Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal

UPC-CoA-42/2026

# ORDER
## of the Court of Appeal of the Unified Patent Court
## issued on 4 November 2026
## case management

APPELLANT (AND CLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

**Fives ECL,** Ronchin, France

(hereinafter "Fives")

represented by Konstantin Schallmoser, attorney at law, and other attorneys at law of the law firm Bonabry Partnerschaft von Rechtsanwälten, Hamburg, Germany

RESPONDENT (AND DEFENDANT AT THE COURT OF FIRST INSTANCE)

**REEL GmbH**, Veitshöchheim, Germany

(hereinafter "REEL")

represented by Dr Benjamin Schröer, attorney at law, and other attorneys at law of the law firm Hogan Lovells Cadwalader International LLP, Munich, Germany, as well as other attorneys-at-law of the law firm Jones Day, Paris, France

PATENT AT ISSUE

EP 1 740 740

LANGUAGE OF THE APPEAL PROCEEDINGS

English

PANEL AND JUDGE

Panel 2
Ingeborg Simonsson, legally qualified judge and judge-rapporteur

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

Date: 11 February 2026, Hamburg Local Division,
Case number of the Court of First Instance: UPC-CFI-274/2023

SUMMARY OF FACTS

1. On 8 October 2026, REEL submitted its Statement of response. With reference to the revocation proceedings brought against the patent at issue before the Central Division, Munich Section, UPC-CFI-2296/2025 ('Revocation Proceedings'), REEL has *inter alia* requested:

> in case the panel does not reject the appeal:
> III. The proceedings are stayed pending a final, unappealable decision in the Revocation Proceedings.
> IV. In the alternative: REEL is granted leave to submit further briefing with respect to the outcome of the Revocation Proceedings after the oral hearing in the present proceedings in case the Central Division does not issue its decision in the Revocation Proceedings prior to the oral hearing in the present case.
> V. Further in the alternative: The panel's decision is made under the condition that claim 1 of the patent as granted is not revoked in the final and unappealable decision in the Revocation Proceedings.
> Further:
> VI. In case the panel does not reject the present appeal: The panel does not issue its decision in the present case before the Central Division issues its decision in the Revocation Proceedings and REEL has been given the opportunity to report thereon.
>
> Moreover:
> VII. Five's pleading and evidence from the Statement of grounds of appeal that was not submitted in the first instance proceedings be disregarded pursuant to R. 222 RoP. This includes, but it is not necessarily limited to:
>
> i. the content of Fives' December 2, December 16, February 21, March 8 and March 30 Offers (see e.g., para. 95 et seq. of the Statement of grounds of appeal, Exhibits BBY 46, 47, 48, 49, 50, 51, 52);
> ii. the factual inferences from REEL's presentation to the Client on September 1 & 2, 2015 (see, e.g., para. 246, 284 et seq., 305 of the Statement of grounds of appeal);
> iii. supposed timing issues with offering a Pavlodar model in the counterfactual scenario (see, e.g., para. 252 et seq. of the Statement of grounds of appeal);
> iv. arguments with respect to the erection and installation concept (see, e.g., para 379 et seq. of the Statement of grounds of appeal);
> v. the need for submission of a formal technical description of a non-infringing alternative offer based on the Pavlodar model (see, e.g., para. 283 of the Statement of grounds of appeal);
> vi. patent protection outside of Germany (see, e.g., para. 322 and 433 of the Statement of grounds of appeal);
> vii. the alleged margin imbalance between the PTM component and the ancillary equipment component of REEL's December 2 Offer (see, e.g., para. 57, 106, 110, 113, 114, 144, 185, 186, 187, 188, 231, 253 of the Statement of grounds of appeal);
> viii. the Service Contract and the actual profit Fives made (see, e.g., para. 338 et seq., 441 et seq. of the Statement of grounds of appeal, Exhibits BBY 51, 58);

ix. a reasonable royalty estimation (see para 433 of the Statement of grounds of appeal);

x. the actual schedule of payments from Alba to Fives (see para. 494 of the Statement of grounds of appeal, Exhibit BBY 62);

2. REEL has set out its grounds in relation to requests III. to VI. in Section H of the Statement of response. For inadmissibility, the grounds are in Section II (pages 101 through 120), but REEL has also commented in substance in Section II.

GROUNDS

3. As regards the pending revocation proceedings, Fives shall be invited to comment on the requests III. to VI. above.

4. As regards admissibility pursuant to R. 222.2 RoP, the judge-rapporteur notes that Fives made general statements in Section 3 of the Statement of grounds of appeal ("no late submission by the claimant"). Given that there is now a detailed challenge, Fives shall be invited to provide short comments, and only in relation to admissibility, not in substance.

ORDER

5. Fives is invited to comment, **no later than 13 November 2026**, on REEL's requests III. to VI. above, and on admissibility in relation to REEL's requests VII. i. to x. above. This does not extend to commenting in substance in relation to Section II of the Statement of response.

Issued on 4 November 2026



Digitally signed by Åsa Ingeborg Simonsson
Date: 2026.11.04 14:28:58 +01'00'

Ingeborg Simonsson, legally qualified judge and judge-rapporteur