Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

- Central Division, seat in Milan -

UPC_CFI_2221/2026
Procedural Order (on a PO under R. 19 RoP)
of the Court of First Instance of the Unified Patent Court
delivered on 22/10/2026

1. The UPC has no jurisdiction to entertain a claim seeking a declaration that a composition, independently of a specific patent right, was obvious at a given priority date.
2. The UPC has jurisdiction to ensure the effectiveness of the judicial protection entrusted to it. That jurisdiction extends to conduct designed to circumvent its exercise, including the abusive use of divisional applications. In revocation proceedings or actions for a declaration of non-infringement, that jurisdiction may be exercised, in particular, by declining to dispose of the action under Rule 360 RoP and by determining that a patent lack(ed) inventive step, notwithstanding its withdrawal at the proprietor's initiative.
3. The UPC Central Division has an autonomous jurisdiction to grant provisional and protective measures in matters entrusted to it by the UPCA which includes the power, where necessary, to preserve the effectiveness of pending revocation proceedings, to restrain a party from withdrawing its approval of the text of the patent under Art. 113(2) EPC.

CLAIMANT

	Sandoz AG, Centralbahnstrasse 4, 4051 Basel, Switzerland	Represented by Bird & Bird LLP, Maximiliansplatz 22, 80333 Munchen, Germany, notably patent attorney Dr. Jan van Dieck and attorney at law Oliver Jan Jungst, LL.M.

DEFENDANT

	Novo Nordisk A/S, Novo Alle, 2880 Bagsvard, Denmark	Represented by Bristows (Ireland) LLP 18-20 Merrion St Upper Dublin 2, D02 XH98 IRELAND with Counsellors: Claire Phipps-Jones, Rachel Mumby, Brian Cordery, Naoise Gaffney, Eden Winlow

PATENT AT ISSUE

Patent no.	*Proprietor/s*
EP 3 689 365	**NOVO NORDISK A/S**

COMPOSITION OF PANEL:

Presiding Judge and JR	Andrea Postiglione
Legally Qualified Judge	Anna-Lena Klein
Technically Qualified Judge	Rudi Goedeweeck

DECIDING JUDGE:
This order is issued by the panel

LANGUAGE OF PROCEEDINGS: English

FACTUAL BACKGROUND

Sandoz AG brought revocation proceedings against Novo Nordisk A/S with the Milan Central Division in relation to Unitary Patent EP 3 689 365. The patent concerns a composition comprising semaglutide for use in the prevention or treatment of type 2 diabetes, administered once weekly at a dose of 1.0 mg, with parenteral administration.

In its Statement of Claim, Sandoz seeks revocation of the patent in its entirety, relying principally on lack of inventive step and added matter. In addition to the ordinary revocation relief (1, 2 and 3) and costs (4), Sandoz formulates three further requests:

5) *that pursuant to its inherent jurisdiction, the Court declares that at the priority date of the patent in suit a composition comprising semaglutide for use in the prevention or treatment of type 2 diabetes, wherein semaglutide is administered once weekly in an amount of 1.0 mg, and wherein semaglutide is administered by subcutaneous administration, was obvious to the skilled person in the art having regard to the common general knowledge and/or the prior art relied upon in the present proceedings;*
6) *that the Court, for all patents it has competence under Art. 32.1 UPCA pursuant to its inherent jurisdiction, declares any claim of a Unitary Patent or respective European Patent granted for the Contracting Member States, entitled to claim the priority date of any application within the patent family of EP 3 689 365 broad enough to cover the subject matter of claims 1 to 5 of the patent in suit, would be invalid on the grounds of lack of inventive step; and*
7) *to safeguard the Claimant's legitimate interest in legal certainty on the validity of the claimed subject matter that the Court issues an order - under penalty to be further specified by the Court - that prevents the Proprietor from withdrawing the approval of the text of the Patent at the EPO (Art. 113(2) EPC) until the EPO opposition division, the Board of Appeal, or the UPC issues a final decision on the validity of the Patent.*

On August 10, 2026, Novo Nordisk filed a preliminary objection pursuant to Rule 19 RoP.

Novo Nordisk's preliminary objection is directed only against Requests 5, 6 and 7. It does not challenge the UPC's jurisdiction to hear the principal revocation action, namely Requests 1, 2, 3 and 4.

The objection is framed as a threshold challenge to the Court's competence under Rule 19.1(a) RoP.

The parties have been heard during an oral hearing which took place in Milan on 28 September 2026 and which exclusively addressed the preliminary Objection.

At the oral hearing, Sandoz clarified that Requests 5, 6 and 7 are purposely directed to preventing the Defendant from using what Sandoz describes as the "divisional game".
The Court therefore assesses the challenged requests in that procedural and substantive context.
Novo Nordisk filed additional comments on 13 October 2026, reiterating the arguments already presented during the oral hearing.
The Judge Rapporteur referred the matter to the Panel.

