



Central Division Paris

UPC_CFI_999/2025

**Order of the Court of First Instance of the
Unified Patent Court
concerning the review pursuant to Rule 333 of the RoP of a preliminary
objection pursuant to Rule 19 of the RoP
issued on 26 January 2026**

Headnotes:

1. The existence of an independent interest in an action for revocation, in addition to the counterclaim for revocation already brought by an affiliated undertaking, depends on the applicant's own business activity. The degree of connection between the companies concerned is irrelevant in this respect. Affiliated companies are not automatically "the same party" within the meaning of Article 33(4) sentence 2 of the UPC Agreement if they are parent and subsidiary companies. Nor is the degree of control a decisive criterion, provided that the company concerned carries out its own business activities.
2. The assessment of the unity of the undertaking in the context of an antitrust action has different requirements and must take other interests into account, so that the principles developed there are not transferable.

Keywords:

Straw man, party identity within the meaning of Article 33(4) sentence 2 of the UPC Agreement

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

versus

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

Contributors:

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 the

proceedings: German

Participating judges: This order was issued by

- Maximilian Haedicke, legally qualified judge and presiding judge
- Tatyana Zhilova, legally qualified judge
- Max Tilmann, technically qualified judge.

Subject matter of the proceedings:

Action for annulment concerning EP 3 083 107 B1; Rule 19 RoP – preliminary objection; Application for review pursuant to R 333 RoP

Facts:

1. The Claimant in the present nullity proceedings and respondent (hereinafter referred to as "the Claimant") filed an action for annulment in relation to the contested patent EP 3 083 107 B1 on 6 October 2025.
2. The defendant in the present nullity proceedings and applicant (hereinafter: "defendant") had filed an infringement action against the Claimant's parent company, ALD Vacuum Technologies GmbH, before 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 revocation of the patent at issue before the Munich local division on 7 August 2025 (UPC_CFI_659/2025).
3. In a document dated 11 November 2025, the defendant lodged a preliminary objection under Rule 19 of the RoP.
4. The defendant requested that the action be dismissed as inadmissible or, in the alternative, that the proceedings be suspended until the Munich local division has reached a decision.

5. In accordance with Rule 19(5) RoP, the Claimant responded to the preliminary objection on 1 December 2025. It requested that the preliminary objection be dismissed.
6. On 9 December 2025, the judge-rapporteur rejected the preliminary objection.
7. On 22 December 2025, the defendant filed an application for review of the judge-rapporteur's order of 9 December 2025.
8. The defendant essentially argues that
9. 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 expenditure and cost pressure.
10. 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 Agreement).
11. 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.
12. 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.
13. 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.
14. 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.
15. In the context of the present application for review of the judge-rapporteur's decision, the defendant submits the following additional arguments in support of its previous statements:
16. Affiliated companies may also be considered "the same party" within the meaning of Art. 33 (4) of the UPC Agreement if a decision against them would have the same effect.
17. Since the parent company controls the local Claimant, any infringement by the subsidiary/local Claimant (e.g. because responsibility for the infringements within the group is shifted to the subsidiary in order to circumvent the injunction) would constitute a violation of the injunction by the parent company that would warrant disciplinary measures.
18. In Case C 97/08 (judgment of 10 September 2009), the ECJ stated in paragraph 61 that it is sufficient for the assumption of identical interests – and thus "party identity" – within a group if the parent company holds 100% of the capital of the subsidiary.
19. The defendant requests

that the panel review the order of 9 December 2025 and amend it to the effect that the action for annulment is dismissed, as requested in the preliminary objection of 11 November 2025,

in the alternative

that the nullity proceedings be suspended until a decision has been made on the parallel counterclaim for nullity before the Munich local division (UPC_CFI_659/2025).

In the further alternative, the defendant requests

in the event that the panel confirms the order or rejects the application for review, to allow an appeal against the decision on the defendant's preliminary objection.

