



UPC_CFI_360/2026
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 08/06/2026

HEADNOTES

1. Rule 13.1(i) RoP requires that a claimant provides the relevant facts on which the Court can assess its jurisdiction, without necessarily mentioning the exact legal provision in the applicable regulation, as it is the Court's duty to apply the relevant law, without any necessity that a party is citing the (correct) law provision.
2. As the UPC is a Court with a territory encompassing all Contracting Member States, Defendants who are sued in their universal place of jurisdiction under Art. 4 Brussels-Ia-Regulation can function as an anchor for the entire territory of the UPC member states for a Defendant registered in a third country, Art. 8(1) Brussels-Ia-Regulation.
3. However, the place and effect of infringing acts by Defendant registered in a UPCA Member State are relevant to establish jurisdiction under Art. 8 (1) Brussels-Ia-Regulation, when it comes to invoke the UPC'S jurisdiction over a national part of a European Patent in a country that is not a member of the UPCA (here the UK). This deviates from the legal situation under Art. 4 Brussels- Ia-Regulation. Only for the jurisdiction under Art. 4 Brussels-Ia-Regulation it is not necessary to examine the plausibility of any acts committed by these Defendants, because then the connection with the UPC territory is established by the domicile and not the location where the acts of the defendant occurred.

KEYWORDS

Art. 31 UPCA, Art. 71b (2) Brussels-Ia-Regulation, Art. 7(2) Brussels-Ia-Regulation, Art 8(1) Brussels-Ia-Regulation; Anchor Defendant; International Jurisdiction, Rule 19 RoP, Preliminary Objection

APPLICANT

1. **INFOBLOX INC.**
(Applicant) - , 2390 Mission College Blvd Ste
501 95054-1554, Santa Clara, CA United
States
Statement of claim served on 11/03/2026
Represented by Marcus Grosch
2. **INFOBLOX GERMANY GMBH**
(Defendant) - The Squire 12, Am Flughafen,
The Squire Business Center, 60549
Frankfurt am Main, Germany
Statement of claim served on 22/02/2026
Represented by Marcus Grosch
3. **NOMIOS GERMANY GMBH**
(Defendant) - Stockholmer Allee 24, 44269
Dortmund, Germany,
Statement of claim served on 22/02/2026
Represented by Marcus Grosch

RELEVANT PARTY

Nixu FL IP Protection LLC
(Claimant) - 16690 Collins Avenue, Suite
1001, Sunny Isles Beach, FL 33160 , USA
Represented by Hosea Haag

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP2005696	FusionLayer Oy

DECIDING JUDGE

Judge-rapporteur Dr. Stefan Schilling

LANGUAGE OF PROCEEDINGS:

English

PRESENT APPLICATION:

Preliminary Objection, R. 19 RoP, by Defendant 1)

SHORT SUMMARY OF FACTS

- 1 With its Statement of Claim, dated 30 January 2026, Claimant filed an infringement action against Defendants 1), 2) and 3) for directly and indirectly infringing claim 2 of EP 2 005 696 B1 in the Federal Republic of Germany, the Republic of France, Finland and the United Kingdom.
- 2 Defendants 2) and 3) are incorporated in Germany, whereas Defendant 1) – like the Claimant – is domiciled in the United States. The Statement of Claim was served on Defendant 1) on 11 March 2026.
- 3 With its Preliminary Objection submitted on 10 April 2026, Defendant 1) contests the Court’s international jurisdiction to decide on the claims brought against it by Claimant. Jurisdiction to hear claims against Defendants 2) and 3) on the basis of Article 31 UPCA in conjunction with Article 4(1) Brussels-Ia-regulation (hereinafter “BR”) is not contested.

POINTS AT DISPUTE

- 4 According to the Claimant, the UPC has jurisdiction vis-à-vis Defendant 1) on the basis of Article 8(1) BR. Defendant 1) objects that the Claimant has not stated the “facts and legal arguments necessary to justify the jurisdiction of the Court” over Defendant 1).