GROUNDS FOR THE ORDER

1. As mentioned before, with its Preliminary Objection of 10 August 2026, the Defendant, Novo Nordisk A/S, objects to the competence of the Court to entertain Requests 5, 6 and 7 of the Statement of Revocation. It submits that those requests do not fall within any head of competence conferred by Art. 32(1) UPCA. According to Novo Nordisk, the UPC is a Court of 'conferred', not 'inherent' jurisdiction; it may adjudicate only the actions specifically listed in Art. 32(1) UPCA and may grant only those measures, procedures and remedies laid down in the UPC Agreement (UPCA). Request 5 is said to seek an abstract declaration on the obviousness of a product or composition, not revocation of an identified patent and not a declaration of non-infringement. Request 6 is said to seek an open-ended declaration concerning future or unidentified patents or claims, which are not before the Court and may never fall within UPC competence. Request 7 is said to seek a coercive order regulating Novo Nordisk's procedural conduct before the EPO, in particular preventing withdrawal of approval of the text under Art. 113(2) EPC; Novo Nordisk contends that neither the UPCA nor the RoP give this Court supervisory power over EPO procedure. Novo Nordisk therefore requests that Requests 5, 6 and 7 be dismissed as early as possible as inadmissible, that the Preliminary Objection be determined without deferral to the main proceedings, and that the period for filing any defence on those requests be extended pending that determination.

2. Sandoz AG requests dismissal of the Preliminary Objection, or, subordinately, adjudication together with the merits under R. 20.2 RoP. Sandoz submits that the challenged requests are ancillary to, and necessary for the effectiveness of, the revocation action. It relies on the exclusive jurisdiction of the UPC over the unitary patent at issue, on the absence of any national forum once unitary effect has been registered, on the subsidiary enforcement of national law instruments under Art. 24 UPCA and on Art. 47 of the Charter of Fundamental Rights of the European Union. It argues that a restrictive reading of Art. 32 UPCA would leave a permanent gap in judicial protection. Requests 5 and 6 are said to correspond, in substance, to Arrow-type declaratory relief designed to prevent a patentee from avoiding a final invalidity ruling and then pursuing the same subject-matter through divisional applications. The expression derives from the English decision issued by Lord Kitchin in Arrow Generics Ltd v Merck & Co Inc [HC 07 C 00852 - 31 July 2007]. Also in that case, the claimant sought a declaration that its own product was obvious and marketable at the priority date of the defendant's pending divisional applications. The relief sought was intended to clear the way for the claimant's product in respect of patent rights arising from divisional applications that had not yet proceeded to grant. The judge held that such relief could serve a useful purpose where a party faced a real commercial threat from pending divisionals and where the issue was sufficiently clearly defined and justiciable. The declaration did not revoke a non-existent patent; it determined a defined technical and legal proposition capable of preventing later

enforcement of essentially the same subject-matter. These declarations are already admissible under the national practise of some UPC member states. Request 7, instead, is characterised as an inter partes measure, preserving the effectiveness of the pending revocation action, not as an order directed to the EPO. Sandoz also relies on the UPC case law on anti-anti-suit injunctions as showing that the heads of competence in Art. 32(1) UPCA must be interpreted as 'inherent' and in light of effective judicial protection.

3. The issues raised by the Preliminary Objection have a twofold dimension. At a general level, they concern the scope of the Court's jurisdiction and the powers available to it to ensure the effective exercise of the competences conferred by the UPCA. At a more concrete level, they concern whether, and by what means, the Court may prevent the procedural strategy described as the "divisional game" from frustrating the practical effect of pending revocation proceedings. As regards the powers available to the Court, the relevant principles will be stated in paragraph 41 below. By contrast, the "divisional game" raises a specific issue in these proceedings, for which the Court has identified practical solutions that are additional to, and distinct from, the question of jurisdiction.

4. A divisional application is a procedural mechanism by which an applicant may file a further European patent application relating to subject-matter contained in a pending earlier European patent application. Art. 76(1) EPC provides that a European divisional application may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed and, if that requirement is complied with, the divisional application is deemed to have been filed on the filing date of the earlier application and enjoys any priority right. Rule 36(1) EPC provides that "*The applicant may file a divisional application relating to any pending earlier European patent application*" and specifies the formal filing requirements, language requirements and fees for such applications. The rule therefore gives the applicant a procedural possibility even while the earlier application remains pending and even after a refusal by the Examining Division, since a divisional can still be filed by appealing the refusal: appeal has suspensive effect, so the application becomes back 'alive' and can be used as a basis for a divisional.

5. The legitimate function of divisional applications is well known. It enables an applicant to pursue disclosed subject-matter that cannot or should not remain in the parent application, including where a lack of unity objection has been raised, or where procedural efficiency and legal certainty are better served by separate prosecution of distinct aspects of the original disclosure. It is notorious, however, that the possibility of filing 'divisionals' has also been used strategically to duplicate proceedings and keep alive subject-matter on which a negative opinion has already been given by the EPO Opposition Division. An applicant may file a divisional application shortly before refusal of the parent application, and if refusal ensues, pursue the same technical content again through the divisional rather than through an appeal. Such practice is, undoubtedly, allowed but also detrimental to legal certainty for third parties and to the claimant on revocation before the UPC Court.

