Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Local Division The Hague
UPC_CFI_499/2024

Order
of the Court of First Instance of the Unified Patent Court
delivered on 09/12/2025
regarding: R.356 and R.353

APPLICANT/DEFENDANT IN THE MAIN PROCEEDINGS

1) **[redacted]Spyra** (Applicant) - [redacted] - Represented by Michal Przyluski

RELEVANT PROCEEDING PARTY/CLAIMANT IN MAIN ACTION

1) **Amycel LLC** (Main proceeding party - Claimant) - 260 Westgate Drive - 95076 - Watsonville, California - US — Represented by Hendrik Wim Jarl Lambers

PATENT AT ISSUE

Patent no.	*Proprietor/s*
EP1993350 B2	Amycel LLC

DECIDING JUDGES

Edger Brinkman - presiding judge
Rute Lopez - legally qualified judge
Margot Kokke - judge rapporteur

LANGUAGE OF PROCEEDINGS: English

PROCEDURE AND POINTS AT ISSUE

1. On 28 October 2025, applicant, defendant in the main proceedings (hereafter: "Defendant"), filed a R.356 application (the "**R.356-Application**"), requesting the Court to set aside the decision by default delivered by the Court on 21 October 2025 in infringement action UPC_CFI_499/2024 in its entirety. Regarding the reason for the default, the Defendant refers to an earlier R.320 Application (to be discussed below). The R.356-Application only contains the following:

> 'The reason for the default in this case is late-filing of the Statement of Defence (SoD). The explanation of the default is as follows. The undersigned failed to file the Statement of Defence for medical reasons (extensively discussed in App_10764/2025), and the SoD was filed on 4 March 2025. It was however not recognised as timely filed by the Court and thus the Court has given the decision by default.'

2. With the R.356-Application the Defendant also requests the Court to stay the enforcement of the decision by default until a decision on the R.356 Application has been given. In the application, the reason why different measures shoud be stayed, are discussed. The Defendant uploaded a (new version of) the late filed statement of defence ("SoD") together with the R.356-Application. The court fee was paid.

3. The claimant in the main proceedings ("Claimant") was given the opportunity to respond. It filed a response on 13 November 2025, requesting the Court:

- to reject, in full, [redacted] application to set aside the October 21, 2025 decision by default, including all requests to stay any orders of this decision;
- to determine that [redacted] shall bear the costs of these proceedings for the application to set aside the October 21, 2025 decision by default.

GROUNDS

4. R.356, concerning 'the Application to set aside a decision by default', reads as follows:

> **Rule 356 – Application to set aside a decision by default**
> 1. A party against whom a decision by default has been given may lodge an Application to set aside that decision within one month of service of the decision.
> 2. The Application to set aside a decision by default shall contain the party's explanation for the default. It shall mention the date and number of the decision by default. The party shall pay a fee for the Application to set aside the decision by default, in accordance with Part 6. In the case of Rule 355.1(a) the Application shall be accompanied by the step the party has failed to take.
> 3. If the provisions of paragraph 2 are met the Application shall be allowed unless a party has been put on notice in an earlier decision that a further decision by default shall be final. If the Application is allowed, a note of allowance shall be included in any publication of the decision by default.

5. The formal and material requirements of R.356.1 and 2 are met.

6. R. 356.3 stipulates that the Application is allowed '*unless a party has been put on notice in an earlier decision that a further decision by default shall be final*'. It is thus necessary to interpret whether in this case the Defendant had been put on notice in an earlier decision that a further decision by default shall be final.

7. The events that led to the default decision are briefly summarized here and can be found in more detail in the referenced orders:

   - By order of 31 July 2024 the Court in provisional measures proceedings (case UPC_CFI_195/2024, the "**PM-Order**"), inter alia ordered the Defendant by way of preliminary injunction to refrain from direct infringement of European patent EP 1 993 350 B2 (the patent at issue) in the territories of The Netherlands, Germany, France and Italy, with immediate effect.

