



Local Division Hamburg
UPC_CFI_481/2026

Order
of the Court of First Instance of the Unified Patent Court
Local Division Hamburg
issued on 7 May 2026

HEADNOTE

1. The success of a subsequent entitlement proceeding, whereby the Claimant becomes the rightful owner of the patent, has no bearing on the validity of an opt-out declaration, as transfer of ownership does not have retroactive effect. The meaning of the term 'proprietor' in Article 83(4) UPCA is to be understood in no other way.
2. The validity of filing a national revocation action is not precluded by a possible protective order issued by a national court and hinders a valid withdrawal of an opt-out.

CLAIMANTS

SILIMED Indústria de Implantes Ltda., Rua Figueiredo Rocha, 374, CEP 21240-660, Rio de Janeiro, Brazil,

Claimant 1),

Silimed GmbH, Inselkammerstr. 8, 82008 Unterhaching, Germany,

Claimant 2),

represented by:

Mike Gruber, Rechtsanwalt, and John Brunner, European Patent Attorney, Carpmaels & Ransford LLP, One Southampton Row, London, WC1B 5HA, United Kingdom,

DEFENDANTS

Polytech Health & Aesthetics GmbH, Altheimer Straße 32, 64807 Dieburg, represented by managing director Dr. Karsten Hemmrich and Dr. Markus Neuhauser,

Defendant 1)

represented by: Jörg Wahl, Rechtsanwalt, and Dr. Clemens Gillen, Patent Attorney, Viering, Jentschura & Partner mbB, Grillparzerstraße 14, 81675 München,

Bondimed Aesthetics GmbH, Unterthalhamstraße 2, A-4694 Ohlsdorf, Austria,

Defendant 2)

represented by: Dr. Christian Meyer, Rechtsanwalt, and Dr. Derk Voss, Patent Attorney, Maiwald GmbH, Elisenstraße 3, 80335 München,

Aleamed BVBA, Duffelsesteenweg 164 a, 2550, Kontich, Belgium,

Defendant 3)

represented by: Dr. Christian Meyer, Rechtsanwalt, and Dr. Derk Voss, Patent Attorney, Maiwald GmbH, Elisenstraße 3, 80335 München,

Aleamed BV, Europalaan 400, 3526KS Utrecht, Netherlands,

Defendant 4)

represented by: Dr. Christian Meyer, Rechtsanwalt, and Dr. Derk Voss, Patent Attorney, Maiwald GmbH, Elisenstraße 3, 80335 München,

Linea Médica SA, Rua da Paz, Edif. Park nº 66, Sala 43/44, 4050-461 Porto, Portugal,

Defendant 5)

represented by: Dr. Christian Meyer, Rechtsanwalt, and Dr. Derk Voss, Patent Attorney, Maiwald GmbH, Elisenstraße 3, 80335 München,

Sanimpo S.r.o., Tismiká 12 10000 Prague, Czech Republic,

Defendant 6)

represented by: Dr. Christian Meyer, Rechtsanwalt, and Dr. Derk Voss, Patent Attorney, Maiwald GmbH, Elisenstraße 3, 80335 München,

Biocablan SL, Avenida Barcelona 211, Nave 5, 08750 Molins de Rei, Barcelona, Spain,

Defendant 7)

represented by: Dr. Christian Meyer, Rechtsanwalt, and Dr. Derk Voss, Patent Attorney, Maiwald GmbH, Elisenstraße 3, 80335 München,

POLYTECH Health & Aesthetics Italia S.r.l., Via San Martino 17, 20122 Milano, Italy,

Defendant 8)

represented by: Jörg Wahl, Rechtsanwalt, and Dr. Clemens Gillen, Patent Attorney, Viering, Jentschura & Partner mbB, Grillparzerstraße 14, 81675 München,

POLYTECH Health & Aesthetics UK LTD (UK), C/O Hillier Hopkins LLP, 249 Silbury Boulevard, Milton Keynes, Bucks, MK9 1NA, United Kingdom,

Defendant 9)

PATENT AT ISSUE

European Patent n° EP 2 581 193 B1

PANEL/DIVISION

Local Division Hamburg

DECIDING JUDGE/S

This order has been issued by the presiding judge and judge-rapporteur Sabine Klepsch.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Patent infringement – Application pursuant to Rule 19 RoP