6. The academic article submitted as BB51 describes the phenomenon in the specific pharmaceutical sector. It explains that after successful challenges to patents blocking generic or biosimilar market entry, divisionals claiming similar subject-matter may emerge, thereby

maintaining uncertainty and delaying market entry. It also describes the practice of withdrawing or de-designating patent rights shortly before an adverse judicial decision, while preserving or filing divisionals covering substantially the same commercial subject-matter. Sandoz submits that the risk is tangible here because a European patent application belonging to the patent family of the patent in suit, EP 4 406 593 (EP'593), is already pending. It further relies on the fact that, in its reply to the Communication pursuant to Rules 69 and 70a(1) EPC of 28 April 2025, the applicant expressly stated: "*Any amendment made herewith is not to be construed as abandonment of subject-matter. Specifically, the Applicant reserves the right to reintroduce any deleted or amended subject-matter at a later stage of prosecution of the present application and/or to file one or more divisional applications*". This reservation explains the basis on which Sandoz invokes the risk of further divisional filings. It does not, however, in the Court's view, amount to unequivocal evidence that Novo Nordisk is presently preparing to implement the alleged "divisional game", since it may also be understood as a sheer general reservation of procedural rights within the pending EPO proceedings. The Court therefore does not consider these materials sufficient to establish, at this stage of the proceedings, misconduct in the present case. The Court therefore intends, at this stage of the proceedings, to adopt a purely systematic approach.

7. Nonetheless, the Court considers it necessary to address the divisional strategy expressly. The 'divisionals' conduct, if used to frustrate judicial scrutiny while maintaining substantially the same exclusionary effect, may fall within the broader legal concept of abuse of rights. In general terms, an abuse of rights arises where a legal entitlement is exercised in apparent compliance with its conditions, but in a manner that departs from the purpose for which the right was conferred. The right to file a divisional application is conferred to organise and protect disclosed subject-matter within the patent grant system; it is not conferred to circumvent, neutralise, or indefinitely postpone effective judicial determination of patent validity. In that sense, the allegation of a "divisional game" is not merely a criticism of prosecution strategy. It raises a question of whether procedural rights are being exercised in a way that undermines the balance between exclusive protection and legal certainty on which the patent system rests.

8. The UPC is, in fact, based on the Unitary Patent Package, which comprises Regulation (EU) No 1257/2012, Regulation (EU) No 1260/2012, the Agreement on a Unified Patent Court (UPCA), the Statute and the Rules of Procedure. Their recitals identify closely related systemic objectives. Recital 4 of Regulation No 1257/2012 states that unitary patent protection is intended to foster scientific and technological advances and the functioning of the internal market by making access to the patent system easier, less costly and legally secure, while improving the level of patent protection through uniform protection and eliminating costs and complexity for undertakings. The preamble to the UPCA likewise records the Contracting Member States' intention, "*to improve the enforcement of patents and the defence against unfounded claims and patents which should be revoked and to enhance legal certainty*", and considers "*that the Unified Patent Court should be devised to ensure expeditious and high quality decisions, striking a fair balance between the interests of right holders and other parties and taking into account the need for proportionality and flexibility*". It further emphasises the Contracting Member States' commitment to the right to an effective remedy before a Court, as guaranteed by Art. 47 of the Charter. Read together with the UPCA and Art. 47 of the Charter, those objectives support an interpretation under which judicial

protection within the package must be effective in practice. The system's purpose would be impaired if the Court were prone to procedural strategies that deprive its validity jurisdiction of practical effect in cases falling within its exclusive jurisdiction.

9. The same conclusion follows from the Charter. Art. 47 of the Charter provides in full: "*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice*". Art. 17 of the Charter provides that: "*1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. 2. Intellectual property shall be protected*".

10. All these provisions must be read together. The protection of patent rights cannot be detached from the procedural mechanisms by which their validity, scope and enforceability are contested. Nor can an exclusive and unified court system be interpreted in a manner that deprives parties of any effective tribunal for a patent-related dispute that falls within the field for which that system was established.

11. The Court of Appeal has clarified the interpretative framework for Art. 32 UPCA in *XSYS v Esko*. At paragraph 23 it held: "*As a provision of an international treaty concluded between States, Art. 32(1) UPCA shall be interpretated in accordance with the principles of customary international law, which are part of the EU legal order (CJEU, Case C-15/17 Bosphorus Queen Shipping Ltd Corp v Rajavartiolaitos, para 67), reflected under Art. 31 VCLT on a general rule of interpretation which provides for an autonomous interpretation of international treaties: 'a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty and in the light of its object and purpose*'. *It means that guidance should be sought in the wording of the provision, with reference to other Articles of the Agreement, and bearing in mind the legal context, including any applicable European Union law"*.

