



Case No.: UPC 2296/2025

Revocation Action

**Procedural order
of the Court of First Instance of the Unified Patent Court,
Central Division (Munich Section)**

**issued on 26 October 2026
(order pursuant to Rules 104(e) and 181 of the RoP)**

APPLICANT

REEL International

69 rue de la Chaux, 69450, Saint-Cyr-au-Mont-d'Or, FR

Represented by Thomas BOUVET and Colin Devinant

RESPONDENT

Fives ECL

100 rue Chaland, 59790, Ronchin, FR

Represented by Konstantin SCHALLMOSER

PATENT IN DISPUTE

European Patent No. EP 1 740 740

DIVISION AND COMPOSITION

Panel 1 of the Munich Section of the Central Division.

The order is made by Mélanie Bessaud, Chair and Reporting Judge, András Kupecz, legally qualified judge, and Koen Callewaert, technically qualified judge.

LANGUAGE OF THE PROCEEDINGS: FRENCH

SUBJECT-MATTER OF THE PROCEEDINGS: Action for revocation. Procedural order on a request for the hearing of experts (Rule 104(e) and Rule 181 of the RoP).

FACTS AND PROCEEDINGS

1. On 31 December 2025, Reel International (“the applicant”) filed an application with the Munich Section of the Central Division of the Unified Patent Court (UPC) for the revocation of European patent EP 1 740 740 (EP’740) entitled “Compact service module for aluminium electrolysis plants”, of which Fives ECL (“the defendant”) is the proprietor.
2. In its statement of defence dated 25 March 2026, Fives ECL argued that Reel International lacked standing to bring proceedings for the revocation of patent EP’740 on the grounds of lack of legal interest and by virtue of the res judicata effect attached to the German decisions dismissing the action for revocation of the German part of patent EP’740 brought by Reel GmbH, a wholly-owned subsidiary of Reel International (Bundespatentgericht, 18 May 2022, upheld by the Bundesgerichtshof, 26 November 2024).
3. The parties exchanged their arguments and submitted expert opinions on the applicable law to determine the effect and scope of the res judicata of the German decisions, as well as on the ‘straw man’ (‘Strohman’) theory.
4. On 8 September 2026, Fives ECL filed a request for the parties’ experts to be heard in person, so that they might be examined in accordance with the principle of adversarial proceedings and under conditions allowing the panel and the parties to question them (Rule 181.2 of the RoP, referring to Rule 176 of the RoP and Rules 104(e), 104(g) and 112 of the RoP).
5. The written phase closed on Wednesday 9 September 2026 and the pre-trial conference was held on 29 September 2026.
6. On 2 October 2026, the reporting judge set the timetable for supplementary submissions in the procedural order pursuant to Rule 105.5 of the RoP, authorising Reel International to respond to the request for expert hearings and inviting the parties to submit their observations on the judgment of the UPC Court of Appeal delivered, after the close of the written proceedings, on 16 September 2026, in the case of Heraeus v. Vibrantz, in which the Court ruled on the applicable law for determining the effect and scope of the res judicata of a decision by a national court of a Contracting Member State.
7. On 6 October 2026, Reel International submitted its observations, arguing that the request for the parties’ experts to be heard in person should be dismissed.

ARGUMENTS OF THE PARTIES

8. In its written submission of 8 September 2026, Fives ECL requested the in-person hearing of the experts in international law, namely Professors [REDACTED] on behalf of Fives ECL and [REDACTED] on behalf of Reel International, who disagree on the following points in their written opinions submitted by the parties:
 - on the German law applicable to the binding effect of decisions by German courts, which could affect the admissibility of the claims due to the implications for res judicata and/or Reel International's standing to bring proceedings;
 - on the extension of the binding effect of German judgments handed down against Reel GmbH to the parent company in the light of the 'straw man' (Strohman) doctrine;
 - on the implications of the expiry of the patent and Fives ECL's decision not to pursue infringement proceedings against Reel International.
9. According to Fives ECL, these differences of opinion are based primarily on the interpretation of German case law and the scope to be accorded to it, in the light of the case law of the UPC. However, as the panel does not comprise lawyers trained in Germany, hearing the experts would be likely to provide clarification to the panel and the parties.
10. Fives ECL states that both experts meet the requirements of impartiality and independence and that they could give evidence in English.
11. In its written submission of 6 October 2026, Reel International objects to the request to hear the parties' experts.
12. Firstly, it argues that, pursuant to Article 53(2) of the Agreement on the Unified Patent Court (hereinafter the UPCA), any hearing of witnesses must be limited to what is strictly necessary. It notes that the UPC's case-law on in-person hearings is restrictive, the principle being that witness evidence is to be given in writing and that a hearing is unnecessary whenever the written submissions are sufficient to inform the court.
13. Secondly, it contends that German law is not applicable to the present dispute and that the admissibility of Reel International's claim depends on an assessment of the facts of the case in accordance with the rules applicable before the UPC, and not on German case-law.
14. Finally, it highlights the comprehensive and exhaustive nature of the written consultations with the parties' experts (two consultations with Professor [REDACTED] and one consultation with Professor [REDACTED], totalling 92 pages of legal advice), which are supplemented by the parties' written submissions, bringing the total to nearly 160 pages.
15. Reel International therefore considers that hearing the experts is not appropriate and would even be contrary to the principle of the proper administration of

justice, in so far as it would be likely to considerably burden the hearing on a secondary issue.