SUMMARY OF FACTS

- 1 The Claimants are suing the Defendants for alleged patent infringement.
- 2 Since 5 January 2026, Claimant 1) is the owner of the European Patent EP 2 581 193 B1 (hereinafter patent in suit). The patent in suit was initially applied for and granted to the Defendant 1). Claimant 1) initiated transfer of ownership proceedings against Defendant 1) in the German Regional Court of Frankfurt with complaint dated 24 November 2017.
- 3 With declaration dated 30 March 2023 and received by the UPC on the same day, Defendant 1), as the then formally registered owner of the patent in suit, had declared an opt-out under Art. 83(3) UPCA with regard to the patent (Exhibit VJP 1).
- 4 With the judgement by the Higher Regional Court of Frankfurt am Main of 28 November 2024, as corrected by order of 23 December 2024 (hereinafter Entitlement Decision), it was stated that Claimant 1) is the rightful owner of the patent. Defendant 1) filed for leave to appeal with the German Federal Court of Justice. The request for leave was denied by the German Federal Court of Justice with order of 16 December 2025. On 5 January 2026 the

order of the German Federal Court of Justice was served on both parties and became final and binding for the parties.

- 5 The transfer of ownership of the patent in suit in its entirety was decided according to the laws of the Federal Republic of Germany, and therefore, in accordance with section 896 of the German Code of Civil Procedure the agreement of Defendant 1) to the transfer of ownership of the patent in suit to Claimant 1) was replaced by the final binding judgement of the Higher Regional Court of Frankfurt. Claimant 1) granted Claimant 2) an exclusive license on 4 February 2026.
- 6 On 8 January 2026, Claimant 1) sent a cease-and-desist letter to Defendant 1) based on an alleged infringement of the patent in suit and demanded that Defendant 1) give undertakings (comprising the promise of a contractual penalty) until 9 January 2026, 1 p.m. German time the latest, i.e. within 24 hours.
- 7 On 9 January 2026 PTH&A Management GmbH (hereinafter also PTH&A) filed an invalidity complaint with the German Federal Patent Court (case no. 6 Ni 6/26) with the request to revoke the German part of the patent in suit in its entirety (Exhibit VJP 4). With order of 9 February 2026 the German Federal Patent Court set the value of the dispute at 1 million euros. The complaint filed by PTH&A Management GmbH named Defendant 1) as the defendant in the revocation proceedings since, at the time of the filing of the complaint, Defendant 1) was still registered as the proprietor of the German part of the patent in suit in the patent register of the German Patent and Trademark Office.
- 8 On 3 March 2026 the invalidity complaint of PTH&A of 9 January 2026 was served on the representatives of Defendants 1) and 8) in the proceedings at hand, despite the fact that the representation for the German part of the patent was withdrawn on 9 January 2026 and the withdrawal was published in the online register of the German Patent and Trademark Office on 31 January 2026. On 23 February 2026 Claimant 1) was registered as the new owner of the German part of the patent in the online register of the German Patent and Trademark Office, the change of ownership was visible for the first time in the online register on 24 February 2026.
- 9 With submission of 6 March 2026 the representative of Defendants 1) and 8) in the proceedings at hand accepted service of the revocation complaint of PTH&A Management GmbH on behalf of Defendant 1) and informed the German Federal Patent Court that, with effect of 5 January 2026, Defendant 1) is no longer the material owner of the German patent in suit and that Claimant 1) in the proceedings at hand has been registered as the new owner since 23 February 2026 in the patent register of the German Patent and Trademark Office. Furthermore, Defendant 1) suggested an amendment of the revocation complaint to the effect that Defendant 1) is replaced as the defendant in the revocation proceedings by Claimant 1) as the now registered proprietor of the German part of the patent in suit and that Defendant 1) expressly declares its consent to an exchange of defendants in the revocation proceedings should a respective amendment of the complaint be made.