Defendant 1’s position

- 5 Defendant 1) is of the opinion that Claimant failed to satisfy the pleading standard laid down in *Adobe v Keeex*. Claimant merely referred to Article 8(1) BR in the Statement of Claim, without any explanation why there is a risk of irreconcilable decisions within the meaning of that provision. In terms of facts necessary to justify jurisdiction on the basis of Article 8(1) BR, Claimant would have had to establish that either Defendant 2) or Defendant 3) infringes the Patent in all countries where relief is sought against Defendant 1), i.e. Germany, France, Finland, and the UK. Since Claimant seeks relief against Defendant 1) in Germany, France, Finland, and the UK, this requires prima facie plausible pleadings of infringement against an anchor defendant in each of those countries.
- 6 According to the Defendant 1) there is no justification for the UPC to decide on the infringement of a UK patent by a US company, certainly not in the absence of any connection to infringement by a co-defendant domiciled in a UPC Contracting Member State. There is not even an allegation that Defendant 2) infringes the Patent in the UK, and in respect of Defendant 3) there is no evidence of this whatsoever. As Claimant itself already stated that Defendant 3) has a sister company in the UK (mn. 113 SoC) as is the case for France, operations in the UK are done through a local entity, Nomios UK&I Ltd, which is responsible for commercial activities in the UK and operates the English domain www.nomios.co.uk. Defendant 3) has no commercial activities in the UK. Defendant 1) is of the opinion that the limitation applies equally to EU Member States that are also UPC Contracting Member States.
- 7 According to Defendant 1) there is no evidence that Defendant 2) sells or licenses Infoblox software, much less that it infringes the Patent. Such evidence does not exist, because

Defendant 2) operates as an employment entity within the Infoblox group. It is not a party to any sale or license related to any Infoblox product and has no involvement in their distribution.

- 8 Defendant 1) argues that also with respect to Defendant 3), the SoC remains vague as to how this entity infringes the patent, stating only that it is “an authorized partner of Defendant 1)”. For substantiation of its allegations, Claimant refers to excerpts from the websites www.nomios.de (AMPER 21) and www.nomios.com (AMPER 22). But the excerpt from the German site, www.nomios.de, contains no concrete offer of any Infoblox product, let alone the Infoblox products which the claimant alleges to infringe the Patent. Defendant 1) submits as further evidence that this domain is operated by Nomios USA Inc. and not Defendant 3), as Exhibit HRM 01. In sum, according to Defendant 1) Claimant has failed to provide any evidence that Defendants 2) and 3) are engaged in the sale of Nios, Nios-X, or Advanced DNS Protection, or any Infoblox product for that matter.
- 9 If the Court were to accept that infringing acts by Defendants 2) and/or 3) have been pleaded with sufficient plausibility at least for the purpose of establishing jurisdiction over Defendant 1), Defendant 1) argues that such jurisdiction would in any case have to be limited to Germany. As there is not even an allegation that either Defendant 2) or Defendant 3) infringes the Patent in Finland, the Court cannot assume international jurisdiction over Defendant 1) on the basis of Article 8(1) BR insofar as the claims against it relate to Finland. The same applies to France.
- 10 Defendant 1) protests with submission dated 29 April 2026 that it is impermissible for the Claimant to rely, for the first time in the Reply PO, on Art. 7(2) BR as a basis for (international) jurisdiction over Defendant 1). According to Defendant 1) Claimant has conceded that Art. 7(2) Brussels I Reg “was not explicitly mentioned in the SoC” (mn. 23 Reply PO). It explained why it chose not to rely on Art. 7(2) Brussels I Reg, which was “because Art. 8(1) [Brussels I Reg] provides for a broader scope of jurisdiction, e.g. longarm jurisdiction for the UK”. The Claimant cannot add a wholly different ground of international jurisdiction after learning from the PO that its case under Art. 8(1) BR is fatally flawed.

