States is established in the case of the UPC Agreement by the fact that, pursuant to Article 1 UPC Agreement, it is subject to the same obligations under Union law as any national court of the contracting Member States. The UPC is thus, from a functional point of view, an inherent part of the court system of the Member States, even though it was established by a treaty (see Opinion of the Legal Service of the Council of the European Union, loc. cit., para. 33). The court is subject to appropriate mechanisms to ensure the full effectiveness of Union law. Under Articles 20 and 21 of the UPC Agreement, the common court of the contracting Member States and part of their court system – like any national court – cooperates with the Court of Justice of the European Union to ensure the correct application and uniform interpretation of Union law, in particular Article 267 TFEU. Decisions of the Court of Justice of the European Union are binding on the courts.
32. The close connection with the court systems of the Member States also follows from the liability of the Member States and the actions provided for in this regard (see Opinion of the Legal Service of the Council of the European Union, loc. cit. para. 33).
33. Under Article 22(1) of the UPC Agreement, the contracting Member States are jointly and severally liable for damages caused by a violation of Union law by the Court of Appeal, in accordance with Union law on the non-contractual liability of Member States for damages caused by violations of Union law by their national courts.
34. If a question requiring a preliminary ruling arises in the context of an action for damages, the competent authority may refer the question to the Court of Justice for a preliminary ruling in accordance with Article 267 TFEU. Contrary to Rokus' view, the UPC Agreement does not thereby completely supersede the national courts.
35. Pursuant to Article 23 of the UPC Agreement, acts of the UPC Agreement are directly attributable to each contracting Member State individually, including for the purposes of Articles 258, 259 and 260 TFEU, and to all contracting Member States collectively.
36. In this way, the UPC is subject to the "appropriate mechanisms to ensure the full effectiveness of Union law" required by the Court of Justice (Opinion 1/09, para. 82).

4. *No referral to the ECJ*

37. It is not necessary to refer the question of the compatibility of the allocation of jurisdiction to the Unified Patent Court with Article 19 TEU and Article 267 TFEU to the Court of Justice of the European Union. In view of the decisions of the Court of Justice cited in paragraphs 26 and 29 above and the

Opinion 1/09 cited in paragraph 27, there is no doubt as to the compatibility of the allocation of jurisdiction by the UPC Agreement in Articles 71a and 71b of the Brussels Ia Regulation with Article 19 TEU and Article 267 TFEU (see ECJ, judgment of 6 October 1982, C-283/81, ECLI:EU:C:1982:335, *CILFIT*, paragraph 21, judgment of 3 July 2019, *Euro-bolt*, C-644/17, paragraph 30; ECJ, judgment of 6 October 2021, C-561/19, ECLI:EU:C:2021:799, *Consortio Italian Management and Catania Multiservizi*).

5. *Violation of the right to a lawful judge under Article 47(2) EU Charter of Fundamental Rights and Article 6(1) sentence 1 ECHR*

38. The appeals against the contested decisions are unsuccessful insofar as the objections were rejected on the grounds of a violation of the right to a lawful judge.

a) *Violation of the right to a lawful judge due to an allocation of powers contrary to EU law?*

39. Since, in light of the above, the rules on jurisdiction in the UPC Agreement are compatible with Article 19 TEU and Article 267 TFEU, no violation of the right to a lawful judge can be found from this perspective.

b) *Violation of the right to a lawful judge due to the absence of a central chamber based in London*

40. Nor is there any objection to the local division's finding that the preliminary objections were inadmissible, insofar as Roku justifies a violation of the right to a lawful judge on the grounds that, contrary to Article 7(2) UPC Agreement, there is no division of the Central Chamber in London.

(1) *No admissible ground for opposition under Rule 19 of the RoP*

41. The exhaustive list of admissible grounds for opposition under Rule 19(1) of the RoP does not include a violation of Article 47(2) of the EU Charter of Fundamental Rights and Article 6 of the ECHR. Insofar as a violation of Article 47(2) of the EU Charter of Fundamental Rights and Article 6 of the ECHR does not concern any of the grounds for preliminary objection listed in Rule 19.1 of the RoP, a preliminary objection based on this is not admissible.

(2) *Unfounded nature of the preliminary objection*

42. The Court of Appeal notes, by way of addition, that the preliminary objection is also unfounded in this respect.

43. According to Article 47(2) sentence 1 of the EU Charter of Fundamental Rights, everyone has the right to have their case heard within a reasonable time, in a fair trial, in public and by an independent and impartial tribunal previously established by law. According to Article 6(1) sentence 1 of the ECHR, everyone has the right to have their civil rights and obligations (...) determined by an independent and impartial tribunal established by law in a fair hearing, publicly and within a reasonable time.

44. Since a division in London would not have jurisdiction over the dispute, as the local division rightly assumed, a violation of Roku's right to a lawful judge is already ruled out from this point of view.

45. Roku unsuccessfully argues that a violation of Article 47(2) of the EU Charter of Fundamental Rights and Article 6 of the ECHR arises from the fact that the absence of a division of the Central Chamber in London could have had an impact on the specific composition of the panel.