- 10 On 4 February 2026 Claimant 1) filed a statement of withdrawal of the original opt-out request of 30 March 2023 with the registry of the UPC (Exhibit VJP 8 and VJP 9). The withdrawal was received by the UPC registry on the same day.
- 11 On 5 February 2026, Claimant 1) filed the Statement of Claim in the UPC proceedings and a request for a preliminary injunction with the Regional Court of Munich against Defendant 1) based on the alleged infringement of the German part of the patent in suit.
- 12 On 26 February 2026 Defendant 1) filed its own invalidity complaint with the request for revocation of the German part of the patent in suit in its entirety with the German Federal Patent Court (Exhibit VJP 11). The German Federal Patent Court confirmed that it received the complaint on 26 February 2026 and assigned the case no. 6 Ni 14/26 (EP) to the proceedings.
- 13 On 7 April 2026 Claimant 1) has filed an application for removal of the unauthorized opt-out (Exhibit CR 20). In that application, Claimant 1) requested that Claimant 1)'s previous application to withdraw of 4 February 2026 be removed from the Register together with the application to opt out, provided that Claimant 1)'s application to remove Defendant 1)'s opt-out is allowed.
- 14 With Decision/Final order dated 10 April 2026 the application for removal of the opt-out was rejected. The Registrar reasoned that pursuant to Rule 5.7 RoP the withdrawal of an opt-out is effective. Since the application to opt-out was effectively withdrawn by Claimant 1) on 4 February 2026, there is no longer an opt-out to consider for Claimant 1)'s application for removal. The Registrar was not informed that a revocation action was filed in Germany at the Federal Patent Court on 9 January 2026.
- 15 The Claimants filed on 5 February 2026 an infringement action against Defendants 1) to 9). The Defendants submitted preliminary objections pursuant to Rule 19 RoP. The Claimant commented on the preliminary objections with its submission of April, 7 2026. Claimants and Defendants were given the opportunity to provide further submissions.

REQUESTS

- 16 Defendant 1) and 8) request:
 - A. In the name and on behalf of Defendant 1 and Defendant 8, we request that the deadline for filing the Statement of Defense and any possible Counterclaim for Revocation be suspended until a decision has been taken on the Preliminary Objection.
 - B. In the name and on behalf of Defendant 1 and Defendant 8 we request a decision allowing the preliminary objection by ruling the following:
 1. Declare that the withdrawal from the opt-out declaration filed by the Claimant 1 with the UPC on 4 February 2026 was invalid.

2. Declare that the opt-out declaration filed with the UPC on 30 March 2023 was and remains valid.
3. Declare that the UPC lacks jurisdiction to hear the case brought by the Claimants with the Statement of Claim of 5 February 2026.
4. Dismiss the infringement action initiated with the Statement of Claim of 5 February 2026 and decide that the Claimants have to bear the costs of the proceedings.
- C. In case the above requests 1 through 4 are rejected, we, auxiliary, request a decision allowing the preliminary objection by ruling the following:
 5. Declare that the UPC lacks jurisdiction to hear the case brought by the Claimants with the Statement of Claim of 5 February 2026 to the extent Claimant bases its claims on acts occurred before 5 January 2026.
 6. Dismiss the infringement action initiated with the Statement of Claim of 5 February 2026 and decide that the Claimants have to bear the costs of the proceedings, to the extent Claimant bases its claims on acts occurred before 5 January 2026.
- D. In case the above requests 1 through 6 are rejected, we, auxiliary, request a decision allowing the preliminary objection by ruling the following:
 7. Declare that the UPC lacks jurisdiction to hear the case brought by the Claimants with the Statement of Claim of 5 February 2026 to the extent Claimant requests Defendant 1 to be ordered to provide information on acts as referred to in request items I., II., and III. of the Statement of Claim which occurred before 5 January 2026.
 8. Dismiss the infringement action initiated with the Statement of Claim of 5 February 2026 and decide that the Claimants have to bear the costs of the proceedings, to the extent Claimant requests Defendant 1 to be ordered to provide information on acts as referred to in items I., II., and III. of the Statement of Claim which occurred before 5 January 2026.
- E. Auxiliary Request (in case requests A through D are rejected):
 9. stay the proceedings until a final legally binding decision of German national courts is issued on the question whether the revocation action 6 Ni 6/26 (EP) filed by PT H&A Management GmbH currently pending with the German Federal Patent Court (Bundespatentgericht).

17 Defendants 2) to 7) request:

- I. Suspension of time limits
 1. suspend the deadline for submitting the Statement of Defense and any possible Counterclaim for Revocation pursuant to Rule 19.6 RoP until a decision has been taken on the Preliminary Objection;
 - II. Grant the Preliminary Objection (Rule 19.1 RoP)
- Primary requests:
2. declare that the withdrawal from the opt-out declaration filed by Claimant 1) on 4 February 2026 was invalid and ineffective;
 3. declare that the opt-out declaration filed on 30 March 2023 was and remains valid;
 4. declare that the UPC lacks jurisdiction to hear the action brought by the Claimants by Statement of Claim dated 5 February 2026;
 5. dismiss the infringement action and order the Claimants to bear the costs of the proceedings;

III. In the alternative (in case requests 2 through 5 are rejected):

6. declare that the UPC lacks international jurisdiction to hear the action with regard to Defendants 2) to 7);
7. declare that the Local Division Hamburg lacks competence to hear the action with respect to Defendants 2) to 7);
8. dismiss the infringement action and order the Claimants to bear the costs of the proceedings accordingly.