16. In response to the request from the reporting judge, the parties submitted their observations on 15 October regarding the decision of the UPC Court of Appeal handed down on 16 September 2026 in the case of Heraeus v Vibrantz.
17. According to Fives ECL, the UPC Court of Appeal stated that the res judicata effect of a judicial decision handed down by a court of a Member State of the UPC was governed by national law. The res judicata effect and scope of decisions handed down by German courts are therefore determined in accordance with German law.
18. It concludes that the application for revocation based on a lack of novelty or inventive step in patent EP'740 is precluded by the res judicata effect of the decisions of the German courts, which dismissed the application for revocation of the patent on those two grounds.
19. By contrast, the ground for invalidity based on insufficient disclosure within the meaning of Article 138(1)(b) of the EPC was not the subject of the German invalidity proceedings and must therefore be assessed separately. The same applies to the challenges relating to the French and Dutch parts of the contested patent.
20. Fives ECL contends that the binding effect of res judicata applies to Reel International, which, although distinct from Reel GmbH, is alleged to have no other purpose than to secure for its subsidiary a procedural advantage from which the latter cannot benefit by virtue of the res judicata effect of the German decisions concerning it. This would therefore constitute a circumvention of the principle of res judicata. Such a strategy would be incompatible with the purpose of res judicata and with the prohibition on the abuse of rights, which also applies in procedural matters. It adds that, in the case of an expired patent, as is the case here, the company's legal autonomy must not be used to circumvent res judicata, which constitutes an absolute procedural bar within the meaning of Rule 362 of the RoP, as confirmed by the UPC Court of Appeal in the judgment in Heraeus v. Vibrantz.
21. Reel International argues that the judgment in Heraeus v. Vibrantz determines the scope of res judicata in relation to a party and its legal successor or assignee, but that it deals neither with the extension of res judicata to persons who are neither parties nor legal successors, nor with the so-called 'straw man' defence.
22. With regard to the res judicata effect of German judgments handed down in proceedings to which only Reel GmbH was a party, the Heraeus v. Vibrantz judgment confirms, according to Reel International, that only the party to the previous proceedings or its successors in title are subject to the res judicata effect. As

As Reel International is not a successor in title, this absolute procedural bar is not enforceable against it.

23. As regards the issue of being a 'straw man', it argues that this concept is distinct from the question of *res judicata*, meaning that German law would not be applicable. This is not a question of the scope of national judgments; consequently, the assessment of whether a person is a 'front man' or a nominee should form part of the assessment of the admissibility of the action in accordance with the rules applicable before the UPC, in particular Article 47 of the UPCA.
24. Reel International considers that the judgment in *Heraeus v. Vibrantz* has narrowed rather than broadened the scope of the present case, since the law applicable to the scope of *res judicata* is now established. Consequently, the only issue remaining under debate regarding the applicable law relates to the alleged status of a nominee, for which the outcome would be the same, whether under German law or the UPCA.

REASONS

25. Under Article 53(2) of the UPCA, the examination of witnesses and experts is conducted under the supervision of the court and is limited to what is necessary.
26. Pursuant to Rules 176 and 177.1, to which Rule 181 of the RoP refers, the court may, at the request of a party, order that the parties' experts be heard in person.
27. In accordance with Rule 176 of the RoP, Fives ECL submitted a request for the parties' experts to be heard, setting out the reasons why they should be heard in person, the facts which the party expects to be confirmed, and the language in which the witnesses will give evidence.
28. The application is therefore admissible but, as it is unfounded, it is dismissed.

1/ The hearing of experts on the *res judicata* effect of the decision of the Bundesgerichtshof of 26 November 2024

29. It is undisputed that the arguments based on *res judicata* and the status of a 'front man', within the meaning of German law, are raised by Fives ECL solely in support of the inadmissibility of the grounds for invalidity of the German part of patent EP'740 based on lack of novelty and lack of inventive step.
30. The *res judicata* invoked by Fives ECL therefore does not extend to the ground for invalidity of the German part of patent EP'740 based on insufficient description, nor to the claims for invalidity of the French and Dutch parts of that patent.
31. During the written proceedings, the parties disagreed on the rules applicable to determining the effect and scope of the *res judicata* of the final German decision dismissing the action for invalidity of patent EP'740 on the grounds of lack of

novelty and inventive step in proceedings to which only Reel GmbH was a party (Bundesgerichtshof, 26 November 2024).

