



Central Division Paris

UPC_CFI_999/2025

**Order of the Court of First Instance
of the Unified Patent Court
concerning a preliminary objection pursuant to Rule 19 of the RoP
issued on: 9/12/2025**

In the case (main proceedings): UPC_CFI_999/2025

between

ALD France S.A.S., 62 rue Louise Drevet, Lieu-dit Pra Paris, 38360 Noyarey, France, represented by its CEO
Serge Bertrand, ibid,

Claimant and Respondent

Legal representatives: Linklaters LLP, Taunusanlage 8, 60329 Frankfurt am Main, Dr Bolko Ehlgen

Assisting patent attorneys:

Fuchs Patentanwälte Partnerschaft mbB, Patent Attorney Christian Läufer, Tower 185, Friedrich-Ebert-Anlage 35-37, 60327 Frankfurt am Main

against

Nanoval GmbH & Co. KG, Kienhorststraße 61-65, 13403 Berlin, Germany, represented by its managing
director Mr Christian Gerking, ibid

Defendant and applicant

Legal representatives: Pfenning Meinig & Partner mbB Patent Attorneys Dr Hannes Bock and Dr Stefan
Golkowsky, Joachimsthaler Straße 10-12, 10719 Berlin

Assisting:

PENTARC Rechtsanwälte PartG mbB, Schmellerstraße 4, 80337 Munich, lawyers Dr Jan Phillip Rektorschek
and Dipl.-Ing. Tobias Baus, LL.M.

Panel/chamber

Panel 3 of the Central Chamber Paris Language of

proceedings: German

Participating judges: This order was issued by legally qualified judge Maximilian Haedicke as judge-rapporteur.

Subject matter of the proceedings:

Action for annulment concerning EP 3 083 107 B1; Rule 19 RoP – Preliminary objection.

Brief description of the facts:

The claimant in the present nullity proceedings and respondent (hereinafter: "Claimant") filed an action for annulment on 6 October 2025, the plaintiff in the present nullity proceedings and respondent (hereinafter: "plaintiff") filed an action for annulment in relation to the patent at issue EP 3 083 107 B1.

The defendant in the present nullity proceedings and applicant (hereinafter: "defendant") had filed an infringement action against the plaintiff's parent company, ALD Vacuum Technologies GmbH, with the Munich local division on 3 May 2025 (UPC_CFI_384/2025). In the context of these proceedings, ALD Vacuum Technologies GmbH filed a counterclaim for annulment of the patent at issue before the Munich local division on 7 August 2025 (UPC_CFI_659/2025).

In a document dated 11 November 2025, the defendant lodged a preliminary objection under Rule 19 of the Rules of Procedure (RoP).

Arguments of the parties:

The defendant essentially argues that

The present action for annulment is an abuse of law and therefore inadmissible. Its aim is to disadvantage the defendant, which is much smaller than the claimant in terms of company size, by imposing additional work and cost pressure.

The action does not raise any new legal or factual issues. The claimant therefore has no apparent interest in legal protection. Rather, the proceedings before the Central Chamber apparently serve solely to cause additional expense for the defendant (and for the UPC).

It can be assumed that it is not actually the claimant in this case as a legal entity, but rather its parent company, ALD Vacuum Technologies GmbH, and thus the defendant and counterclaimant in the Munich proceedings, that is the actual claimant in the present proceedings. The claimant in the present case is nothing more than a "front man" and acts exclusively as a vehicle for its parent company, the defendant in the Munich proceedings. This results in double jurisdiction, which must lead to the inadmissibility of the later filed action, i.e. the present action.

The plaintiff in the present action for annulment and the defendant in the proceedings before the Munich local division are "the same party" within the meaning of Article 33 of the UPC Agreement.

The initial situation differs fundamentally from that in the Meril v. Edwards decision (UPC_CFI_255/2023). At the time the action for annulment was brought in that case, no counterclaim for annulment was pending in the parallel infringement proceedings. In the present case, the counterclaim for annulment was brought by the subsidiary before the current action for annulment was filed.

In the alternative, the proceedings should be suspended until the Munich local division has reached a decision. The Munich local division has set the date for the oral hearing for 10 June 2026.

The defendant requests that

to dismiss the action as inadmissible,

alternatively

to stay the action until the decision of the Munich local division has been made.

In accordance with Rule 19(5) of the RoP, the claimant responded to the preliminary objection on 1 December 2025. It requests that the preliminary objection be rejected.

It essentially argues as follows:

The Central Chamber in Paris has jurisdiction over the action for annulment because the claimant in this case is an independent party and not a straw man. The infringement action pending before the local division in Munich (UPC_CFI_384/202) ("infringement action") was not brought between the same parties. This infringement proceeding or the counterclaim for invalidity brought therein by the German parent company of the Claimant, ALD Vacuum Technologies GmbH ("ALD Germany"), cannot therefore lead to an exceptional deviation from jurisdiction under Article 33(4) sentence 2 of the UPC Agreement.