IV. In the further alternative (in case requests 2 through 8 are rejected):

9. declare that the UPC's international jurisdiction is limited
 - with respect to Defendants 2), 3), 4) and 5), to the territories of the Contracting Member States of the UPCA for which the Patent at Issue is in effect;
 - with respect to Defendant 6), to Czech Republic;
 - with respect to Defendant 7), to Spain;
10. dismiss the infringement action and order the Claimants to bear the costs of the proceedings to the extent Claimants seek relief in respect of acts or effects outside those territories.

V. In the further alternative (in case requests 2 through 10 are rejected):

11. stay the proceedings, at least with regard to Defendants 6) and 7), pending the decision of the Court of Justice of the European Union on the questions referred by the Court of Appeal of the Unified Patent Court with decision of 6 March 2026 (UPC_CoA_789/2025 and UPC-CoA_813/2025) concerning the interpretation of Article 8(1) Brussels Ia Regulation.

VI. In the further alternative (in case requests 2 through 11 are rejected):

12. stay the proceedings pending the decision of the German Federal Patent Court on the question whether the revocation action 6 Ni 6/26 (EP) filed by PTH&A Management GmbH is admissible.

18 The Claimants request:

- I. The Preliminary Objections are rejected.
- II. in the alternative to I.: The decision on the Preliminary Objections be dealt with in the main proceedings pursuant to R. 20.2 RoP.
- III. in the alternative to II.: Claimants are allowed to amend their reply to the Preliminary Objections following decisions of the Regional Court Munich I in the pending proceedings for a preliminary injunction against Defendant 1 (case no. 7 O 290/26) and for a penalty for contempt of court against Defendant 1 (case no. 7 O 15569/24).
- IV. in the alternative to III.: only regarding the objection to the Hamburg LD's competence to hear the action with respect to certain Defendants, Claimants request that, if the Court considers not to be competent for (parts of) the action with respect of such defendants, the affected parts of the action shall be referred to other LDs as follows:
 - with respect to Defendant 2 affected parts shall be referred to the Vienna LD
 - with respect to Defendant 3 affected parts shall be referred to the Brussels LD
- V. with respect to Defendant 4 affected parts shall be referred to The Hague LD
 - with respect to Defendant 5 affected parts shall be referred to the Lisbon LD
 - with respect to Defendant 8 affected parts shall be referred to the Milan LD.

- VI. Defendants 1 to 8 bear the costs for Claimants' defense against the Preliminary Objections and Claimant 1's application for removal of the opt-out.
- VII. in the alternative to V.: Defendants 1 to 8 bear the costs for Claimants' defense against the Preliminary Objections.
- VIII. The request to stay the proceedings is rejected.
- IX. in the alternative to VII.: The proceedings are separated regarding Defendants 6 and 7 without Claimants having to pay a new court fee for the new proceedings.
- X. in the alternative to VIII.: The proceedings are separated regarding Defendants 6 and 7.
- XI. The Request to suspend Defendants' deadline for filing a Statement of Defence is rejected.
- XI. finds that Claimant 1's removal application dated 4 February 2026 is valid and effective and
- XII. orders the deletion of the opt-out application filed by Defendant 1 on 30 March 2023.