Claimant’s position

- 11 The Claimant argues that the infringing acts of Defendant 1) itself establish the Courts jurisdiction (Local Division Hamburg) pursuant to Art. 7 (2) in conjunction with Art. 71b (2) BR. As stated in the SoC, Defendant 1) itself infringes the patent in suit in Germany. Furthermore Defendant 1) infringes the patent in France and Finland which are UPC Member States and therefore within the jurisdiction of the Court pursuant to Art. 33 (2) UPCA. This is not contested by Defendants.
- 12 The Claimant is of the opinion that it stated in the SoC (para. 174 – 180) that Defendants are patent infringers individually, which is why the question, if Art. 8 (1) BR applies regarding an intermediary's liability in light of the Dyson/Dreame referral, has not to be decided here. Instead, the UPC can derive its jurisdiction regarding Defendant 1) from its

universal jurisdiction against Defendant 2) and/ or 3) on the basis of the already established harmonized interpretation of the Brussels Regulation.

- 13 The Claimant argues that the CJEU has since Roche v Primus expressly softened these strict requirements and now applies Art. 8 (1) BR as having a significantly broader scope of application. In Solvay v Honeywell (12 July 2012, C-616/10), the CJEU confirmed that a 'connection' pursuant to Art. 8 (1) BR exists even if the defendants are domiciled in different states but have infringed the same national part of a European patent by carrying out reserved acts in relation to the same product. To summarize, according to the CJEU case law, a risk of conflicting judgments pursuant to Art. 8 (1) BR exists when a claimant alleges in a substantiated way that defendants infringe the same patent with the same product(s).
- 14 Contrary to Defendants' argument, it is not a requirement of Art. 8 (1) BR that the alleged collective infringement takes place within UPC territory. Neither is it necessary to examine the plausibility of any acts committed by Defendants 2) and 3) for the purposes of establishing jurisdiction.
- 15 Pursuant to R. 13.1(i) RoP it is required that the SoC contains an indication of the division before which the case is brought and an explanation of its jurisdiction. Such an allegation can be done either by stating infringing acts of defendants jointly or individually. It is then for the court to determine whether the alleged infringement is plausible to establish jurisdiction. In any event, a Claimant's obligation to substantiate cannot extend so far as to require the Court to reach a decision on patent infringement, since the question of infringement is to be decided in the case on the merits.
- 16 The Claimant is of the opinion that contrary to Defendants' allegations, the infringing acts of Defendant 2) and 3) are not relevant to establish jurisdiction under Art. 8 (1) BR. It is sufficient that all three Defendants infringe the patent in suit by selling, marketing and/ or deploying the Infoblox Software systems. Therefore, they infringe the same patent by selling the same products. Even if the Website is operated by an American domain owner, as Defendants state (para. 16 PO) the infringement can be attributed to Defendant 3), as it is explicitly named on the website accessible in Germany.

REQUESTS BY THE PARTIES

17 Defendant 1) request the Court:

1. to dismiss the case against Defendant 1), Infoblox Inc., for lack of international jurisdiction under Art. 31 UPCA in conjunction with Art. 71b(2) and Art. 8(1) Brussels I Reg;

2. In the alternative:

to dismiss the case against Defendant 1), Infoblox Inc., for lack of international jurisdiction under Art. 31 UPCA in conjunction with Art. 71b(2) and Art. 8(1) Brussels I Reg, insofar as the claims against Defendant 1) relate to France, Finland, and the UK;

3. In the further alternative:

to dismiss the case against Defendant 1), Infoblox Inc., for lack of international jurisdiction under Art. 31 UPCA in conjunction with Art. 71b(2) and Art. 8(1) Brussels I Reg, insofar as the claims against Defendant 1) relate to the UK.

4. Both primarily and in the alternative:

to order that claimant bears the costs of this Preliminary Objection.