     The appeal that the Defendant filed against the PM-Order resulted in a decision by default of the Court of Appeal of 28 November 2024. Also, the revocation action filed by Defendant at the Central division Milan ended with a decision by default.

   - The statement of claim ("SoC") in this infringement action was uploaded on 30 August 2024.

   - By 13 December 2024 official service had not yet been completed. Service by electronic means was not an option because the representative of Defendant in the provisional measures' proceedings had not been appointed by the Defendant for this action nor authorised to accept service. Service of the SoC on the Defendant – a Polish national – in person was (repeatedly) not accepted by him.

   - By order of 19 December 2024 of the judge-rapporteur (the "**R.275-Order")** the Court, pursuant to a R.275 Application, ruled as follows:

     I. The date on which the Statement of Claim is deemed to be served on Defendant is 25 November 2024;
     II. Amycel is ordered to send a copy of this order to Defendant's former representative with the requests set out in 11 above.

     Paragraph 11 of the order referred to at II, reads as follows:

     11. Amycel used the same representative in the provisional measure proceedings (at the local division and in appeal APL_47391/2024, UPC_CoA_490/2024) and in the revocation action (PR_ACT_40493/2024 UPC_CFI_403/2024). Although this representative indicated that he has not been engaged by Defendant for these proceedings, the court assumes that he is in touch with the Defendant. Amycel is therefore ordered to send a copy of this order by email to the former representative, requesting him (i) to forward the order to the Defendant or otherwise bring it to his attention and (ii) to inform the Defendant that a decision by default shall be issued in case he does not appear in these proceedings by filing a statement of defense within three months from 25 November 2024.

     [emphasis added by the Court]

   - On 20 December 2024, Claimant's representative sent a copy of the R.275-Order to the patent attorney of the firm J&D who represented Defendant in all related proceedings before the UPC, with the message set out in paragraph 11 of that order.

   - On 6 January 2025 a representative for Defendant registered in the CMS for this case. This is the same representative that represented Defendant in the application for provisional measures in both instances and in the revocation action at the CD Milan concerning the patent. The date of service set by the Court was not disputed by the representative.

- On 4 March 2025 Defendant's representative submitted the SoD. On the same day he submitted an Application for re-establishment of rights pursuant to R.320 because of the late filing, arguing that he was ill and thus unable to submit the SoD within the time limit of R.23 RoP.

- By order of 1 April 2025 (the "**R.320-Order**"), after hearing the other party, the full panel rejected the application for re-establishment of rights. The Court found that, in the context of the specific circumstances of these proceedings (detailed in the R.320-Order), the representative of the Defendant had not taken all due care to avoid that his (unforeseen and outside his control) incapacity to file at the very end of the period during which the SoD could be filed, would have the consequence that the deadline for filing the SoD could not be met. The Court ordered as follows:

  1. The R.320-Application for the re-establishment of rights is rejected;
  2. The SoD is considered not to be filed;
  3. A decision by default shall be taken in the infringement action.

  [emphasis added by the Court]

  A R.320-Order cannot be appealed pursuant to R.320.7.

- On 21 October 2025 the Court issued a decision by default (the "**Default-Decision**"), confirming the preliminary injunction given in the PM-Order by granting a permanent injunction subject a penalty payment. The Court also granted other corrective measures as well as the payment of an interim award of damages.

8. The Court finds that in the above circumstances, the Defendant must be considered to have '*been put on notice in an earlier decision that a further decision by default shall be final*' within the meaning of the exception of R.356.3 RoP. In this context 'further' should be understood to mean 'subsequent', also in view of the corresponding denotation 'ultérieure' in the French version of the RoP. The provision seems to have been written for a default decision given in circumstances wherein the position/arguments of the Defendant was/were not taken into account at all, for instance because the Defendant failed to appear although properly served. This also explains the requirement of R.356.2 that the application to set aside a decision by default shall contain the party's explanation for the default. The ratio of this provision is thus to provide a party whose position was not considered, to provide the Court with an explanation and for the Court to revise its decision by default based on this information.