12. The list in Art. 32(1) UPCA remains the starting point and defines the Court's competence. However, that competence cannot be interpreted by isolating each word from the object and purpose of the Agreement. A court entrusted with exclusive jurisdiction over revocation actions, declarations of non-infringement, actions for damages derived from provisional protection, prior use, and provisional and protective measures must have the procedural powers necessary to ensure that those heads of competence are effective. This is not a licence to create an unlimited jurisdiction. The Court does not fail to recognize its competence's limits, since the contracting member states conferred only these limited competences to the UPC. It is however the recognition that a judicial organ must have the inherent procedural authority necessary to protect the integrity and effectiveness of proceedings that are properly heard before it. The Court therefore considers, in line with Sandoz's submissions, that it possesses inherent jurisdiction and not merely jurisdiction

literally conferred by the UPCA. In any event, such so-called 'inherent' jurisdiction is not to be intended as external or additional to the jurisdiction conferred by the UPCA, but is already implicit in and forms an integral part of the conferred jurisdiction, insofar as it is necessary to secure its effective exercise.

13. The UPC has already proceeded on that basis in the field of anti-anti-suit injunctions. In Huawei v Netgear (UPC_CFI_791/2024 Decision of 11.12.2024), the Munich Local Division granted an ex parte anti-anti-suit injunction to prevent a party from seeking foreign relief that would have interfered with enforcement of patent rights before the UPC, identifying Art. 32(1)(a) and (c) UPCA, together with Arts. 17(2) and 47 of the Charter, as the legal framework supporting such relief: the UPC may protect the effectiveness of proceedings before it against external procedural steps capable of frustrating the exercise of patent rights or access to the Court. It is unnecessary here to determine the full scope of that case law. It is sufficient to observe that the UPC has not treated Art. 32 as preventing measures not literally named in the provision where such measures are necessary to preserve the effectiveness of a head of jurisdiction that is expressly conferred by Art. 1,3 and 32 UPCA.

14. This conclusion is further supported by Art. 42 UPCA, headed "Proportionality and fairness", which provides in full: "*1. The Court shall deal with litigation in ways which are proportionate to the importance and complexity thereof. 2. The Court shall ensure that the rules, procedures and remedies provided for in this Agreement and in the Statute are used in a fair and equitable manner and do not distort competition.*" The final words of Art. 42(2) are of particular significance. They show that the Court's judicial function is not confined to securing the effective protection of patent rights in isolation. In applying the rules, procedures and remedies of the UPCA, the Court is also expressly required to ensure that their enforcement does not distort competition. Patent protection and the preservation of undistorted competition are therefore complementary, rather than conflicting, objectives within the system established by the Agreement. This provision does not confer on the UPC a free-standing jurisdiction to determine competition-law claims falling outside Art. 32 UPCA. It does, however, require the Court, when exercising a head of jurisdiction conferred by that Article, to prevent the procedural and remedial mechanisms of the patent system from being used in a manner capable of producing unjustified exclusionary effects on the market. Art. 32 UPCA must therefore be read as permitting the Court, within the limits of the Agreement and the RoP, to make substantive and procedural determinations necessary to achieve the purpose for which the relevant head of jurisdiction exists. That purpose includes the effective adjudication of revocation actions. Patents confer a temporary exclusive right in exchange for disclosure of the invention. Third parties must have an effective possibility to challenge invalid patents and thereby clear the way for lawful economic activity. If the Court could not address an alleged abusive use of divisional filings designed to avoid a validity determination while preserving the same practical exclusionary effect, the UPC would be the central forum for protecting unitary patents but would lack the tools to deal with (possible) misuse of the patent instrument itself. That result would be inconsistent with the object and purpose of the UPCA and with the express requirement laid down in Art. 42(2) UPCA.

15. Against that background, the Court maintains that its jurisdiction encompasses such measures and determinations as are necessary to ensure the effective judicial protection of rights arising

under the patent system. This includes the right related to clearing the way of potentially invalid patents. Requests 5 and 6 must therefore also be examined from that perspective: whether they are aimed at preventing conduct designed to circumvent or frustrate the pending proceedings.

16. The Court's view is that Request 5 is not allowable in the broad and unspecified form in which it is framed, and the Court does not have jurisdiction to decide on this request. The request is directed to "a composition" rather than to an identified patent, patent claim, patent application or product. As drafted, neither does it prevent the alleged divisional game, nor does it clearly identify the remedy sought by the claimant as requested by R. 13.1 (k) RoP, since its scope might extend beyond the patent in suit and the specific subject-matter placed before the Court. It rather seeks an abstract declaration on the obviousness of a subject-matter and/or formulation and/or composition independently of a specific right before the Court or sufficiently identified future right. The exercise of the Court's jurisdiction must, however, remain directed to a specific and concrete proposition, rather than to a generic or hypothetical one, in accordance with the principles of legal certainty and the reliance of third parties.

17. Nor is Request 5 an "Arrow declaration". In countries where 'Arrow declarations' are available, they are directed to a claimant's defined product, process or proposed activity and declare whether that product or process (or proposed activity) was old or obvious at the relevant date. Request 5 is, instead, not framed by reference to a specifically identified Sandoz product, process, intended act or market activity. Sandoz itself describes the nature and purpose of Request 5 as "*directed to patentability of subject matter, not to product characteristics*" with the intention to "*bind future divisionals*". This position was reiterated by Sandoz's counsel at the Hearing. National courts which do grant Arrow declarations have made it clear that such declarations are directed to identified products, processes and commercial activities.