18 The Claimant requests:

1. The Preliminary objection dated 10 April 2026 is dismissed.
2. Defendant 1) bears the costs of the Preliminary objection proceedings.
3. In the alternative, the Preliminary objection is to be dealt with in the main proceedings.

GROUND FOR THE ORDER

19 Pursuant to Rule 19.1 (a) RoP, a defendant may lodge a Preliminary objection concerning the jurisdiction and competence of the Court.

20 The preliminary objection is admissible because it was lodged in due form and within the time limit specified in Rule 19.1-3 RoP. The application is also successful in substance with respect to the UK part of the patent in suit (item 3. of the request). International jurisdiction with respect of Defendant 1) for the indicated territories of the UPCA countries Germany, France and Finland follow Art. 7(1) and Art. 8(1) BR.

1. Art. 7 (2) Brussels I recast

21 The Claimant is not blocked from invoking Art. 7 BR as a ground for international jurisdiction of the UPC in the response to the preliminary objection. This does in the present case not give any broader jurisdiction than following Art. 8 BR, though.

22 Rule 13.1(i) RoP requires that the Statement of claim contains an indication of the division before which the case is brought and an explanation of its jurisdiction. The intention of this provision is that the claimant must bring forward sufficient facts and submissions to establish internal and international jurisdiction of the Court (cf. CoA, Order of 13 March 2026 – UPC_CoA_922-925/2025 – Keeex/Adobe et al, mn. 44). This requires in substance that the Claimant provides the relevant facts on which the Court can assess its jurisdiction, without necessarily mentioning the exact legal provision in the applicable regulation as it is the Court's duty to apply the relevant law, without any necessity that a party is citing the (correct) law provision.

23 In the present case, the Claimant provided sufficient facts in SoC mn. 93 to establish jurisdiction under the principle of the place of the damage that has occurred or threaten to occur. Regarding Defendant 1) the Claimant referred to the factual allegation that it is the website operator of the general website www.infoblox.com with the possibility to download the NIOS software. This is sufficient to open jurisdiction under Art. 7 sub (2) BR

concerning the territory of the UPCA countries mentioned in the SoC, which is Germany, France and Finland.

- 24 However, the scope of Art. 7 sub (2) BR in conjunction with Art. 71b (1) BR is limited to infringing acts in the Contracting Member States of the UPCA (CJEU, Decision of 22 January 2015 - C-441/13, GRUR 2015, 296 Rn. 36 – Pez Hejduk v EnergieAgentur.NRW, on copyrights), which the UK is not. The CoA has already clarified that as court of the place where the damage occurred or may occur (Art. 7 BR), the UPC has jurisdiction only to hear cases concerning damage occurring in its territory, which is the only link between the court seized and the subject matter of the dispute (CoA, Order of 13 March 2026 – UPC_CoA_922-925/2025 – Keeex/Adobe et al, mn. 44). Thus, the international jurisdiction with respect of Defendant 1) regarding the UK national part of the patent in suit can only be obtained by means of Art. 8 BR.

2. Art. 8 (1) Brussels I recast

- 25 In the present case the requirements of Art. 8 (1) BR are equally only met with respect to the territories of Germany, France and Finland. Defendants 2) and 3) can serve as anchor defendants for Defendant 1) for Germany, France and Finland, but not for the UK, as no activities of the anchor defendants is substantiated in the UK.

a) Anchor Defendant

- 26 According to Art. 8 (1) BR a person domiciled in a Member State may also be sued where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. Art. 71b (2) BR extends this provision for the UPC to persons not domiciled in an EU Member State, like here the US-based Defendant 1).