POINTS AT ISSUE

- 19 Defendant 1) and 8) argue in their Preliminary Objection (hereinafter also PO 1) that an opt-out pursuant to Rule 5 RoP applies to the patent that is the subject of the proceedings, Rule 19.1(a) RoP. The withdrawal of the opt-out declared by the Claimant 1) on 4 February 2026 is invalid and ineffective since an action has been brought or commenced before a national court or a court of a contracting member state respectively prior to the entry of the application to withdraw in the register, Art. 83(4) UPCA and Rule 5.8 RoP. The invalidity or ineffectiveness of the withdrawal filed by Claimant 1) on 4 February 2026 leads to the result that the initial opt-out filed with regard to the patent in suit on 30 March 2023, which has come into effect on 1 June 2023 under Rule 5.12 RoP, remains valid and in effect with the consequence that the jurisdiction of the UPC is permanently excluded with regard to the patent in suit. To the extent the Claimants base their asserted claims on acts occurred before 5 January 2026, these acts do not form patent infringement and thus Claimants insofar do not assert claims resulting from patent infringement, but could if at all only rely on claims under general tort law (§ 823 BGB) as a consequence of a vindication decision of the Higher Regional Court Frankfurt, which became legally binding on 5 January 2026. Before 5 January 2026, Defendant 1) was registered owner of the patent in suit. The UPC has no jurisdiction over ownership claims and thereto connected claims.
- 20 Defendants 2) to 7) argue the Preliminary Objection (hereinafter also PO 2) is based, first, on the fact that the patent in suit has been validly opted out from the jurisdiction of the UPC and that the purported withdrawal from that opt-out (opt-in) is invalid and ineffective. Consequently, the jurisdiction of the UPC is excluded in its entirety. The Claimants have not established a valid withdrawal from the opt-out. In the Statement of Claim, the Claimants seek to establish jurisdiction on the basis of an alleged coordinated exploitation of the accused products within a group structure and the existence of defendants domiciled in UPC Contracting Member States. However, they have neither demonstrated a sufficient connecting factor for jurisdiction under Art. 8(1) Brussels Ia Regulation, nor the prerequisites for joinder under Art. 33 UPCA.

- 21 Therefore, in the alternative and only if the Court were to reject the first objection, the Preliminary Objection is further based, second, on the lack of international jurisdiction and competence of the UPC. This concerns in particular:
- a) the absence of the conditions required for the joinder of multiple defendants under Art. 8(1) Regulation (EU) No 1215/2012 (“Brussels Ia Regulation”) and Art. 31 UPCA with respect to Defendants 2) to 7),
 - b) the absence of international jurisdiction over Defendants 6) and 7), whose alleged conduct is confined to national markets outside the relevant territorial scope of the UPC; and
 - c) the absence of the conditions required for the joinder of multiple defendants under Art. 33 UPCA with respect to Defendants 2) to 7).
- 22 Finally, the Claimants seek to aggregate territorially and legally distinct acts of different entities into a single infringement scenario, although such acts are carried out by each of the Defendants 2) to 7) independently in separate national markets and are subject to different legal regimes. Therefore, in the further alternative and only if the Court were to reject the first and second objection, the Preliminary Objection is further based, third, on the lack of international jurisdiction and competence of the UPC with respect to Defendants 2) to 5) outside the territory of the UPC Contracting Member States, and Defendants 6) and 7) outside their respective country of residence.
- 23 The Claimants are of the opinion that both Preliminary Objections are unfounded and must be rejected. To the extent the POs are based on an alleged opt-out (PO 1 requests B. 1. to 4.; PO 2 requests 2. to 5.), they must fail because either the opt-out filed by Defendant 1) was invalid or Claimant’s withdrawal of the opt-out was valid: Defendant 1)’s opt-out is invalid because Defendant 1) acted as an unauthorized patent applicant without any substantive rights to the Patent when it filed the opt-out, as was determined in a final and binding decision of a court of a UPC Member State. Since Claimant 1) had substantive rights to the patent it also had the right to withdraw the opt-out declaration. In any case, the opt-out declaration would be deemed to not have been filed due to Claimant 1)’s application for removal, which was filed in parallel. The alleged defects of the withdrawal relied on by the Defendants, namely the nullity action of 9 January 2026 in Germany against the German part of the Patent, are not relevant for the application for removal.
- 24 Furthermore, the national nullity action relied on by Defendants does not count as an action within the meaning of Art. 83(4) UPCA because it was filed in blatant violation of an order by a court of a UPC Member State.
- 25 Unless the POs are rejected right away, the validity of the opt-out, its withdrawal and removal would in any event have to be dealt with in the main proceedings (Rule 20.2 RoP) because it is intertwined with a finding on Claimant 1)’s standing to sue. Questions of fact and law that are relevant for both the jurisdiction of the UPC and the merits of the case are not to be decided in the PO procedure, but must be dealt with in main proceedings. This applies in

particular to issues of material ownership of the patent-in-suit (cf. Mannheim LD, Fingon v. Samsung Electronics, UPC CFI 750/2024, order of 4 April 2025).

26 Further, the PO 2 must fail to the extent that it is argued that the UPC “lacks international jurisdiction” or that the Hamburg LD lacks competence for an infringement action against Defendants 2) to 7) (PO 2, requests 6. to 8.). A denial of the allegation that Defendants have engaged in a “close and interdependent commercial relationship” regarding the distribution of infringing products would constitute a defense on the merits and thus, be outside of the scope of a PO pursuant to Rule 19.1 RoP. Based on the alleged acts of all Defendants and the undisputed jurisdiction of the UPC over Defendant 1) and the Hamburg LD’s competence for an action against this anchor defendant jurisdiction and competence also exists for all other Defendants (cf. CoA, Dyson v. Dreame, UPC CoA 789/2025, order of 6 March 2026)

GROUNDS FOR THE ORDER

27 The Preliminary Objections are admissible and founded.

A.

