



Action No.: UPC 2296/2025

Revocation action

**Procedural order
of the Court of First Instance of the Unified Patent Court,
Central Division (Munich Section)
issued on 24 March 2026**

HEADLINE

Lack of interest in bringing proceedings and res judicata, which the defendant to an action relies on to deny the court the power to rule on the merits of the claim, do not affect the substantive or territorial jurisdiction of the court and are not included in the list of preliminary objections set out in Rule 19.1 RoP, which must be regarded as exhaustive.

KEYWORDS

Preliminary objection; R. 19; interest in bringing proceedings; principle of res judicata (no)

PLAINTIFF (DEFENDANT TO THE PRELIMINARY OBJECTION)

REEL International

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Represented by Thomas BOUVET and Colin Devinant

DEFENDANT (APPLICANT FOR THE PRELIMINARY OBJECTION)

Fives ECL

100 rue Chalant, 59790, Ronchin, FR

Represented by Konstantin SCHALLMOSER

PATENT IN SUIT

European Patent No EP 1 740 740

DIVISION AND COMPOSITION

Panel 1 of the Munich Section of the Central Division.

The order is made by the Judge-President and Judge-Rapporteur Mélanie Bessaud.

LANGUAGE OF THE PROCEEDINGS: FRENCH

SUBJECT OF THE PROCEEDINGS: Invalidation action. Preliminary objection.

STATEMENT OF FACTS

1. On 31 December 2025, REEL International ("the plaintiff") filed an application with the Munich Section of the Central Division of the Unified Patent Court (UPC) for invalidity of European Patent EP 1 740 740 (EP'740) entitled "Compact service module for aluminium electrolysis plants", held by Fives ECL ("the defendant").
2. On 23 February 2026, the representative of Fives ECL filed a preliminary objection seeking to have the UPC decline jurisdiction on the grounds that Reel International had no interest in bringing proceedings and that the decisions handed down by the German courts on an action for invalidity of the German part of patent EP'740 were res judicata. In the alternative, he made requests relating to the handling of the case, seeking a ruling on Reel International's lack of standing to bring the action and on res judicata, prior to any discussion of the merits of the case. At the same time, it applied for an extension of the time limits for filing its statement of defence, pursuant to Rule 9.3 of the Rules of Procedure (hereinafter "RoP") on the grounds that Reel International had no legal interest in the case.
"RoP") on the grounds that the preliminary objection should be decided first.
3. On 26 February 2026, the Judge-Rapporteur issued a procedural order in which she rejected the request for an extension of time limits and ruled that Fives ECL had to file its statement of defence to the nullity action within two months of service of the statement of defence.
4. On March 9, 2026, Reel International filed its observations on Fives ECL's preliminary objection.
5. Fives ECL's preliminary objection relates to the UPC's lack of jurisdiction.
 - Primarily, it asks the Court to decline jurisdiction because of the inadmissibility of Reel International's invalidity action against the French, Dutch and German parts of patent EP'740, for lack of an interest in bringing proceedings;

- In the alternative, it asks the court to decline jurisdiction by reason of the inadmissibility of the invalidity action resulting from the res judicata effect of the decision of the Bundesgerichtshof of 26 November 2024 as regards the German part of patent EP'740 and by reason of the inadmissibility of the invalidity action brought by Reel International against the French and Dutch parts of patent EP'740 for lack of legal interest in bringing proceedings.
 - In the event that the Central Division rejects its requests under Rules 19.1. a), 361 and 362 of the RoP or decides to deal with the preliminary objection in the main proceedings (Rule 20.2) Fives ECL requests that, prior to any discussion of the merits of the case, a ruling be made on Reel International's lack of standing and on res judicata pursuant to Rules 332 b) and d), 334 d), e), f) and g), 336 and that Reel International's application for a declaration of invalidity be dismissed.
6. In substance, Fives ECL submits that Reel International, the parent company of Reel GmbH, has not established an interest in bringing an invalidity action against patent EP'740, which had expired on the date on which its application was lodged. It argues that standing is not defined either in the UPCA Agreement or in the Rules of Procedure. However, Article 47(6) of the UPCA provides that any natural or legal person, or any body entitled to bring an action under its national law, which is affected by a patent, may bring an action in accordance with the Rules of Procedure. The concept of an interest in bringing proceedings must therefore, in its view, be assessed in the light of the case-law of the UPC and the national laws of the Member States. However, it maintains that it has never brought infringement proceedings against Reel International in any parallel proceedings in Germany or before the UPC. In addition, in a letter dated 5 February 2026, it confirmed in a clear and legally irrevocable manner that it was renouncing any action against Reel International on the basis of the patent at issue. It concludes that Reel International has no legal interest in bringing an action for invalidity of its expired patent. It added that Reel International had no direct personal interest in the action, as it had not suffered any financial or image damage of its own. Fives ECL emphasises that the argument that the invalidity of Patent EP'740 would render moot the claims for damages brought against its subsidiary Reel GmbH before the Hamburg Local Division is inoperative since the proceedings relating to the determination of damages in which Reel GmbH is involved before the UPC arise directly from the infringement proceedings brought in Germany against Reel GmbH, which gave rise to a decision that has become final. Fives ECL concludes that Reel International has no interest in bringing the action.
7. As regards the authority of res judicata by the German national courts, Fives ECL submits that Reel International and Reel GmbH must be regarded as constituting one and the same party. It adds that Reel International cannot maintain, without contradicting itself, that, on the one hand, it has an interest in bringing proceedings on the grounds that it is 'concerned' by patent EP'740 as a result of the takeover of Reel GmbH, which is now its indirect wholly-owned subsidiary, that it will bear the legal and defence costs and that it will suffer damage to its image as a result of the proceedings brought.