20. The claimant requests

1. the order of the judge-rapporteur of 9 December 2025 concerning a preliminary objection pursuant to Rule 19 of the RoP on the defendant's application for review,
2. to reject the defendant's applications to amend the order,

and

3. to reject the defendant's application for leave to appeal.

21. The claimant essentially submits the following:

22. 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 annulment brought therein by the Claimant's German parent company, 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.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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.

29. In its defence to the application for review, the claimant supplements its previous statements with the following additional arguments:
30. In the request for review dated 22 December 2025, the defendant largely raises new grounds that were not the subject of the preliminary objection. This concerns in particular the statements on an alleged extension of legal force (p. 3 of the review application), the reference to ECJ case C 97/08 (p. 4 of the review application) and the assertion that ALD Germany controls the Claimant (p. 4 ff of the review application).
31. Contrary to the defendant's opinion, it is not necessary for the plaintiff to have a direct interest in the outcome of the legal dispute. A sufficient interest on the part of the plaintiff already exists if the company existed before the infringement action or the first legal dispute was brought and the company is active on the market, i.e. in particular sells goods.

Reasons

32. The application for review of the judge-rapporteur's decision pursuant to Rule 333 of the RoP is admissible, as it was filed within the time limit specified in Rule 333.2 of the RoP. The order issued on the basis of a preliminary objection is to be classified as a procedural order to be reviewed by the panel (see decision of the Court of Appeal of the Unified Patent Court ("CoA") of 21 March 2024, UPC_COA_486/2023, Netgear/Huawei).
33. The Panel confirms the decision of the judge-rapporteur on the basis of essentially the same considerations as those underlying the judge-rapporteur's order and refers to them in full.
 - 1.
34. 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 within the meaning of Article 33(4) sentence 2 of the UPC Agreement. Therefore, the present nullity action is not inadmissible on the grounds of identity of parties.
35. Contrary to the defendant's opinion, 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 "the same party". Neither do the interests of the parties coincide to such an extent that a judgment against one party has legal force vis-à-vis the other, nor does the Claimant act as a "front man" for ALD Vacuum Technologies GmbH. The defendant's statements in its defence do not alter this.
36. As cited by the judge-rapporteur, the orders of the Central Chamber in Paris 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 "the same parties" requires that the parties be identical. However, the interests of two legal entities may coincide to such an extent that a judgment against one of them has *res judicata* effect on the other. In such a case, the persons are to be regarded as one and the same party for the purposes of Article 33(4) sentence 2 of the UPC Agreement (UPC_CoA_464/2024, et al, para. 28).
 - a)

37. ALD France S.A.S Net and ALD Vacuum Technologies GmbH are not the same company. Nor is ALD France S.A.S. Net to be treated as "the same party" within the meaning of Article 33(4) sentence 2 on the basis of a straw man arrangement.
38. The criteria for this were set out in detail in the judge-rapporteur's order. 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. This does not apply to the Claimant.
 - b)
39. ALD France S.A.S. Net is also not to be treated as "the same party" within the meaning of Article 33(4) sentence 2 of the UPC Agreement on the basis of interests consistent with those of ALD Vacuum Technologies GmbH. The interests of ALD France S.A.S Net and ALD Vacuum Technologies GmbH do not coincide to such an extent that a judgment against one of them would have legal force vis-à-vis the other.
40. As already explained, the existence of a separate interest is determined by the existence of separate business activities. The degree of connection between the companies concerned is irrelevant. Affiliated companies are not automatically "the same party" within the meaning of Article 33(4) sentence 2 of the UPC Agreement if they are parent and subsidiary companies (see UPC_CoA_464/2024, et al para. 30). Nor is the degree of control a decisive criterion, provided that the undertaking concerned carries on an independent business activity.
41. The decision of the ECJ in Case C 97/08 (judgment of 10 September 2009) does not lead to a different conclusion. The examination of the uniformity of the undertaking in the context of an antitrust action has different requirements and must take other interests into account. That case concerned the attribution of the competition infringement to the parent company and its subsidiaries. The fact that the ECJ has established in the specific legal context of competition law that the term "undertaking" is to be understood as designating an economic entity, even if that economic entity consists legally of several natural or legal persons, and that the unlawful conduct of a subsidiary can be attributed to the parent company, in particular if that subsidiary cannot be attributed to the parent company, in particular where that subsidiary does not decide independently on its own conduct on the market but carries out, in all material respects, the instructions given to it by the parent company, does not mean that the two undertakings do not have separate legal personality, but only concerns the consequences of the unlawful conduct in terms of the joint liability of the parent company (Order of the Central Chamber of Paris of 13 November 2023, UPC_CFI_255/2023, para. 44).
42. The rebuttable presumption established by the ECJ in this context that a parent company holding 100% of the capital of its subsidiary exercises a decisive influence over the conduct of its subsidiary (ECJ, judgment of 10 September 2009 – Case C 97/08, para. 60) serves only to attribute the conduct of the subsidiary to the parent company. The instructions of the parent company are decisive for this attribution (ECJ, judgment of 10 September 2009 – Case C 97/08, para. 58). However, according to the case law of the Court of Appeal, Article 33(4) sentence 2 of the UPC Agreement does not refer to the influence of the parent company on the subsidiary, but to the identity of the parties or their interests (UPC_CoA_464/2024, et al para. 27). It cannot be assumed without further ado that the interests of the parent company and the subsidiary coincide (see UPC_CoA_464/2024, et al para. 30).