28 The Preliminary objections are admissible because they were lodged in due form and within the time limit specified in Rule 19.1-3 RoP. The Preliminary objections were lodged on 23 and 24 March 2026, i.e. within one month of service of the Statement of claim in accordance with Rule 19.1 RoP.

B.

29 The Preliminary Objections are founded. The Unified Patent Court (hereinafter the Court or UPC) has no competence in respect of the present action based on the patent in suit pursuant to Art. 32 (1) (a) UPCA in conjunction with Art. 2 (b) UPCA. The patent in suit is opted out from the exclusive competence of the Court, as the opt-out applied for on 30 March 2023 was not effectively withdrawn on 4 February 2026 in accordance with Art. 83 (4) UPCA.

I. opt-out

30 Pursuant to Rule 19.1 (a) RoP, the Defendant may lodge a Preliminary objection concerning the jurisdiction and competence of the Court, including any objection that an opt-out pursuant to Rule 5 RoP applies to the patent that is the subject of the proceedings.

31 The initial opt-out of Defendant 1) on 30 March 2023 is valid. Defendant 1) was at the time of the opt-out the formally registered and material owner of the patent in suit.

32 The Frankfurt Higher Regional Court awarded ownership to the patent in suit with judgment of 24 November 2024 to Claimant 1). Defendant 1) filed for leave to (further) appeal with the German Federal Court of Justice. The request for leave to (further) appeal was denied by the German Federal Court of Justice with order of 16 December 2025. On 5 January 2026

the order of the German Federal Court of Justice was served on both parties of the proceedings, Claimant 1) and Defendant 1). The judgment of the Frankfurt Court of Appeals has become final and binding on 5 January 2026.

- 33 The transfer of ownership of the patent in suit in its entirety was decided according to the laws of the Federal Republic of Germany. The agreement of Defendant 1) to the transfer of ownership to Claimant 1) was therefore replaced by the final and binding judgment of the Frankfurt Court of Appeals. Claimant 1) is therefore material owner of the German part of the patent in suit since 5 January 2026.
- 34 German Entitlement decisions do not result in a transfer of the patent in suit *ex tunc* but *ex nunc*. Therefore, there is no retroactive effect. The actual legitimate patent holder may well be entitled to claim damages under German law (see FCJ, GRUR 2020, 986). However, claims for damages do not render acts carried out by the past originally registered patent holder invalid.
- 35 Nothing else can be inferred from Art 60 EPC in conjunction with Art. II § 5 I IntPatÜG, where the entitled person may request the “transfer of the patent from the patent holder”. Art. II § 5 I IntPatÜG, which applies to German parts of European patents, is identical to Section 8 of the German Patent Act (§ 8 PatG), which applies to German patents. The same principles apply to § 8 PatG *mutatis mutandis* to Art. II § 5 I IntPatÜG. That means that for both legal provisions, upon completion of the transfer, the assignee acquires the right to the patent. However, such acquisition has no retroactive effect. If the right to the grant of a patent or the patent itself arose from the outset for the authorized holder of the patent, it would have been a right to correction, not a right to transfer. A “transfer” is not the surrender of an object that already belongs to the entitled party. In the case of Section 8 of the German Patent Act, the obligor has a right that he can surrender only through a legal transfer; if his position were limited to a purely formal misnomer, he would be obligated merely to consent to the correction of the patent register.
- 36 Therefore, until the transfer is completed, the unauthorized applicant or patent owner retains full authority to influence the legal status of the patent or patent application through statements and legally significant omissions *vis-à-vis* the Patent Offices or the Courts. This means that the unauthorized applicant or patent owner can validly declare a so called opt-out from the jurisdiction of the UPC.
- 37 There is no evidence to suggest that Art. 83 UPCA and the ‘proprietor’ referred to therein should be interpreted differently. The term ‘patent proprietor’ or ‘proprietor’ in the UPCA (cf. Art. 25, 26, 47 UPCA etc) refers to the substantive proprietor of a unitary patent or a European patent. This is because the UPCA does not indicate that the term ‘patent proprietor’ or ‘proprietor’ could have a meaning that deviates from its literal sense. However, account must also be taken of Rules 8.4 and 8.5 RoP, which govern which persons are to be regarded as patent proprietors for the purposes of the proceedings. In short, this is determined on the basis of the entry in the register for unitary patents and on the basis of

substantive ownership for European patents, with the status in the register constituting a rebuttable presumption.

