



Appeal n°:

UPC-CoA-126/2026

PROCEDURAL ORDER
of the Court of Appeal of the Unified Patent Court
issued on 28 September 2026
concerning an application for re-establishment of rights pursuant to R. 320 RoP

APPELLANTS AND APPLICANTS (DEFENDANTS AND COUNTERCLAIMANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. **Keysight Technologies, Inc.**, Santa Rosa, California, United States of America
2. **Keysight Technologies Deutschland GmbH**, Böblingen, Germany

(hereinafter “**Keysight**”)

represented by Klaus Haft, attorney-at-law, HOYNG ROKH MONEGIER, and other representatives of that firm and of Samson & Partner Patentanwälte

RESPONDENT (CLAIMANT AND COUNTERDEFENDANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Centripetal Limited, Galway, Ireland

(hereinafter “**Centripetal**”)

represented by Dr. Ralph Nack, attorney-at-law, Noerr PartG mbB and other representatives of that firm

PATENT AT ISSUE

EP 3 821 580

PANEL AND DECIDING JUDGES

Panel 1c

Klaus Grabinski, President of the Court of Appeal

Peter Blok, legally qualified judge and judge-rapporteur

Paolo Catallozzi, legally qualified judge

Eric Augarde, technically qualified judge

Torsten Duhme, technically qualified judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Decision of the Mannheim Local Division, dated 5 December 2025

Reference numbers: UPC-CFI-414/2024 (infringement action)
 UPC-CFI-729/2024 (counterclaim for revocation)

FACTS AND REQUESTS OF THE PARTIES

1. Centripetal brought an infringement action against Keysight before the Mannheim Local Division, alleging direct infringement of European Patent 3 821 580 (“the Patent”).
2. Keysight filed a counterclaim for revocation, which was heard together with the infringement action. During the oral hearing, Keysight made the counterclaim for revocation conditional on the panel ruling in favour of infringement, and requested that the panel only consider the counterclaim if it ruled that the challenged embodiments infringed the Patent.
3. In its decision of 5 December 2025 (“the Impugned Decision”), the Local Division held that the Patent had not been infringed and that the condition for deciding the counterclaim for revocation was not fulfilled. Consequently, the Local Division did not decide on the counterclaim, dismissed the infringement action and ordered Centripetal to bear the costs of the infringement proceedings.
4. Centripetal filed an appeal against the dismissal of the infringement action (UPC-CoA-14/2026).
5. In its order of 16 July 2026, issued in the proceedings between Emboline v. AorticLab (UPC-CoA-40/2026), the Court of Appeal found that a clarification of the possibility of making a counterclaim for revocation conditional upon a finding of infringement was needed, since this possibility is not expressly addressed in either the UPCA or the Rules of Procedure (para. 6). In the same order, the Court of Appeal clarified as follows:

“7. In the event of an appeal by the infringement claimant, the counterclaimant may appeal against the Court of First Instance’s decision not to decide on the counterclaim for revocation. Even though upon a finding of non-infringement a decision not to decide on the counterclaim is in accordance with the counterclaimant’s request, the (conditional) counterclaimant must nevertheless be considered to have a legitimate interest in an appeal since, if the Court of Appeal were to overturn the Court of First Instance’s decision and finds an infringement, the condition would be fulfilled and the decision of the Court of First Instance holding that the condition was not fulfilled must be set aside.

8. The counterclaimant may lodge an appeal pursuant to R. 220.1(a) RoP under the condition that the infringement claimant lodges an appeal against the decision in the infringement action. Once an appeal in the infringement action is lodged, the condition is fulfilled and the applicable (regular) appeal fee must be paid. If no appeal against the decision in the infringement action is lodged within the time period indicated in R. 224 RoP, then the condition under which the appeal in the counterclaim for revocation action was lodged is not fulfilled, the appeal is considered to be not lodged and no appeal fees shall be due.

[...]

12. Since the possibility of making a counterclaim for revocation conditional upon a finding of infringement is not expressly addressed in either the UPCA or the Rules of Procedure, and it has only been clarified in this order how the counterclaimant should proceed upon a finding of non-infringement by the Court of First Instance,

AorticLab [counterclaimant in that case] may wish to request re-establishment of rights pursuant to R. 320 RoP.”

6. On 27 July 2026, Keysight filed a Statement of appeal and Statement of grounds of appeal, requesting – in summary – that the Court of Appeal revoke the Patent in the event the Court of Appeal sets aside the Local Division’s finding of non-infringement. Simultaneously, it filed an Application for the Re-establishment of rights pursuant to R. 320.2 RoP, requesting that its rights be re-established for the purpose of lodging the appeal against the Impugned Decision, in the event that the panel handling the case shares the legal position adopted by the panel in the Order of 16 July 2026.
7. Centripetal was given the opportunity to respond to the Application for Re-establishment of rights and, in the event that Keysight’s request for re-establishment is granted, to the time limit for the Statement of response of one month from the service of the order on the Application, which the judge-rapporteur proposed in view of the limited content of Keysight’s Statement of appeal and Statement of grounds of appeal.
8. In its response, Centripetal requested that the Court of Appeal dismiss the Application for Re-establishment of rights, order Keysight to bear the costs of the Application, and, in the event that re-establishment is granted, set the time limit for the Statement of response at three months, or at least two months from the service of the order on the Application.

