

Order
of the Court of Appeal of the Unified Patent Court
issued on 21 October 2026
concerning a request for a discretionary review under 220.3 RoP

APPELLANTS (DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Amazon Web Services, Inc.**, Tumwater, United States of America
2. **Amazon Web Services EMEA SARL**, Luxembourg, Luxembourg
3. **AWS European Sovereign Cloud GmbH**, Potsdam, Germany
4. **Amazon Data Services Italy S.r.l.**, Milan, Italy

(hereinafter jointly referred to as “**Amazon**” or “**Appellants**”)

represented by attorney at law Klaus Haft, from HOYNG ROKH MONEGIER, Düsseldorf, Germany, and other representatives of that firm and of Trevisan & Cuonzo, Rome and Milan, Italy

RESPONDENT (CLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

NIXU FL IP PROTECTION LLC, Sunny Isles Beach, United States of America

(hereinafter referred to as “**NIXU**”)

represented by attorney at law Dr. Emanuela Bianco, from Saglietti Bianco, Turin, Italy, and other representatives of Thum & Partner, Munich, Germany and Studio Galli Avvocati, Milan, Italy

PATENT IN SUIT

EP 3 417 570

DECIDING JUDGE

Emmanuel Gougé, legally qualified judge and standing judge

IMPUGNED ORDER

Order of the Local Division Milan issued on 9 October 2026 in the infringement action UPC-CFI-0002434/2026 (R.333 RoP) confirming the Order of 4 September 2026 of the Judge-Rapporteur on the alignment of deadlines (R. 9 RoP).

SUMMARY OF FACTS AND INDICATION OF PLEADINGS

1. On 6 July 2026 NIXU lodged an infringement action against Amazon for infringement of the patent in suit with the Milan Local Division of the UPC (hereafter “Milan LD”). The service of the Statement of claim to Amazon was completed respectively on 29 July 2026 (Appellant 4), 3 August 2026 (Appellants 2 and 3) and 11 August (Appellant 1).
2. On 31 August 2026, Amazon filed an application under R. 9.3 RoP for alignment of the time limits, requesting the Court to set the deadline for the Statement of defence as well as for the Counterclaim for revocation for all defendants uniformly to 11 November 2026 and, in the alternative, to a common date between 29 October and 11 November 2026 that the Court will consider appropriate.
3. The judge-rapporteur allowed the application for an alignment of date and ordered that, for all defendants, the period for filing the Statement of defence and Counterclaim for revocation shall run from 29 July 2026 and that, accordingly, the statements of defence and any counterclaims for revocation shall be filed by 29 October 2026 (Milan LD order of 4 September 2026, hereafter the “JR Order”).
4. Following an Application for review filed by AMAZON pursuant to R. 333 RoP, the Panel of the Milan LD dismissed the Application, considering *inter alia* that the date of 29 October 2026 set as a common time limit falls within the period determined by reference to the dates on which the Statement of claim was served on each defendant and governs the further course of the written procedure in a manner consistent with the general principles of proportionality, efficiency and fairness (impugned Order of 9 October 2026). It refused to grant leave to appeal (Order of 14 October 2026).
5. On 15 October 2026, Amazon filed a request for discretionary review pursuant to R. 220.3 RoP, requesting the Court to
 - review and set aside the JR Order insofar as it aligns the deadlines of all Appellants with a deadline calculated from service upon Appellant 4), i.e. 29 July 2026; and
 - to set the deadline for the Statement of defence as well as for the Counterclaim for revocation for all Appellants uniformly to 11 November 2026;
 - in the alternative, to set a deadline for the Statement of defence and for the Counterclaim for revocation for all Appellants at any date between 5-10 November 2026, exercising its discretion.

Amazon also requested the Court of Appeal to exercise its discretion and shorten the time period for NIXU’s response to the request for discretionary review and to set the deadline for NIXU’s response on 20 October 2026, or such date as the Court considers sufficient to decide on the present appeal ahead of 29 October 2026.

6. Amazon argues *inter alia* that the Milan LD did not comply with Art. 15 of the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters of 15 November 1965 (hereafter “the Hague Service Convention”), that corporate connections between companies are not sufficient to consider the service on a group company in a different continent to result in effective notification of a US-based company and that the balance of interests should be in favour of Amazon.