9. In the present case, the Defendant was represented in the proceedings from at least two months before the expiration of the deadline for filing the SoD. The representative was aware what the time limit was for submitting the SoD. He was also warned in the R.275-Order, which was sent to him on 20 December 2024, that a decision by default would be rendered in case the SoD would not be filed within the time limit.

10. In addition, the reasons for the default were presented by the Defendant in the R.320 application. These were assessed by the Court (full panel) and considered insufficient in the reasoned R.320-Order, concluding (again) that a decision by default shall be taken. Reference is made to the R.320-Order for the grounds. Even though the word 'final' as such was not included in the order, it was, or should have been, clear to all that this would be a final decision, ending the proceedings before the Court of First Instance. This is confirmed by the fact that no

new reasons for the default were provided in the R.356-Application. On the contrary, the Defendant referred to the R.320 application only for the grounds for its application to set aside the Default-Decision. These reasons were addressed already by the Court in the R.320-Order, which order can only be appealed together with the final decision.

11. The Court therefore finds that the R.356 Application cannot be allowed because the Default-Decision is a final decision of the court of first instance to which (only) an appeal can be filed within two months pursuant to R.220.1(a) and R.224.1(a) RoP.

12. The Default-Decision thus contains a clerical error regarding the information provided about the legal remedy, where reference was made to R.356.1 RoP. This should have been appeal, as set out above. The Court rectifies the Default-Decision in this respect ex officio with this order pursuant to R.353 RoP (after hearing the parties).

13. It is thus understandable that the Defendant filed an R.356-Application instead of an appeal. An appeal should be lodged within two months of the service of the final decision. The Default-Decision was issued on 21 October 2025. The term thus expires on 20 December 2025, which, as this is a Saturday, is automatically extended to 22 December 2025. This term is not affected by the rectification decision (see e.g. LD Brussel order of 19 August 2025, UPC_CFI_131/2025). The Defendant is therefore advised to submit the appeal within the time limit.

14. Should the exception of R.356.3 RoP be interpreted differently and should the Default-Decision not be considered a final decision because the word 'final' is not included therein, the R.356-Application must also be dismissed. The same panel assessing the same factual and legal situation does not reach a different outcome to that reached in the R.320-Order. As the R.356-Application is dismissed, the same applies to the requested stay of the enforcement of the Default-Decision.

15. This order may be appealed together with the Default-Decision.

ORDER

The Court, having heard the parties, orders as follow

A. Regarding the R.356-Application

The Application is not admissible, alternatively is dismissed.

B. Regarding R.353 – Rectification

The Default-Decision of the Court of 21 October 2025 is rectified as follows:

The following information for legal remedy on page 12

> "INFORMATION ABOUT LEGAL REMEDY
> Defendant may lodge an application to set aside this decision within one month of service of the decision (Rule 356.1 RoP)"

is deleted and replaced by the following:

"INFORMATION ABOUT APPEAL
An appeal may be lodged against the present decision at the Court of Appeal, by any party which has been unsuccessful, in whole or in part, in its submissions, within two months of the date of the notification of the Decision (Art. 73(1) UPCA, R. 220.1(a), 224.1(a) RoP)."

Edger Brinkman	Edger Frank BRINKMAN Digitally signed by Edger Frank BRINKMAN Date: 2025.12.09 11:46:08 -03'00'
Rute Lopes	Rute Alexandra Da Silva Sabino Lopes Assinado de forma digital por Rute Alexandra Da Silva Sabino Lopes Dados: 2025.12.09 11:43:05 Z
Margot Kokke	Margot Elsa KOKKE Digitally signed by Margot Elsa KOKKE Date: 2025.12.09 21:19:46 +01'00'
On behalf to the registry	Bianca de Raad Digitaal ondertekend door Bianca de Raad Datum: 2025.12.09 18:21:23 +01'00'