43. The different standard is justified by the fact that Article 33(4) sentence 2 of the UPC Agreement serves solely to avoid parallel proceedings and conflicting decisions (see UPC_CoA_464/2024, et al para. 29). The ECJ itself, in the context of Article 21 of the Brussels Convention (now Article 29 of the Brussels I Regulation), which has a similar regulatory purpose, also did not focus on the influence exerted on the other party, but rather on whether the interests of the parties are identical and inseparable (ECJ, judgment of 19 May 1998 – Case C-351/96, para. 25).
44. According to R 171.1 RoP, the defendant bears the burden of proof for the Claimant's lack of business activity. The defendant has not sufficiently proven that the Claimant does not conduct any independent business activity. Rather, the Claimant's activities on the French market indicate that it conducts its own business.
 - c)
45. As already stated in the judge-rapporteur's order, 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 possible straw man status of the Claimant, it is the same party within the meaning of Article 33(4) of the 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.

46. The application for suspension of the proceedings is rejected.
47. Rule 295 of the RoP governs 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.
48. Rule 295(m) RoP must be applied and interpreted in accordance with the right to an effective remedy and to 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.
49. 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.
50. 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 if the proceedings are suspended.

3.

51. The appeal is not admissible. In view of the decision already handed down by the Court of Appeal in case UPC_CoA_464/2024, an appeal is not necessary at this stage in order to maintain legal uniformity.

52. Order

The order of 9 December 2025 is confirmed. The appeal is not allowed.

Issued on 26 January 2026

Names and signatures	
<p>Judge</p> <p>For the legally qualified judge Maximilian Haedicke, presiding judge and reporting judge, for technical reasons Max Tilmann, technically qualified judge</p> <p>Max Wilhelm Tilmann</p> <p>Digitally signed by Max Wilhelm Tilmann Date: 26 January 2026 14:03:33 +01'00'</p> <p>For legally qualified judge Tatyana Zhilova for technical reasons</p> <p>Max Tilmann, technically qualified judge</p> <p>Max Wilhelm Tilmann</p> <p>Digitally signed by Max Wilhelm Tilmann Date: 26 January 2026 14:03:13</p> <p>Max Tilmann, technically qualified judge:</p> <p>Max Wilhelm Tilmann</p> <p>Digitally signed by Max Wilhelm Tilmann Date: 26 January 2026 14:02:52 +01'00'</p>	<p>For the Deputy-Registrar</p> <p>Digital signature of MARGAUX MARIE-ANGE GRONDEIN</p> 