18. Moreover, (and this concern does not relate to the admissibility of such relief in the abstract, but to the manner in which Request 5 has been formulated in the present case), that formulation risks affecting rights of third parties who are not parties to the proceedings and have not been heard. The right to be heard is a fundamental component of fair trial guarantees under Art. 47 of the Charter and Art. 6 ECHR. The Court of Justice and the European Court of Human Rights consistently require that judicial determinations affecting civil rights and obligations be made after the persons concerned have had a real opportunity to present their case. Request 5, in its present form, notwithstanding the clarifications rendered by Sandoz at the OH, would not sufficiently confine the effects of the declaration to parties external to proceedings and to the whole patent family that gives rise to the dispute, regardless of the respective patentees' rights. The Court therefore shall not affirm jurisdiction to grant Request 5 as formulated. Accordingly, the Court lacks competence to hear request number 5.

19. Conversely, Request 6 appears to be in the jurisdiction and competence of the Court, on the terms set out below. Request 6 reads as follows: "*that the Court, for all patents it has competence under Art. 32.1 UPCA pursuant to its inherent jurisdiction, declares any claim of a Unitary Patent or respective European Patent granted for the Contracting Member States, entitled to claim the priority date of any application within the patent family of EP 3 689 365 broad enough to cover the*

subject matter of claims 1 to 5 of the patent in suit, would be invalid on the grounds of lack of inventive step".

20. Request 6 is directed at divisional patents derived from EP 3 689 365, insofar as their claims encompass the same subject-matter of the patent in suit and provided that those patents remain owned by the Defendant, notes the Court (otherwise, the same grounds of inadmissibility arising from the lack of an adversarial process, identified above, would apply). This is apparent from the fact that the declaration sought concerns the invalidity for lack of inventive step of any claim entitled to the priority date of an application within the EP 3 689 365 patent family and broad enough to cover the same subject-matter of claims 1 to 5 of the patent in suit.

21. The Court interprets Request 6 as seeking to prevent the re-emergence through a divisional application of the same protective perimeter that is challenged in the revocation action. Read in the light of Sandoz's clarification at the oral hearing, the request is not an attempt to obtain a general academic opinion. It is intended to preserve the effectiveness of the pending revocation proceedings in the event that the patent proprietor withdraws or otherwise eliminates the present patent, so as to avoid a negative decision on its validity, while pursuing equivalent subject-matter in the same family. Properly understood, Request 6 therefore seeks Arrow-type relief (or declaration): it asks the Court to determine a defined issue of obviousness now, in order to provide commercial certainty against later enforcement of materially equivalent claims pursued through pending or future divisionals. As the UK Judge explained in Arrow Generics, such a declaration does not invalidate a patent that has not yet been granted; it resolves a concrete technical and legal proposition capable of serving a useful purpose for a claimant facing a real commercial threat. Also here, the Court acknowledges that such relief may affect the rights of third parties. Those concerns may, where appropriate, be addressed through the procedural mechanism provided for in R. 316 RoP. At this stage, however, they do not preclude the Court from affirming its jurisdiction; they concern the abstract admissibility of Request 6 and the conditions under which the relief sought might ultimately be granted.

22. The case law of the UPC Court of Appeal has already shown a clear openness both to the recognition of powers inherent in the judicial function of the UPC and to forms of protection that are not rigidly dependent on the formal grant of the patent, as is also apparent from Art. 3(d) UPCA. This approach is consistent with the recent order in *Omnia v Sidel*, in which the Central Division (UPC_CFI_799/2026) and the Court of Appeal (UPC_CoA_90/26) held that the Court may entertain an action seeking a declaration of non-infringement even though, at the date on which the action was lodged, the formal grant of the patent had not yet been completed, provided that grant occurs during the proceedings and before the statement of defence. That reasoning, based on procedural efficiency, legal certainty and the avoidance of an artificial duplication of proceedings, supports the broader principle that patent-related judicial protection may attach to sufficiently identified subject-matter independently of the formal completion of the grant process. Read together, those authorities show both an openness to inherent jurisdiction where necessary to secure the effectiveness of UPC proceedings and an acceptance that judicial protection need not invariably be tied to the formal date of grant.

23. The UPC and the EPO operate at distinct, albeit complementary, levels. The EPO is responsible for examining patent applications and granting the patent title, whereas the UPC exercises judicial functions concerning, inter alia, infringement and validity within the scope conferred by the UPCA. Accordingly, the circumstance that the UPC may, where the applicable procedural requirements are met, rule on infringement or validity issues concerning a patent application before formal grant does not amount to an undue interference with the EPO's functions. The UPC neither directs the examination procedure nor determines whether the patent should be granted; it adjudicates the legal consequences of sufficiently identified subject matter for the purposes of a dispute falling within its jurisdiction.

24. Against this background, the Court considers it undisputed that it has the competence to rule on (in)validity of claims of Unitary and European Patents (the latter where they are not opted out). The question if request 6 as worded, relating to claims of a possible plurality of European and Unitary Patents, already granted and not granted, is as such admissible, is not a question of competence of the Central Division (section Milan) but of the admissibility of the requests, which must be dealt with in the main proceedings (see, again, UPC_CoA_90/2026, margin 46 - *Omnia v Sidel*).