The claimant was entered in the French commercial register in 2007 and carries out its own business activities. It achieved a net annual turnover of EUR 8,429,885 in the 2024 financial year. In addition, the claimant has net current assets of EUR 19,525,310 with equity of EUR 331,557, and thus considerable assets of its own. Most recently, it incurred personnel costs of EUR 1,649,131 for an average of 16.1 employees.

The objection of abuse of rights cannot be raised by way of a preliminary objection. The preliminary objection can only be based on specifically enumerated grounds. Abuse of rights is not one of them.

The framework of the Unified Patent Court does not preclude a patent from being challenged by different legal entities, even if they are organisationally or commercially linked, with different actions, even if these are based on the same grounds for invalidity.

The defendant's assertion that the claimant was exploiting its size to disadvantage the much smaller defendant through the associated additional expenditure and cost pressure was inaccurate and irrelevant.

Nor can an abuse of rights be inferred from a "lack of interest in legal protection". The Claimant has an interest in defending itself against the defendant's legally invalid patents.

The defendant's alternative application for suspension is unfounded, as it can be assumed that the Munich local division will decide before the Paris Central Chamber even without a suspension. A suspension would therefore not change anything in terms of possible conflicting decisions.

Reasons

The preliminary objection is to be rejected. The Central Chamber has jurisdiction over the action for annulment. A stay of the present proceedings is out of the question.

1.

The claimant in the present nullity proceedings, ALD France S.A.S, and the defendant ALD Vacuum Technologies GmbH in the proceedings before the Munich local division are not the same party. Therefore, the present action for annulment is not inadmissible on the grounds of identity of parties.

Article 33(4) of the UPC Agreement stipulates: "*The actions referred to in Article 32(1)(b) and (d) shall be brought before the Central Chamber. However, if an infringement action within the meaning of Article 32(1)(a) has already been brought before a local or regional chamber between the same parties in respect of the same patent, such actions may only be brought before the same local or regional chamber.*"

This provision contains a rule of jurisdiction according to which the Central Chamber is in principle competent for actions for a declaration of non-infringement or for revocation. However, the second sentence contains an exception to this rule. This exception provides that if patent infringement proceedings between the same parties concerning the same patent have already been brought before a local or regional chamber, that chamber shall have jurisdiction for all further proceedings concerning the same patent involving the same parties.

Therefore, Article 33(4) sentence 2 of the UPC Agreement regulates the jurisdiction of the local division first seized, i.e. before the nullity action was filed, provided that the dispute is between the same parties and concerns the same patent.

Contrary to the defendant's view, ALD France S.A.S Net as the claimant in the present proceedings and ALD Vacuum Technologies GmbH as the defendant and counterclaimant in the Munich proceedings are not "same party" within the meaning of Article 33(4) of the UPC Agreement. In particular, the Claimant is not acting as a "front man" for ALD Vacuum Technologies GmbH.

As per the orders of the Central Chamber of 13 November 2023, UPC_CFI_255/2023 (para. 29 et seq.) and of 1 September 2025, UPC_CFI_258/2025 (para. 21) and, in particular, the decision of the Court of Appeal of 25 November 2025, UPC_CoA_464/2024, UPC_CoA_457/2024, UPC_CoA_458/2024, UPC_CoA_530/2024, UPC_CoA_532/2024, UPC_CoA_533/2024, UPC_CoA_21/2025, UPC_CoA_27/2025 (hereinafter: "UPC_CoA_464/2024, et al.") (para. 27 ff.), the concept of "same parties" requires that the parties be identical.

ALD France S.A.S Net and ALD Vacuum Technologies GmbH are not the same company.

The term "front company" refers to a company that exists only formally, without any real or significant business activity. Indications that a company is a front company include the absence of its own assets and employees. The circumstances must allow the conclusion that the company is being used to conceal the true identity of the owner or to carry out activities that the owner does not want to or cannot carry out directly.

The defendant, who claims that the claimant is a "front company", bears the burden of proof in accordance with Rule 171(1) of the RoP.

The circumstances presented by the defendant – in particular, that the two companies are represented by the same lawyers in both proceedings and that the documents are essentially identical – are not sufficient to prove that the claimant is a front company. It is reasonable for companies, in particular parent companies and subsidiaries, to coordinate their litigation strategies and engage the same lawyers. These circumstances do not in themselves indicate that the claimant was used on behalf of the parent company to carry out certain actions that exclusively concern its business activities. Notwithstanding this coordination, ALD France S.A.S Net, as the claimant in the present proceedings, and ALD Vacuum Technologies GmbH, as the defendant and counterclaimant in the Munich proceedings, may pursue independent business activities or their own interests, even if these interests coincide in the present case in challenging the patent at issue.