- 38 Furthermore, there is no indication that Art. 83 UPCA departs from the requirements for the transfer of patents under the IntPatÜG. Rather, Art. 24 UPCA provides that the court shall base its decision on, amongst other things, other international agreements applicable to patents and binding on all the Contracting Member states, to which the IntPatÜG belongs. In this respect, the term 'proprietor' in Art. 83 UPCA cannot be assessed in isolation. Authorised ownership must be examined in the light of other legal provisions. Where these provisions clearly state that no retroactive transfer shall take place, the question of authorisation must be assessed at the time of the relevant act. On this basis, Defendant 1) validly exercised the opt-out on 30 March 2023.
- 39 Legal certainty considerations also support this understanding. It must be clear from the register to everyone which patents fall within the UPC's jurisdiction and which do not. This cannot be questioned by national entitlement proceedings, which, if one were to follow the Claimant's view, would result in opt-out declarations no longer being deemed valid, even though the declaration was made by the patent proprietor registered at the time of the declaration.
- 40 Furthermore, in the event of a change of ownership, both the UPCA and the RoP expressly provide that a withdrawal from an opt-out may be declared if the conditions are met. The actual patent proprietor is thus not left without rights.

II. withdrawal from opt-out

- 41 The withdrawal from the opt-out of 4 February 2026, filed by Claimant 1), is invalid since the revocation action filed by PTH&A against the German part of the patent in suit before the German Federal Patent Court was brought on 9 January 2026 and therefore prior to the withdrawal from the opt-out. It fulfils the necessary criteria in order to cause the blocking effect under Art. 83 (4) UPCA and Rule 5.8 RoP, with the consequence that the withdrawal is ineffective and the opt-out remains in force.
- 42 An effective withdrawal from an out-out requires, pursuant to Art. 83(4) UPCA and Rule 5.8 RoP, that a proprietor of a European patent shall be entitled to withdraw their opt-out, unless an action has already been brought before a national court, which is the case here.
- 43 The revocation action filed by PTH&A is an action brought before a national court. The action was filed on 9 January 2026. It can be assumed that the court fee was paid because Defendant 1), as the former registered proprietor was served on 3 March 2026. That would not have happened if PTH&A did not fulfil its obligation to pay the court fee (see Section 5 German Patent Cost Act).
- 44 The fact that service was not effected until 3 March 2026 does not preclude the assumption that the action was not validly brought. Neither the UPCA nor the RoP appear to provide a

definition as to when an action is considered “brought” or “commenced” before a national court or a court of a contracting member state respectively.

- 45 Under German law, an invalidity action is commenced when the statement of claim is received by the court, i.e. the German Federal Patent Court, Section 81 paragraph 4, first sentence of the German Patent Act. This means that the invalidity action of PTH&A before the German Federal Patent Court was “brought” or “commenced” (Rule 5.8 RoP) respectively on 9 January 2026. From the fact that Defendant 1), as the registered proprietor at the time of the commencement of the revocation action on 9 January 2026, has meanwhile been served with the revocation complaint it can be concluded that the advance for the court fees of the Federal Patent Court must have been paid by PTH&A. The fact that the invalidity complaint of PTH&A has been served on Defendant 1) also allows the conclusion that the invalidity action in the Federal Patent Court is not deemed as withdrawn under Section 6 Patent Costs Act.
- 46 If one, instead or in addition to German law, wanted to refer to the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (hereinafter Brussels Ibis) for the determination when an action has been “brought” or “commenced” respectively, one would come to the conclusion that the receipt of the written complaint by the court would deem the action as being “brought”, as can be seen from Art. 32 (1) Brussels Ibis (“at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the step he was required to take to have service effected on the defendant”). The invalidity complaint, instituting invalidity proceedings under Paragraph 81(4) German Patent Act, was lodged with the German Federal Patent Court on 9 January 2026 and from the service of the complaint upon Defendant 1), as the former registered proprietor, on 3 March 2026 it must be concluded that PTH&A as the claimant in the invalidity proceedings has not failed to take the steps that were required to have service effected on Defendant 1) in the proceedings at hand. Consequently, the application of the Brussels Ibis, be it directly or by analogy, too, arrives at the conclusion that the Federal Patent Court was seised with PTH&A’s invalidity complaint before the filing of the opt-in by Claimant 1).
- 47 Furthermore, the action brought before the national court must, pursuant to Rule 5.8 RoP be an action for which the UPC has jurisdiction pursuant to Art. 32(1) UPCA. Art. 32(1) lit. (d) UPCA expressly lists “actions for revocation of patents”. Since PTH&A’s invalidity complaint requests that the German part of the patent in suit is revoked, the invalidity action before the German Federal Patent Court satisfies the requirement of Rule 5.8 RoP.
- 48 Therefore, an “opt-in” with regard to the patent in suit could not have been validly declared on 4 February 2026 since, at that time, a relevant action in a national court with regard to the patent in suit had been “brought” or “commenced” in form of the invalidity action of PTH&A of