46. The insertion of the words "on the basis of law" in Article 6(1) of the ECHR is intended to prevent the organisation of the judicial system from being left to the discretion of the executive and to ensure that this area is regulated by a law enacted by the legislature in accordance with the rules governing the exercise of its powers. This expression reflects, in particular, the principle of the rule of law and encompasses not only the legal basis for the existence of the court, but also the composition of the panel in each case and all other provisions of domestic law, the non-observance of which renders the participation of one or more judges in the hearing of the case irregular, including, in particular, rules on the independence and impartiality of the members of the court concerned (ECJ, judgment of 6 October 2021, W.Z., C-487/19, ECLI:EU:C:2021:798, paragraph 129).
47. With regard to Union law, the Court of Justice has therefore ruled, in line with the case law of the European Court of Human Rights, that an irregularity committed in the appointment of judges in the judicial system concerned constitutes a violation of the requirement that a court must be established by law, in particular if the nature and seriousness of the irregularity is such that it creates a real risk that other branches of government – in particular the executive – may exercise powers that they are not entitled to exercise, thereby compromising the integrity of the outcome of the appointment procedure and giving rise to legitimate doubts in the minds of individuals as to the independence and impartiality of the judge or judges concerned, which is the case when it concerns fundamental rules that are part of the establishment and functioning of that judicial system (ECJ, W.Z., para. 130).
48. Such doubts cannot be inferred from the fact that, contrary to Article 6 of the UPC Agreement, there is no division of the Central Chamber in London. The establishment of a division of the Central Chamber in London has become impossible since the United Kingdom did not ratify the UPC Agreement following its withdrawal from the EU. The failure to establish such a division and the non-inclusion of British judges in the appointment process therefore does not give rise to legitimate doubts on the part of individuals as to the independence and impartiality of the judges concerned.
49. Contrary to Rokus' opinion, the Administrative Committee of the UPC Agreement was also authorised, by analogy with Article 87(2) of the UPC Agreement, to provide, by decision of 26 June 2023, that Milan should replace London as a division of the Central Chamber with the powers specified in Annex II of the UPC Agreement.
50. Under Article 87(2) EPC, the Administrative Committee may amend the UPC Agreement in order to bring it into line with an international treaty in the field of patents or with Union law. The fact that the Agreement does not provide for any power of amendment if the implementation of the UPC Agreement proves impossible is due to an unintended regulatory gap. Article 87(2) UPC Agreement serves the purpose of ensuring that there are no obstacles to the implementation of the Agreement. Since there is also a corresponding need in the case of factual obstacles, Article 87(2) UPC Agreement must be applied accordingly in this case.

51. Contrary to Roku's view, this is not precluded by the fact that the United Kingdom left the European Union before the UPC Agreement entered into force. The authorisation to amend the UPC Agreement under Article 87(2) UPC Agreement does not merely concern adjustments in the event of legal changes after the Convention has entered into force. Rather, the wording "in order to bring it into line with an international treaty (...) or with Union law" suggests that, in particular, an incompatibility with Union law that already existed when the Agreement entered into force authorises the Administrative Committee to make a corresponding amendment. This is the only way to ensure that there are no obstacles to the implementation of the Convention and that the Administrative Committee can respond appropriately to any incompatibility with Union law that is identified. Nothing else can apply in the case of an analogous application of Article 87(2) UPC Agreement due to factual obstacles.
52. Roku unsuccessfully argues that the change in the court structure, which is based on a factual impossibility, is a fundamental change that requires democratically legitimised decisions by the contracting states. The involvement of the contracting states is sufficiently ensured by analogy on the basis of the right of veto in Article 87(3) UPC Agreement.
53. Contrary to Roku's view, the Administrative Committee's competence was not limited to removing London as the competent department. The Administrative Committee decides at its discretion how to bring the Convention into line with an international treaty in the field of patents or with Union law in accordance with Article 87(2) of the UPC Agreement. The same applies in cases such as this, where Article 87(2) of the UPC Agreement applies *mutatis mutandis* due to the impossibility of implementing the Convention.

III. *Application for the determination of court fees*

54. Roku's application to set only one court fee in proceedings APL_15067/2025 and APL_15072/2025 is unsuccessful. For the appeal proceedings, the plaintiff must pay the fixed fee and, if applicable, the fee based on the value in dispute for the infringement action in accordance with Part 6, pursuant to Rule 228 of the RoP. A fee is payable for each infringement proceeding. The fact that the appeals raise the same issues does not alter this.

IV. *Costs*

55. Dolby's and Sun's applications that Roku be ordered to pay the costs of the proceedings are rejected. Since this is not a final order or decision that concludes the main proceedings on the merits, there is no reason to make a decision on costs (see UPC Court of Appeal, order of 16 September 2024, UPC_CoA_301/2024, APL_33746/2024, ICPillar/ARM, para. 41).

ORDER

- I. The appeals are dismissed.

- II. Roku's application to set only one court fee in proceedings APL_15067/2025 and APL_15072/2025 is rejected.
- III. Dolby's and Sun's applications to impose the costs of the proceedings on Roku are dismissed.

Issued on 6 October 2025

Rian Kalden, Presiding Judge and legally qualified judge

Patricia Rombach, Rapporteur and legally qualified judge

Ingeborg Simonsson, legally qualified judge