against it and, secondly, to set aside all res judicata by asserting that it cannot be regarded as the same party as Reel GmbH.

8. Reel International claims that the Court should:
 - Primarily DECLARE Fives ECL's preliminary objection inadmissible and unfounded;
 - In the alternative
 - o REJECT Fives ECL's request for a dedicated hearing;
 - o DECLARE Fives ECL's requests for inadmissibility and res judicata unfounded;
 - In any event :
 - o REJECT all of Fives ECL's claims made in its preliminary objection;
 - o DISPENSE Reel International from translating the documents it submits, the original language of which is English;
 - o ORDER Fives ECL to pay the costs of the preliminary objection.

9. Reel International's main argument is that the preliminary objection is inadmissible on the grounds that the list of grounds for a preliminary objection is exhaustive and cannot be extended to other defences, as has been ruled on several occasions by local divisions and by the UPC Court of Appeal. In her view, it follows that any preliminary objection that relates to issues other than jurisdiction (of the UPC or the relevant division) within the meaning of Article 32 UPCA, or the language of the statement of claim, is inadmissible.

It adds that Rules 361, 362 or 363 RoP, which allow the court to reject applications by way of orders, are reserved for exceptional situations and concern "cases where the applications are manifestly doomed to be rejected" (Chapter 12 RoP), i.e. where the alleged inadmissibility or res judicata is not open to discussion, which is not the case here.

Reel International submits that the inadmissibility of its claims is a matter that must be decided together with the merits and opposes the holding of a hearing dedicated to issues of admissibility and res judicata prior to the hearing on the merits.

10. On the merits of the preliminary objection, she argued that because a patent is general in scope, any member of the public, whether natural or legal, should be considered to be "concerned by the patent" within the meaning of Article 47.6 of the UPCA, without having to prove any development or investment in the field concerned by the patent, and that only actions by "straw men" could be excluded. In this respect, it notes that Rule 44 RoP on invalidity actions, unlike Rule 13.1(f) RoP on infringement actions, does not require the invalidity applicant to explain how it would be "concerned" by the patent, which shows that this notion is not considered to be an additional condition that must be justified by the applicant in order for it to be admissible in its invalidity action.

11. Reel International submits that it is undeniably 'concerned' by patent EP'740 within the meaning of Article 47(6) UPCA, given that it is a competitor of Fives ECL, that its indirect wholly-owned subsidiary, Reel GmbH, has been found guilty of patent infringement in Germany and that proceedings to determine damages are pending before the UPC, while another has been announced. It adds that it is incurring expenses (in particular legal and defence costs) as a result of the proceedings brought against Reel GmbH, that it is suffering damage to its image and that the value of its shareholdings in its subsidiaries would be weakened by a financial judgment against Reel GmbH.
12. As far as Reel International is concerned, only UPC law applies. However, case law has made it clear that a parent company, even if it is not affected by proceedings pending against a subsidiary, has an interest in bringing proceedings within the meaning of Article 47.6 of the UPCA and Rule 44 RoP.
In any event, under national law, including French law, which is particularly relevant to the nationality of the claimant, Reel International would also have standing.
Lastly, it considers that Five ECL's waiver of its right to bring proceedings against it, which occurred after the proceedings were brought, is irrelevant.
13. On the question of res judicata, Reel International submits that in the absence of identity of parties and cause, no res judicata can be invoked.

REASON

1/ On the preliminary objection

14. Under Rule 19.1 RoP, within one month of service of the statement of claim, the defendant may file a preliminary objection concerning :
 - a) the jurisdiction of the Court, including any objection that a waiver under Rule 5 applies to the patent which is the subject of the proceedings ;
 - b) the jurisdiction of the division indicated by the claimant;
 - c) the language of the statement of claim.
15. In its preliminary objection, Fives ECL challenged the UPC's jurisdiction within one month of service of the statement of claim, arguing that Reel International had no legal interest in bringing proceedings and that a previous national decision was res judicata.
16. However, the list of preliminary objections set out in Rule 19.1 RoP must be regarded as exhaustive and cannot extend to other defences such as abuse of process or manifest unfoundedness (UPC Court of Appeal, 3 September 2024, Aylo v DISH, SLING, UPC_CoA_188/2024, which approved the decision to reject the preliminary objection, confirmed in the judgment of the UPC Court of Appeal, 6 October 2025, Roku/Sun, UPC_CoA_288/2025, according to which a preliminary objection based on grounds not covered by Rule 19.1 RoP is inadmissible).