9 January 2026 in the German Federal Patent Court. This means that the initial opt-out declared on 30 March 2023 with regard to the patent remains in effect.

- 49 This is not precluded by the fact that the Registrar, in a decision dated 10 April 2026, accepted that the withdrawal from the opt-out had taken effect, meaning that the application under Rule 5A RoP was unsuccessful. The Registrar was not aware of the German revocation action and the fact that entitlement proceedings have no retroactive effect. Furthermore, no decision binding the court was made regarding the validity of the withdrawal of the opt-out, but merely regarding the application submitted by Claimant 1) pursuant to Rule 5A RoP.
- 50 The protective order of the Regional Court Munich dated 17 December 2024 (case no. 7 O 15569/24, Exhibit CR 21) does not interfere with the effective filing of the revocation action before the German Federal Patent Court. First, said protective order cannot cover the filing of a revocation action. Second, said protective order was issued against Defendant 1), not against its managing directors as individuals and in particular not against PTH&A and its managing directors as individuals. It has no effect on the claimant of the revocation action in question. Third, even if Defendant 1) had “enticed” PTH&A to file the revocation action here in question this would not render the revocation action of PTH&A inadmissible. PTH&A is not subject to said protective order and is as any third party free to file a revocation action against the patent in suit. In fact, PTH&A as parent holding company might have its own and justified interest in filing such an action.
- 51 Furthermore, Art. 83(4) UPCA merely requires that an action has been brought before a national court. Whether this was done in or without breach of a court order is not a prerequisite. Claimant 1)’s penalty request (Exhibit CR 22) as well as the outcome of Defendant 1)’s request to lift the underlying protective order pending in the Regional Court Munich have no bearing for the question whether the revocation action filed by an independent third party (PTH&A) is admissible or not. These proceedings may or may not find that Defendant 1) violated the protective order; the court seised with these proceedings, however, has no jurisdiction over the revocation action here in question in the bifurcated German system and cannot bindingly answer the question whether the concerned revocation action is admissible or not.

III. Conclusion

- 52 Based on the above, in application of Art. 83(4) UPCA, the withdrawal of the opt-out on 4 February 2026 with regard to the patent in suit, following the opt-out lodged on 30 March 2023, and entered into the register on 1 June 2023, is ineffective due to national invalidity proceedings brought before the German Federal patent Court. Hence. The opt-out for the patent in suit is effective and the UPC lacks competence over the patent in suit for all matters falling under the ambit of Art. 32(1) UPCA. Consequently, the Court lacks jurisdiction to hear the case UPC_CFI_481/2026.

53 The POs succeed therefore with their main requests. Consequently, no further decision is required on the other requests, especially the suspension of deadlines regarding the Statement of Defence. In addition, there was no reason to rule on the PO's in the main proceedings, as the question of the court's jurisdiction is not directly linked to the further pleadings. There is no need for further discussion of the matter itself if the court is not authorised to rule on it.

ORDER

For these grounds, having heard the parties on all aspects of relevance for the following decision, the action UPC_CFI_481/2026 is dismissed since the Unified Patent Court does not have competence over European Patent EP 2 581 193 B1 owing to its opt-out on 30 March 2023.

The infringement action against Defendants 1) to 8) is dismissed as inadmissible.

INFORMATION ABOUT APPEAL

The present decision dismissing the action constitutes a final decision of the Court of First Instance and may be appealed by the unsuccessful party within two months of the date of the notification of the decision (Article 73(1) UPCA, Rules 220.1(a) and 224.1(a) RoP).

ISSUED ON 7 MAY 2026

Presiding Judge and Judge-rapporteur
Sabine Klepsch

For the subregistry