- 27 In any case, Art. 8 (1) BR requires a close connection with a defendant who is domiciled in the UPCA area and who is, thus, subject to the UPC's universal jurisdiction under Art. 4 BR (LD Hamburg, Order of 7 April 2026 – UPC_CFI_2255/2025 – Dyson v Dreame II, mn. 52). It requires that the respective claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings (CoA, Order of 6 March 2025 – UPC_CoA_789/2025 and UPC_CoA_813/2025, GRUR-RS 2026, 3074 mn. 15 – Referral order Dyson/Dreame).

aa) Universal jurisdiction

- 28 It is rightfully not disputed that the UPC has jurisdiction with respect to Defendants 2) and 3) as they are incorporated in Germany. Pursuant to Art. 4 (1) BR, persons domiciled in a Member State, whatever their nationality, shall be sued in the courts of that Member State. Following Art. 63 (1) BR a company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat; central administration; or principal place of business. This jurisdiction in the forum of the courts of the Member State in which the defendant is domiciled or has its seat under Art. 4 (1)

BR is a universal jurisdiction (LD Düsseldorf, Order of 28 January 2025 – UPC_CFI_355/2023, ACT_578607/2023 – FUJI Film).

29 As according the UPC is considered to be a court of member state just like the national EU Member State courts (Art. 71a BR), with a territory encompassing *all* Contracting Member States, the UPC has not only international jurisdiction under Art. 4 BR for every defendant, who is based or domiciled within *any* Contracting Member State of the UPCA (CoA, Order of 6 March 2025 – UPC_CoA_789/2025 and UPC_CoA_813/2025, GRUR-RS 2026, 3160 mn. 17 – Injunction order Dyson/Dreame; see also LD The Hague, Order of 6 February 2026, UPC_CFI_875/2025, mn. 4.2.2. – Abbott/MicroTech), but also for all acts committed in any country within the UPCA territory, comp. Art. 34 UPCA. Hence, the UPC is competent to hear the case against Defendants 2) and 3) in all relevant countries Federal Republic of Germany, the Republic of France and Finland.

30 The connection with the UPC territory is established by the domicile of Defendants 2) and 3), and not the location where the acts of the defendant occurred. According to the CoA, in this respect it is not necessary to examine the plausibility of any acts committed by the Defendants 2) and 3) France or Finland for the purposes of establishing jurisdiction (cf. CoA, Order of 6 March 2025 – UPC_CoA_789/2025 and UPC_CoA_813/2025 – Referral order Dyson/Dreame, mn. 12; CoA, Decision of 2 June 2026 – UPC_CoA_312/2025 UPC_CoA_333/2025 UPC_CoA_880/2025 UPC_CoA_882/2025 – Kodak v Fujifilm, mn. 294).

bb) Close connection

31 The close connection with regards to Defendant 1) is established in the present case with respect to the indicated UPCA Member States as the Claimant provided undisputed facts that Defendants 2) and 3) are active in the distribution or the support of the distribution in *Germany*. According to mn. 107 of the SoC Defendant 2) is officially registered with the purpose to “support services for the sale and marketing of Infoblox software systems” (AMPER 20). Whether or not Defendant 2) indeed sells or licenses Infoblox software, or – as the Defendant 1) claims – is not a party to any sale or license related to any Infoblox product and has no involvement in their distribution, is a question for the assessment of liability on the merits.

32 The same applies to Defendant 3) who is according to mn. 110 of the SoC an authorized partner of Defendant 1) and offers infringing products on its website according to mn. 110 of the SoC. The Claimant referred to that on their website Defendant 3) states that “Nomios Germany is an award-winning Infoblox Partner” (AMPER 21). Whether or not this qualifies for any liability for the alleged patent infringement is a question for the decision on the merits.

33 Hence, as both Defendants 2) and 3) are allegedly active or supportive in the distribution of the attacked embodiments within the territory of the UPC, it is expedient to hear the cases together in order to avoid irreconcilable judgements. As the UPC is a Court with a territory encompassing *all* Contracting Member States, Defendants 2) and 3) - who are

sued in their universal place of jurisdiction – can function as an anchor for the entire territory of the UPC member states with respect to Defendant 1).