GROUNDS

Admissibility of the Application for Re-establishment of rights

9. Centripetal was right not to challenge the admissibility of Keysight’s Application for Re-establishment of rights.
10. The Application concerns the time limits for filing the Statement of appeal and the Statement of grounds of appeal (R. 224.1(a) and 224.2(a) RoP). The non-observance of these time limits by Keysight has the direct consequence of losing means of redress within the meaning of R. 320.1 RoP, namely an appeal against the Impugned Decision.
11. The Application was filed within the time periods of R. 320.2 RoP. It was filed within six months of the expiry of the time limits for filing the appeal statements and within one month of the removal of the alleged cause for non-observance of the time limits.
12. Keysight further performed, with its application, the omitted act of lodging the Statement of appeal and Statement of grounds of appeal, as required by R. 320.4 RoP.

Merits of the Application for Re-establishment of rights

13. Pursuant to R. 320.1 RoP, the Court may re-establish a means of redress where a party has failed to observe a time limit for a cause which, despite all due care having been taken by the party, was outside his control.
14. In the Emboline case, cited above, this Court has already decided as follows regarding an Application for Re-establishment of rights by AorticLab in a situation similar to the present case (UPC-CoA-40/2026, order of 17 August 2026, Emboline v. AorticLab):

“48. In view of the case law of the Court of Appeal on the required interest in an appeal in accordance with R. 220.1 RoP, which states that an appeal may be brought by a party “adversely affected” (orders of 17 April 2026 in UPC-CoA-901/2025, Abbott v. Sinocare and of 2 July 2026 in UPC-CoA-19/2026, Guardant Health v. Sophia Genetics), it was not obvious that a conditional counterclaimant would have a sufficient interest in an

appeal where the Court of First Instance, in accordance with such counterclaimant's request, did not decide on the counterclaim for lack of fulfilment of the condition and ordered the counterclaimant to bear the costs as having been unnecessarily made.

[...]

50. AorticLab could thus reasonably trust that the Court would not allow a request by a counterclaimant to make its claim conditional upon a finding of infringement, without there being a possibility that the counterclaimant pursue its conditional counterclaim upon a finding of infringement on appeal. Considering the above-mentioned case law, which AorticLab could reasonably interpret such that it failed the required interest in bringing an appeal from the outset, [...], AorticLab could reasonably assume that it would at any rate still be allowed to pursue its counterclaim as part of its Statement of response or as part of a cross-appeal to be filed together with its Statement of response pursuant to R. 237 RoP."

15. It follows that Centripetal's argument that Keysight should have filed an appeal, even though it was uncertain whether the appeal would be admissible, cannot succeed. In the specific circumstances of the case, Keysight could not reasonably be expected to file the appeal. This changed only with the 16 July 2026 order in the Emboline v. AorticLab case, cited above, in which the Court of Appeal set out how the counterclaimant should proceed upon a finding of non-infringement by the Court of First Instance.
16. The assessment is not changed by the fact that Keysight has not submitted any evidence in the form of affidavits from the persons involved in the non-observance of the time limits and the persons involved in establishing precautionary measures of due care taken in order to avoid such cases of non-compliance (cf. R. 320.3(b) RoP). In the present case, the submission of evidence is not required, since the relevant facts are not in dispute between the parties.

Time limit for the Statement of response

17. The time limit for lodging the Statement of response will be three months from the date of service of the Statement of grounds of appeal, as provided by R. 235.1 RoP.
18. The Court of Appeal will not shorten the time limit for the Statement of response, in view of Centripetal's objections against the shortening.
19. Centripetal's request for a time limit of three or two months from the date of service of the order on the Application for Re-establishment must be dismissed. Granting the request would extend the time limit for the Statement of response beyond three months after the service of the Statement of grounds of appeal under R. 235.1 RoP. Centripetal has not provided any reasons for such an extension.

Costs

20. The Court will not decide on costs, because this order does not conclude the action.

ORDER

The Court of Appeal

- I. Re-establishes Keysight's right to lodge a Statement of appeal against the Impugned Decision and to lodge a Statement of grounds of appeal;
- II. Rejects Centripetal's request concerning the time limit for the Statement of response.

This order was issued on 28 September 2026.

Klaus Grabinski, President of the Court of Appeal

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MARTIN
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Unified Patent Court
Einheitliches Patentgericht
Jurisdiction unifiée du brevet