32. In their respective supplementary written submissions filed on 15 October 2026, the parties, having analysed the judgment delivered by the UPC Court of Appeal on 16 September 2026 (Heraeus v. Vibrantz), agreed that the res judicata effect of the German decision is governed by German law.
33. Indeed, the Court of Appeal, relying on Article 24(1) of the UPCA and Article 36(1) of Regulation (EU) No 1215/2012 (the Brussels I bis Regulation), held that the question of the taking effect and the scope of res judicata must be determined in accordance with the law of the Member State in which the judgment was delivered (paragraphs 88 to 92).
34. The UPC Court of Appeal further stated that the scope of the res judicata effect of a German judgment is determined by Articles 322 and 325 of the German Code of Civil Procedure (ZPO), such that that judgment has effect in favour of and against the parties, as well as against persons who have become their successors in title after the commencement of the proceedings (paragraphs 102 and 103).
35. It follows that the expert opinions concerning the law applicable to determining the binding effect of the German decision do not need to be clarified during a hearing.
36. Thus, the first point of disagreement amongst the experts cited by Fives ECL in support of its request for a hearing does not justify such a hearing.

2/ The hearing of experts on the classification as a 'front man' or 'shell company'

37. According to Fives ECL, Reel International's actions appear to circumvent the res judicata effect of the final German decision which dismissed Reel GmbH's application for the revocation of patent EP'740 on the grounds of lack of novelty and inventive step. Should the German part of the patent be revoked, Reel GmbH – which is being sued for infringement and whose application for the patent's invalidation was dismissed by the German courts – would benefit from the effects of this invalidation sought by its parent company, even though it is now barred from pursuing this legal remedy. Reel International would therefore be acting solely in the interests of its subsidiary, which would justify extending the effect of the final German judgment to it (the 'straw man' theory). In any event, the 'Tafelförmige Elemente' case law on a parent company's standing to sue would apply to the facts of this case and would justify declaring its action inadmissible.
38. Reel International disputes that it is acting solely on the instructions of its wholly-owned subsidiary and at the latter's expense. On the contrary, it claims to have a direct and legitimate interest in bringing proceedings for the revocation of patent EP'740 and invokes, in particular, economic and reputational interests. It argues that the assessment of its personal interest must be made in accordance with the UPCA and European Union law, rather than national law.

39. In this regard, it should be noted that the court will only have to rule on the question of whether the res judicata effect extends to Reel International if the latter were, first of all, classified as a ‘front company’ – a matter which concerns the legal characterisation of Reel International’s action and the assessment of its interest in bringing proceedings. It is therefore a question of law.
40. At this stage, and in light of the detailed opinions of the private experts (two consultations with Professor [REDACTED], exhibits Fives ECL BBY 19, pp. 8–13, and BBY 33, pp. 5–29, and two consultations with Professor [REDACTED], exhibits Reel International DJ_08_01, pp. 12–16 and DJ_08_02, 26 pages), the extensive written discussions devoted to this issue in the parties’ written submissions—including the supplementary written submissions filed on 15 October 2026—and the case law submitted by the parties for consideration, the court is sufficiently informed regarding the German law applicable to the ‘front man’ theory. It is therefore not necessary to arrange for a hearing of the private experts on this point. Whilst disagreements do indeed persist between the parties as to the law applicable to the present case, there are no ambiguities or gaps in the legal opinions that would require an adversarial hearing of the two experts, given that Fives ECL does not identify any specific facts or any specific questions that should be put to them.
41. In any event, the issue of the ‘front man’ within the meaning of German law would arise in assessing the admissibility of the action for nullity brought solely against the German party to patent EP’740 on the grounds of lack of patentability due to lack of novelty and inventive step.
42. However, it is in the interests of the proper administration of justice to limit the parties’ submissions during the oral hearing to the essential points at issue, it being noted that, as agreed by the parties at the preparatory conference, their representatives will each have 30 minutes to present their arguments on the admissibility of the action for the nullity of patent EP’740 brought by Reel International and will therefore be able to provide any further details they deem relevant.

3/ The expiry of the patent and Fives ECL’s decision not to bring infringement proceedings against Reel International.

43. According to Fives ECL, Reel International’s standing to bring proceedings should be assessed more restrictively following the expiry of the patent whose invalidity is sought and in light of Fives ECL’s undertaking not to bring infringement proceedings against it, in accordance with the case law established by the German courts.
44. Reel International contends that the admissibility of its action rests on the factual circumstances and, in particular, on the existence of Reel International’s own interest, distinct from that of Reel GmbH, which is a matter for an assessment of the facts and not of German case-law.
45. In the Panel’s view, the effects of the expiry of the contested patent and of Fives ECL’s decision not to bring infringement proceedings against Reel International fall within the

discretion to assess Reel International’s standing to bring proceedings under Article 47(6) of the UPCA, rather than under German national law, and therefore do not require the parties’ experts to be heard in person. Above all, the exchanges between the parties are very comprehensive on these points, and the experts have provided their detailed opinions on these matters. It is therefore not necessary to hear the experts in person.

ORDER

The application by Fives ECL for the Court to hear the parties’ experts in adversarial proceedings is dismissed.

Made on 26 October 2026

Mélanie Bessaud President and Reporting Judge	MÉLANIE, JEANNE LISON BESSAUD Digitally signed by MÉLANIE, JEANNE, LISON BESSAUD Date: 22 October 2026 09:59:41 +02'00'
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