b) UK part of the patent in suit

- 34 Despite the fact, that the UPC has jurisdiction over Defendant 2) and 3) based on its domicile in the UPCA countries, which could in principle also cover acts in the territory in non-UPC and non-EU countries (cf. CoA, Decision of 2 June 2026 – UPC_CoA_312/2025 UPC_CoA_333/2025 UPC_CoA_880/2025 UPC_CoA_882/2025 – Kodak v Fujifilm, mn. 280), the necessary close connection required by Art. 8 BR is not established for the United Kingdom.
- 35 Contrary to Claimant’s position, the place and effect of infringing acts of Defendant 2) and 3) are still relevant to establish jurisdiction under Art. 8 (1) BR, when it comes to invoke the UPC’S jurisdiction over a national part of a European Patent that is *not* a member of the UPCA. Only for the jurisdiction under Art. 4 BR it is not necessary to examine the plausibility of any acts committed by these Defendants, because then the connection with the UPC territory is established by the domicile and not the location where the acts of the defendant occurred (cf. CoA, Order of 6 March 2025 – UPC_CoA_789/2025 and UPC_CoA_813/2025 – Referral order Dyson/Dreame, mn. 12). To establish jurisdiction under Art. 8(1) BR (or Art. 7(1) Lugano) this would require the Claimant to allege facts which relate to that specific country, which means the UK. Claimant cannot rely on the mere fact that the UPC has universal jurisdiction for two Defendants when acts in non-UPC and even non-EU countries are in question. For establishing international jurisdiction, claimants have to substantiate that the parties allegedly infringe the *same* national patent jointly in the country the claimant is seeking an injunction (comp. LD The Hague, Order of 23 May 2025 – UPC_CFI_191/2025 and 192/2025, mn. 18; LD Paris, Order of 14 April 2026 – UPC_CFI_2070/2025 p. 6).
- 36 Hence, for the purpose of establishing jurisdiction under Art. 8(1) BR the plausibility of acts of the alleged *anchor* is decisive. It is clearly not sufficient that all three Defendants individually infringe *different* national parts of the patent in suit by selling, marketing and/ or deploying the Infoblox Software systems, without acting jointly. Independent actors acting in different countries, but not in the one the Claimant is seeking jurisdiction for, cannot be deemed to be closely connected so that it would be expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.
- 37 In the present case, the Claimant has not asserted any facts which could allow the conclusion that Defendant 1) together with one party, who is sued in its universal jurisdiction, jointly infringe the *UK part* of the patent. Hence, the alleged situation is not one, where Defendant 1) jointly with Defendant 2) and/or 3) infringe the same national part of a European patent with the same product. Any joint infringement in other countries does not say anything about actions in the UK. Hence, it is irrelevant for the assessment of jurisdiction for the UK part of the patent that Defendant 3) is named on a website which is operated by an American owner.

3. Procedural consequences

- 38 As the objection prevails with its item 3. the case against Defendant 1) is to be dismissed as inadmissible for lack of international jurisdiction, insofar as the claims relate to the UK part of the patent in suit
- 39 Rule 19 RoP does not offer an isolated cost decision for this type of application. The costs are costs of the main proceeding.
- 40 Leave to appeal has not been requested. According to R. 21.1 RoP a decision of the judge-rapporteur allowing the Preliminary objection may be appealed pursuant to Rule 220.1(a).

ORDER

I. The case against Defendant 1), Infoblox Inc., is dismissed as inadmissible for lack of international jurisdiction, insofar as the claims against Defendant 1) relate to the UK national part of EP2005696.

II. The remaining preliminary objection is dismissed.

III. The costs of the preliminary objection are costs of the main proceeding.

INFORMATION ON THE APPEAL

The present decision allowing the Preliminary objection 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 21.1, 220.1(a) and 224.1(a) RoP).

SIGNATURES

Stefan Schilling
Digital signiert von Stefan Schilling
DN: cn=Stefan Schilling, c=DE,
email=stefan.schilling@unifiedpatentcourt.org
Datum: 2026.06.08 11:20:38 +02'00'

Judge rapporteur Dr. Stefan Schilling



For the sub-registry