On the contrary, the circumstances presented by the claimant, in particular the submitted sales figures, assets, and number of employees, indicate that the claimant is an independent and profit-oriented company and not merely a front company.

It can be left open whether and to what extent the initial situation in the present case differs from that in the decision *Meril v. Edwards* (UPC_CFI_255/2023). In order to assess whether, due to the claimant's possible straw man status, it is the same party within the meaning of Article 33(4) UPC Agreement in proceedings already pending before the local division, it is irrelevant in which order the action for annulment and the counterclaim for annulment were brought. The only decisive factor for the admissibility of the action for revocation is that it was not brought by the same party that is a party to the proceedings before the local division. As explained above, this is not the case.

2.

It can be left open whether the objection of abuse of rights can be raised in a preliminary objection under Rule 19 of the RoP in any case where this objection is aimed at excluding the jurisdiction of the court seised. In any event, there is no abuse of rights. Insofar as the defendant appeals to the alleged straw man status of the claimant to justify the abuse of rights, this case is conclusively regulated by Article 33(4) of the UPC Agreement and the interpretation of the term "the same parties" in this context.

3.

The defendant's argument that an abuse of rights arises from the fact that the action aims to harm the defendant, which is much smaller than the claimant in terms of company size, through the associated additional expenditure and cost pressure, is also unsuccessful.

a.

Seeking legal protection by using the procedures provided by the state or supranational bodies for the enforcement of rights, such as bringing actions before the UPC, is not an abuse of rights, but legitimate. Whether there may be exceptions to this in individual cases can be left open. In any case, no such exception is apparent here. Even a large company may sue smaller companies before the UPC Agreement, even if such litigation represents a considerable cost burden for the smaller company. The legal basis of the UPC Agreement provides for various mechanisms to protect small and medium-sized enterprises, for example Art. 36(3) UPC Agreement, Art. 2(2) and (3) Table of upper limits for recoverable costs and Rule 370(8) RoP. Furthermore, it must be taken into account that the defendant in the nullity proceedings had originally taken action against the plaintiff in the context of a patent infringement action and proceedings for the preservation of evidence and therefore had to expect further costs, including possible nullity actions.

b.

Nor is it an abuse of law to submit largely identical documents containing the same arguments in two different proceedings. As already explained, the coordination of parallel proceedings is legitimate. This also applies to the submission of identical documents. Therefore, there is no lack of legal interest in bringing proceedings.

c.

Furthermore, as stated in the decision of the Central Chamber of 13 November 2023, UPC_CFI_255/2023, and in the decision of the Court of Appeal of 25 November 2025, UPC_CoA_464/2024 et al., the UPC Agreement and the RoP do not preclude a patent from being challenged by different persons, even if the respective plaintiffs are linked by organisational or business relationships. As the Court of Appeal has stated, the fragmentation caused by two parallel proceedings is acceptable. The Court of Appeal points out that there are ways for the court to mitigate this disadvantage, such as referring the counterclaim for revocation to the central chamber (decision of the Court of Appeal of 25 November 2025, UPC_CoA_464/2024 et al., para. 31).

4.

The application for a stay of proceedings is rejected.

Rule 295 of the RoP sets out the conditions under which the Court may stay proceedings. According to the only applicable rule, Rule 295(m) of the RoP, the Court may stay proceedings in any other case where the proper administration of justice so requires.

Rule 295(m) RoP shall be applied and interpreted in accordance with the right to an effective remedy and a fair and public hearing within a reasonable time (see Court of Appeal, UPC_CoA_22/2024 APL_3507/2024 App_24693/2024 App_21545/2024, para. 22 with regard to Rule 295(a) RoP). The requirement of effective legal protection also demands a swift decision on the action for annulment.

The risk of conflicting decisions by the Central Chamber and the local division does not constitute grounds for a stay. It is justified by the regulatory system of the UPC Agreement and the RoP, which in principle allow parallel nullity actions and counterclaims for nullity.


The infringement action and counterclaim for annulment will be heard before the local division as early as June 2026, so it can be assumed that the infringement action will be decided before the decision on the action for annulment. Furthermore, it cannot be entirely ruled out that two different judgments will be handed down, regardless of the date of the hearing before the local division and the Central Chamber. The possibility of two divergent decisions cannot therefore be completely ruled out, even by suspending the proceedings.

Order

1. The application to dismiss the action is rejected.
2. The application to stay the proceedings is dismissed.

Issued on 9 December 2025

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Wilhelm
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Maximilian Haedicke, judge-
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