25. At this stage, contrary to claimants allegations, there is no need to subsidiarily resort to national law under Art. 24 UPCA. Article 24 UPCA concerns the law applicable by the Court when exercising jurisdiction already conferred upon it; it does not constitute an autonomous basis of jurisdiction. Accordingly, the existence in the national law of a Contracting Member State of a remedy unknown to the unitary patent system cannot, by itself, confer jurisdiction on the UPC or extend the exhaustive heads of competence laid down in Article 32 UPCA. Nor can the choice of unitary protection entail the transposition into the UPC framework of every remedy available under the laws of individual Contracting Member States.

26. In fact, the UPCA and the RoP already provide a sufficient procedural basis for the Court to determine whether the effectiveness of revocation proceedings requires relief capable of preventing the same subject-matter from being abusively relitigated through divisional applications. Rule 360 RoP is particularly relevant: "*If the Court finds that an action has become devoid of purpose and that there is no longer any need to adjudicate on it, it may at any time, on the application of a party or of its own motion, after giving the parties an opportunity to be heard, dispose of the action by way of order.*". Rule 360 governs the supervening loss of the action's purpose and the resulting absence of any continuing need for adjudication. This may occur, i.e., where, during revocation proceedings, the proprietor causes the patent to be revoked by withdrawing approval of its text under Art. 113(2) EPC.

27. If it is true that under Rule 360, the withdrawal or revocation of the patent pending litigation *might* ordinarily cause a revocation action to become devoid of purpose, it does not, however, automatically establish that there is no longer any need to adjudicate, nor does it entail that the Court automatically loses jurisdiction over the pending action. The wording of Rule 360 makes clear that it is for the Court to 'find' that the action has become devoid of purpose.

3028. The Rule reflects the concept of a supervening loss of the interest in bringing proceedings and requires the Court to examine whether the claimant in a revocation (or in a DNI) or the

defendant in an infringement action can still obtain a concrete and substantial advantage from a decision. The wording "dispose of the action" is intended to permit closure where there is no longer any substantive right or subject matter upon which the Court can adjudicate (in the French version '*sans object*' or '*gegenstandlos*' in German); it should not be understood as a tool to terminate proceedings when the object of the proceedings has been simply shifted to another patent application by an – improper –- divisional game, since in this very case, the subject matter of the dispute continues to exist and has merely been attempted to be removed from the Court's scrutiny. That possibility cannot be permitted, since, as argued above, an abuse of rights is incompatible with the legitimate exercise and enforcement of the right itself.

29. Accordingly, before disposing of the action, the Court must hear the parties and is in the position to assess the practical and legal consequences of the supervening event. Where a withdrawal of a patent text pursuant to Art. 113(2) EPC may frustrate a pending validity determination while substantially the same subject-matter remains capable of being pursued through a divisional application, the claimant in revocation might retain a specific interest in obtaining a ruling on the validity issues already placed before the Court. This is consistent with the approach already adopted by this Central Division in Pari Pharma v Koninklijke Philips, UPC_CFI_613/2024, decision of 27 November 2025 (§29, 30, 31), and LS9 v bellissa HAAS, UPC_CFI_860/2025, decision of 19 August 2026. Those decisions interpret the requirement that a claimant be 'concerned' by a patent under Art. 47(6) UPCA broadly.

30. These decisions clarified that a party may be concerned by a patent not only where it is already exposed to a specific infringement risk, but also where it seeks to remove the patent in order to (hypothetically) secure freedom to operate, make investments or commence commercial activity in the relevant technical field. The same applies when a divisional application is (mis)used to artificially impede market competition and free movement of goods and service. It follows that, where the application to dispose of the action is based on circumstances arising from a strategic use of the possibility of filing divisional applications, the Court may reject that application under Rule 360 RoP and proceed to determine the merits.

31. In such circumstances, by ruling on the validity of the patent protection covering a product where the patent has previously been withdrawn i.e. pursuant to R. 113(2) EPC, the Court still retains the power to state on a patent claim that substantially corresponds—and only to the extent that it corresponds—to the subject-matter pursued in a pending divisional application. In this way, the determination achieves the same practical effect sought through an Arrow declaration, without ambiguity: it provides commercial certainty by clearing the way for the a relevant product and prevents the proprietor from relying on materially equivalent claims pursued through a divisional application to recreate the exclusionary effect of the surrendered patent. This formulation leaves no room for uncertainty: patent protection of a future divisional is affected only to the extent that the relevant claim substantially corresponds to the subject-matter of the withdrawn patent. The determination neither prejudges claims of a different scope that may emerge from the EPO proceedings nor interferes with the EPO's institutional competences.