REASONS FOR THE ORDER

7. The request for discretionary review is admissible but is denied.
8. In the present case, parties agree that time limits for filing submissions should be aligned, they disagree however as to whether a time extension should be granted to Amazon for lodging their Statement of defence and Counterclaim for revocation.
9. Under R. 9.3(b) RoP the Court may shorten any time period on a reasoned request by a party. When considering such a request, the Court has to balance the interests of both parties, whereby due account must be given to the principles of due process, among which equality of arms (UPC_CoA_405/2024, 30 July 2024, *Alexion v Amgen*, para. 5).
10. When deciding whether to allow a discretionary review pursuant to R. 220.3 and 4 RoP, it should be considered whether the Court of First Instance went beyond the boundaries of its discretion, whether the impugned order is manifestly incorrect and whether it raises a fundamental question of law, that its review is necessary to ensure a consistent application and interpretation of the Rules of Procedure or any other objective of the discretionary review (UPC_CoA_807/2025, 2 September 2025, *CeraCon v. Sunstar*, para. 12; UPC_CoA_489/2024, 6 September 2024, *Motorola v. Ericsson*, para. 4; UPC_CoA_826/2024, 23 December 2024, *Microsoft v Suinno*, para. 10; UPC_CoA_95/2026, 10 July 2026, *Adobe v Keex*, para. 25).
11. In the present case, Amazon has failed to demonstrate that the Milan LD has been manifestly wrong in the exercise of its discretion in confirming the date of 29 October 2026 as the common time limit for the Appellants for lodging their Statement of defence and Counterclaim for revocation.
12. As rightly stated by the Milan LD, in the absence of agreement between the parties, the alignment of deadlines is a matter for the Court's discretion, to be exercised in accordance with the general principles of proportionality, efficiency and fairness.
13. The specific circumstances of the case have been duly taken into account by the Milan LD, pointing to the joint representation of the Appellants and referring to Amazon's own statement according to which "the allegations presented against them concern the same patent and substantially the same factual, technical and legal issues".
14. The Appellants' corporate connection is another fact that the Milan LD has rightly considered as relevant, together with the other circumstances, which plainly facilitates coordination in the preparation of Amazon's written submissions and which support an alignment of procedural deadlines within the boundaries of its discretion.
15. Reference to Art. 15 of the Hague Service Convention, and its provision that service or delivery shall be effected "in sufficient time to enable the defendant to defend", does not change this. As Art. 15 of the Hague Service Convention does not specify what is meant by "sufficient time", as also admitted by Amazon, it leaves the definition to the procedural law applicable in the relevant court, meaning in the case-at-hand to Art. 41 UPCA, R. 9.3 and 23 RoP. In light of the above circumstances (para. 13-14), and considering that the time between the first service (to Appellant 4) and the second date of service (to Appellants 2 and 3) amounts to 2 working days, that the time between the date of the second service and the date of the third service (to Appellant 1) amounts to 6 working days, and considering that the date of 29 October 2026 set by the Milan LD is within the range of dates requested by Amazon in their alternative request for deadlines alignment, Amazon has not demonstrated that the Milan LD exceeded the limits of the discretion granted to it by R. 9.3 RoP or exercised that discretion in a manifestly incorrect manner.
16. The alternative request to set a deadline for the Statement of defence and for the Counterclaim for revocation at any date between 5-10 November 2026 has been filed by Amazon for the first time in the

appeal proceedings. It differs from the alternative request filed in first instance whereby the requested dates ranged from 29 October to 11 November 2026.

17. In the absence of any specific circumstances and further explanation brought by Amazon to support this new request, it shall be dismissed pursuant to R. 222.2 RoP, according to which requests which have not been submitted by a party during proceedings before the Court of First Instance may be disregarded by the Court of Appeal.
18. In view of the above, and considering the date for lodging the Statement of defence and for the Counterclaim for revocation, there is no need to consult NIXU.

ORDER

The request for discretionary review is denied.

This order was issued on 21 October 2026

Emmanuel Gougé



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RENÉ GOUGÉ
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Emmanuel Gougé, legally qualified judge and standing judge