



UPC_CFI_301/2025
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 10/04/2026

concerning Rules 9.2 and 36 RoP

APPLICANT – CLAIMANT

Orange SA
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Represented by
Volkmar Henke

RESPONDENT - DEFENDANT

HMD Global Oy
Bertel Jungin aukio 9
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Represented by
Oliver Bäcker

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor</i>
EP2345029	Orange SA

DECIDING JUDGE

Presiding judge &
Judge-rapporteur

Camille Lignières

LANGUAGE OF PROCEEDINGS: English

ORDER

Summary of facts and procedure

In the context of an infringement action brought by ORANGE against HMD, ORANGE filed an application under Rules 9.2 and 36 of the Rules of Procedure (RoP) dated 17 March 2026, seeking to have certain facts and arguments put forward by HMD in its latest submission (Rejoinder Part II) declared inadmissible as late filed, or alternatively to be permitted to respond to them by means of supplementary written submissions, as proposed and included in the concerned application.

In written comments of 8 April 2026, filed as requested by the judge-rapporteur via CMS communication on 27 March 2026, HMD opposes this application, arguing that the facts and arguments in its Rejoinder Part II are, in its view, such that these elements “do not introduce new matter that substantially departs from the SoD, or merely factual or legal additions in reaction to the opposing party’s prior submission”, which is consistent with the UPC’s case law.

HMD adds that the ‘front-loaded’ nature of the procedure should not be interpreted too narrowly. They conclude that the ORANGE’s request must be dismissed. In the alternative, HMD requests that, should the judge permit further submissions on FRAND, it be allowed to respond to them.

Legal framework

Point 2 of the RoP’s preamble

R 9.2 RoP

R 36 RoP

Grounds for the order

The Court notes that ORANGE’s application, based on Rule 9.2 and Rule 36 of the Rules of Procedure, relates solely to the non-technical aspect, namely the FRAND defence raised by HMD. With regard to this specific defence, the Rules of Procedure provide no provision for it, unlike in the case of a counterclaim for revocation or an application to amend the patent, where the number and content of the pleadings are precisely set out (see Rule 29 et seq. of the Rules of Procedure, or Rule 30 et seq. of the Rules of Procedure).

Concerning the FRAND defence, the Judge-Rapporteur must therefore apply the general principles of ‘fairness’ and of adversarial proceedings set out in the preamble to the RoP (point 2). As this is a defence raised by HMD against ORANGE, it is justified that the counter-defendant in this FRAND defence (i.e., ORANGE) should have the final say on this point in order to ensure a ‘fair trial’.

Consequently, without having to verify whether the arguments put forward by HMD in Part II (FRAND defence section) of its ‘Rejoinder’ were new or not, it is appropriate, in the interests of ‘fairness’, to allow ORANGE to respond last on the FRAND defence and thus to allow ORANGE to submit its written response on this point, as included in its application of 17 March 2026, Part II: pages 14 to 86.

At this stage of the proceedings, there is no justification for allowing HMD to respond further to the FRAND defence; the next submission will be HMD's final response to ORANGE's application for patent amendment (Rejoinder to the reply under R.32.3 RoP).

For these reasons, the Judge-rapporteur:

-Allows the submission from ORANGE, included in its procedural application of 17 March 2026, regarding the FRAND defence -Part II: pages 14 to 86;

-Denies the subsidiary request from HMD;

-The present order may be reviewed under R. 333 RoP.

C. LIGNIERES, Judge-rapporteur.

ORDER DETAILS

UPC number: UPC_CFI_301/2025

Application type: R. 9.2 RoP AND R. 36 RoP

Action type: Infringement Action

Date of issue: 10 April 2026