32. Request 6 is therefore, as stated above, within the jurisdiction and competence of the Court for the purposes of the present proceedings. Furthermore, in the case at hand, in the event of

withdrawal of the approval of the text of the patent at the EPO, the Court will assess whether Sandoz retains a concrete and continuing interest in obtaining a determination. Should the evidence establish that the patentee has pursued a divisional strategy liable to frustrate the pending revocation action, the Court reserves the power to decline to dispose of the action under Rule 360 RoP and, where appropriate, to determine the validity of the subject-matter of the patent notwithstanding its withdrawal by the proprietor. Such a determination could, in substance, affect claims in a Unitary Patent or European patent entitled to the priority of an application within the EP 3 689 365 patent family only insofar as those claims are broad enough to cover the subject-matter of claims 1 to 5 of the patent in suit: it would identify the subject-matter by which the claimant remains concerned, defined by a prior divisional application, and, if that subject-matter were found invalid, establish that its commercial use cannot be prevented on the basis of the withdrawn patent or of equivalent claims pursued within the same patent family.

33. This power is therefore not, strictly speaking, an exercise of inherent jurisdiction, although the existence of such jurisdiction was affirmed. On closer examination, the Court's jurisdiction is limited to determining that the previous patent protection would have been invalid notwithstanding the subsequent withdrawal of the patent. That determination may have consequential effects on any divisional patent pursued strategically, but only insofar as its claims reproduce or substantially correspond to the subject-matter already adjudicated. Rather, it reflects the proper exercise of the powers already conferred on the Court by the combined operation of the provisions identified above, in particular Art. 47 UPCA and Rule 360 RoP.

34. This approach does not entail any direct adjudication upon the validity of patents yet to be granted. Should a divisional patent nevertheless proceed to grant notwithstanding the Court's determination concerning the withdrawn patent, the significance of that earlier determination would arise only in the context of the divisional patent's enforcement or of a subsequent revocation action. In particular, an applicant seeking provisional measures inter partes would be required, pursuant to Rule 206(3) and (4) RoP, to place before the Court all material information and could not properly withhold the fact that a substantially corresponding claim directed to the same subject-matter had already been held invalid. The practical utility of the divisional strategy would thus be curtailed both in relation to the assertion of infringement, including by way of provisional relief, and in any ensuing revocation proceedings. That consequence would not, however, operate automatically. The Court seized of the infringement or revocation action would remain required to determine, in the light of the claims as granted and the circumstances of the case, whether the divisional had in fact been employed as an instrument for circumventing the earlier validity determination, and to what extent the claims reproduce or substantially correspond to the subject-matter already adjudicated. A conscious and properly calibrated application of Rule 360 RoP thus preserves effective judicial protection while avoiding any unwarranted prejudgment of future rights.

35. Request 7 seeks an order preventing the Defendant from withdrawing its approval of the text of the patent before the EPO under Art. 113(2) EPC until a final decision on validity has been issued by the EPO Opposition Division, the Board of Appeal or the UPC. At this stage, however, the Court addresses only the abstract question whether it has jurisdiction and power to grant such relief; it does not decide whether the order should be made in the present case. As formulated in the

Statement of Claim, Request 7 is not supported by specific factual circumstances but is linked only in general terms to the alleged "divisional game". The merits - including urgency, necessity, proportionality and the appropriate scope of any measure - will be considered only if and when the request is reformulated and supported by concrete facts. The Court therefore reserves any decision on whether such relief should ultimately be granted.

36. The Court has preliminarily considered Request 7 in the context of the heads of jurisdiction conferred by Art. 32(1)(b) and (d) UPCA, concerning actions for declarations of non-infringement and revocation actions, respectively. The effectiveness of those proceedings may, in appropriate circumstances, require measures capable of preserving their subject matter and preventing procedural frustration. The scope of any such power may also be assessed in the light of Directive 2004/48/EC, which forms part of the relevant EU legal context. Art. 2 of Directive 2004/48/EC concerns the scope of the Directive and applies its measures, procedures and remedies to infringements of intellectual property rights. Art. 4 identifies the persons entitled to seek those measures. Art. 9 provides for provisional and precautionary measures, including interlocutory injunctions intended to prevent imminent infringement or continuation of alleged infringement. Art. 23 further provides that "*Member States may apply other appropriate sanctions in cases where intellectual property rights have been infringed*". These provisions are significant from a systematic perspective. By expressly linking even the residual power to impose "other appropriate sanctions" to cases in which an intellectual property right has been infringed, Art. 23 confirms that the enforcement framework established by the Directive is organised around actual or threatened *infringement*, rather than around the preservation of the effectiveness of validity proceedings. Read together, Arts. 2, 4, 9 and 23 therefore show that the Directive's provisional, protective and sanctioning measures are principally directed only to infringement enforcement. This systematic conclusion does not exclude the existence of distinct interim powers inherent in the judicial function of the Central Division where such powers are strictly necessary to preserve the effectiveness of a revocation action properly before it; it merely confirms that those powers do not derive directly from the enforcement mechanisms harmonised by Directive 2004/48/EC but are inherent in the UPC jurisdiction attributed to the Central Division. Those powers are thus a direct emanation of the heads of jurisdiction conferred by Art. 32(1)(b) and (d) UPCA and are inherent in their effective exercise; they do not, therefore, find their jurisdictional basis in Art. 32(1)(c) UPCA.