17. The purpose of the preliminary objection is to purge issues of jurisdiction and language from the proceedings at an early stage, in the interests of efficiency and saving resources. However, not all issues that may constitute an obstacle to a decision on the merits of the main action, such as an action for invalidation of a patent as in this case, fall within the scope of the preliminary objection system. The lack of an interest in bringing proceedings and the res judicata effect, which the defendant in the present patent invalidity action relies on to deny the court the power to rule on the merits of the claim, have no bearing on the court's substantive or territorial jurisdiction.
18. Accordingly, the preliminary objection which, under the guise of lack of jurisdiction of the UPC, raises a defence intended to deprive the plaintiff in the invalidity action of its right to act must be rejected as inadmissible or, at the very least, unfounded. It will be for the Court, ruling on the merits of the application for invalidity of the patent, to assess Reel International's interest in bringing the action and to determine whether res judicata precludes a ruling on the application for invalidity of the German part of patent EP'740.

2/ On the alternative request for an order declaring Reel International's claims inadmissible

19. In the alternative, Fives ECL requests that the issues relating to Reel International's interest in bringing an action and the res judicata be dealt with prior to the proceedings on the merits.
20. Reel International objected, arguing that there was no reason to deal with the defences raised by Fives ECL prior to the hearing on the merits.
21. The Judge-Rapporteur considers that the rejection of the preliminary objection does not require an order to be made on the basis of Rule 361 of the RoP or a prior hearing to be held on the question of Reel International's interest in bringing the action, since its direct and personal interest in the nullity action and its economic interest resulting from its links with its indirect wholly-owned subsidiary, Reel GmbH, should be assessed. The need to assess the elements of fact and law on the one hand and the evidence produced by each of the parties on the other demonstrates that Reel International's lack of interest in bringing the action is not manifest within the meaning of Rule 361 RoP (UPC, Court of Appeal, 18 September 2024, Network System Technologies v Audi, UPC_CFI_513-514-515_2023).
22. The same applies to the argument that the German part of the EP'740 patent is res judicata, given the dispute as to the identity of the parties and the cause of action, which precludes the pure and simple application of the principle of res judicata as referred to in Rule 362 RoP.
23. The applications for advance orders will therefore be dismissed.

3/ On the alternative request for a preliminary ruling on Reel International's interest in bringing proceedings and on the principle of res judicata

24. As regards the organisation of a hearing dedicated to a preliminary ruling on these defences raised by Fives ECL, account must be taken of the objectives of expedition and efficiency laid down in the preamble to the Rules of Procedure (point 7), according to which the proceedings must be conducted in such a way as to normally allow the final hearing on the issues of infringement and validity at first instance to be held within one year, i.e. in this case at the beginning of 2027. By that date, the Court of Appeal's position on the principle of res judicata should be known, since Fives ECL has indicated that a hearing is scheduled for September 2026 on a case that will make it possible to ascertain the UPC's case law on this issue. Organising a hearing before the Court of Appeal has given its decision would therefore not be in the interests of the proper administration of justice, nor would organising two hearings on the same case a few weeks apart.
25. There is therefore no reason at this stage to anticipate the hearing on the preliminary defences raised by Fives ECL and it is appropriate, on the contrary, to provide for the organisation of a single hearing, which meets the requirements of efficiency and economy of the procedure, without calling into question the legitimate interests of all the parties and, in particular, of Fives ECL, since a decision will be given in the decision on the merits on its arguments intended to see Reel International deprived of its right to bring an action for invalidity of its patent.

4/ Exemption from translation

26. In the absence of any dispute, REEL International's request that it be excused from translating the documents it submits, the original language of which is English, should be granted.

5/ Procedural costs

27. An advance ruling on costs is not necessary and the costs of the preliminary objection will be decided with the decision on the merits.

6/ On the right to appeal

28. An order of the judge-rapporteur rejecting the preliminary objection may only be appealed at the same time as the appeal against the decision or with the permission of the court of first instance, pursuant to Rule 220.2 RoP (Rule 21.1 RoP, second sentence). In the present case, there is no reason to allow an immediate appeal, given that no application is made in this respect.

FOR THESE REASONS,

The Judge-Rapporteur :

- REJECTS the preliminary objection raised by Fives ECL ;
- REJECTS Fives ECL's requests for early orders based on Articles 361 and 362 of the Rules of Procedure;
- REJECTS Reel International's request for an early hearing of its defences based on the absence of an interest in bringing proceedings and on the principle of res judicata;
- DISPENSES REEL International from translating the documents it submits, the original language of which is English;
- DECLARES that the costs of the preliminary objection will be settled with the decision on the merits.

Issued on 24 March 2026

MÉLANIE, JEANNE,
LISON BESSAUD

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Judge-Rapporteur
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