37. In fact, the Central Division seized of a revocation action must be able, where necessary, to protect the effectiveness of its own proceedings. A request preventing a party from taking a procedural step elsewhere that would render the revocation action devoid of purpose is materially different from an infringement injunction. It is directed to the preservation of the Court's jurisdiction and to the avoidance of procedural frustration. Such a measure, if justified on the facts, belongs to the jurisdiction of the division seized of the underlying action. It would be contrary to the principle of effective judicial protection to hold that Central Divisions possess revocation jurisdiction but are structurally incapable of issuing any interim measure necessary to prevent that jurisdiction from being deprived of effect. It would be equally illogical to require a party seeking to safeguard procedural rights arising from a revocation action to apply to a Local Division on the footing that Local Divisions alone possess injunctive powers under Art. 32 lett. (c) UPCA. As explained above, the injunctive jurisdiction entrusted to the Local Divisions under the UPCA

concerns measures directed against actual or threatened infringement; it does not encompass measures whose object it is to preserve the procedural prerogatives and the effective exercise of the jurisdiction specifically assigned to the Central Division.

38. Nor does the potential competence of a local division arise on the present facts as a bar to this Central Division's competence. The parties have not raised an objection that Request 7 should have been brought before a local or regional division. In any event, the measure sought is ancillary to the revocation action pending before this Central Division and is intended to protect the integrity of those proceedings. The Court therefore regards its jurisdiction to entertain Request 7 as undisputed between the parties and, in any event, inherent in its power to ensure that a revocation action properly before it remains effective.

39. Request 7 is therefore within the jurisdiction and the competence of the Court. This conclusion does not determine whether the conditions for granting such an interim measure are met. Those conditions, including urgency, proportionality, risk of harm, the balance of interests, and the precise scope of any order and penalty, remain to be assessed after the parties have been fully heard.

40. For these reasons, the Court considers that Novo Nordisk's Preliminary Objection is well-founded only in relation to Request 5 as presently formulated. Requests 6 and 7 are not manifestly inadmissible and fall within the Court's jurisdiction in the limited terms set out above. Their ultimate merits, scope and any appropriate relief are reserved for further determination in the main proceedings.

41. The following principles must therefore be stated:

i. The UPC has no jurisdiction to entertain a claim seeking a declaration that a composition independently of a specific patent right was obvious at a given priority date.

ii. The UPC has jurisdiction to ensure the effectiveness of the judicial protection entrusted to it. That jurisdiction extends to conduct designed to circumvent its exercise, including the abusive use of divisional applications. In revocation proceedings or actions for a declaration of non-infringement, that jurisdiction may be exercised, in particular, by declining to dispose of the action under Rule 360 RoP and by determining that a patent lack(ed) inventive step, notwithstanding its withdrawal at the proprietor's initiative.

iii. The UPC Central Division has an autonomous jurisdiction to grant provisional and protective measures in matters entrusted to it by the UPCA. That jurisdiction includes the power, where necessary, to preserve the effectiveness of pending revocation proceedings, to restrain a party from withdrawing its approval of the text of the patent under Art. 113(2) EPC.

42. The costs of the Preliminary Objection will be reserved and determined together with the decision on the merits, unless the Court decides otherwise at a later procedural stage.

43. Pursuant to Rule 21 'a decision of the judge-rapporteur allowing the Preliminary objection may be appealed pursuant to Rule 220.1(a). An order of the judge-rapporteur rejecting the Preliminary objection may only be appealed pursuant to Rule 220.2. 2. If an appeal is lodged, proceedings at

first instance may be stayed by the judge-rapporteur or the Court of Appeal on a reasoned request by a party'. As announced at the oral hearing, the Court grants the parties leave to appeal this Order in its entirety. As far as the first instance Court is concerned, the panel is not, however, presently minded staying the proceedings should the Court of Appeal's decision not be delivered promptly.

FOR THESE REASONS

the Court:

1. UPHOLDS the Preliminary Objection in relation to Request 5 and DECLARES Request 5 manifestly inadmissible in its present form;

2. DISMISSES the Preliminary Objection in relation to Request 6, in the terms set out in points (i), (ii) and (iii) above, without prejudice to the Court's assessment of the merits and scope of any declaration at a later stage;

3. DISMISSES the Preliminary Objection in relation to Request 7, in the terms set out in points (i), (ii) and (iii) above, without prejudice to the Court's assessment of the conditions for granting any interim or protective measure;

4. RESERVES the costs of the Preliminary Objection with the main proceedings.

Milan, 22 October 2026

Judge rapporteur and presiding judge Andrea Postiglione	
Legally qualified judge Anna-Lena Klein	
Technically qualified judge Rudi Goedeweeck	
For the Deputy Registrar	

Rule 21 – Appeal against decision or order on a Preliminary objection 1.
A decision of the judge-rapporteur allowing the Preliminary objection may be appealed pursuant to Rule 220.1(a). An order of the judge-rapporteur rejecting the Preliminary objection may only be appealed pursuant to Rule 220.2. 2. If an appeal is lodged, proceedings at first instance may be stayed by the judge-rapporteur or the Court of Appeal on a reasoned request by a party.

Leave to appeal is granted.