Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Reference number:

UPC-CoA-201/2026

PROCEDURAL ORDER
of the Court of Appeal of the Unified Patent Court
concerning an appeal against an order ruling on a Preliminary objection (R. 21 RoP)
issued on 26 November 2026

APPELLANT (CLAIMANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Sandoz AG, Basel, Switzerland

(hereinafter "**Sandoz**")

represented by patent attorney Dr. Jan van Dieck and other representatives of the law firm Bird & Bird LLP

RESPONDENT (DEFENDANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Novo Nordisk A/S, Bagsværd, Denmark

(hereinafter "**Novo"**)

represented by attorney-at-law Claire Phipps-Jones and other representatives of the law firm Bristows (Ireland) LLP

PATENT AT ISSUE

EP 3 689 365

DECIDING JUDGE

Peter Blok, legally qualified judge and judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

□ Order of the Central Division (Milan Section), dated 22 October 2026

Reference number: UPC-CFI-2221/2026

SUMMARY OF FACTS

1. Sandoz brought an action for revocation of the patent at issue ("the patent") before the Central Division (Milan section). In addition to a request relating to the revocation of the patent, Sandoz made the following requests 5, 6, and 7:

   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.

2. On 10 August 2026, Novo filed a Preliminary objection pursuant to R. 19 RoP, challenging the competence of the Court to decide on Requests 5, 6 and 7. Novo did not challenge the Court's competence to hear the principal revocation action.

3. In the order of 22 October 2026 ("the impugned order"), the Central Division upheld the Preliminary objection in relation to Request 5 and declared this request manifestly inadmissible in its present form (item 1 of the operative part). It dismissed the Preliminary objection in relation to Requests 6 and 7 "in the terms set out in points (i), (ii) and (iii) [of the impugned order], without prejudice to the Court's assessment of the merits and scope of any declaration at a later stage". It granted leave to appeal.

4. On 5 November 2026, Sandoz filed a Statement of appeal and Grounds of Appeal against the impugned order on the basis of R. 220.2 RoP, requesting that the Court of Appeal
   I) set aside item 1 of the operative part of the impugned order,
   II) dismiss Novo's Preliminary objection insofar as it concerns Request 5 in its original form, and
   III) refer Request 5 back to the Court of First Instance for a decision on the merits together with the other requests already on file.

   In the alternative, Sandoz requests that the Court of Appeal grant leave to amend Request 5 and, on the basis of Request 5 as amended, set aside item 1 of the operative part of the impugned order, dismiss Novo's Preliminary objection insofar as it concerns Request 5 as amended and declare that the Court has jurisdiction to hear Request 5 as amended and refer the case, insofar as it concerns Request 5 as amended, back to the Court of First Instance for further proceedings.

GROUNDS FOR THE PROCEDURAL ORDER

5. An appeal against a decision or order of the Court of First Instance may be brought before the Court of Appeal under the conditions set out in Art. 73 UPCA.

6. In the specific case of Preliminary objections referred to in R. 19 RoP, R. 21.1 RoP provides that a decision of the judge-rapporteur allowing the Preliminary objection may be appealed pursuant to R. 220.1(a) RoP (R. 21.1 RoP, first sentence), whereas an order of the judge-rapporteur rejecting the Preliminary objection may only be appealed pursuant to R. 220.2 RoP (R. 21.1 RoP, second sentence).

7. The Court of Appeal has already ruled that an order by the judge-rapporteur which allows a Preliminary objection but does not terminate the proceedings as regards one of the parties is neither a "decision" which allows the Preliminary objection within the meaning of the first sentence of R. 21.1 RoP, nor an order which "rejects" the Preliminary objection within the meaning of the second sentence of R. 21.1 RoP. In the case of such an order, which does not fall within any of the appeal scenarios referred to in Art. 73(1) and 73(2)(a) UPCA or R. 220.1 RoP, the provisions of the second sentence of R. 21.1 RoP shall apply by analogy (UPC-CoA-4/2026, Order of 11 February 2026, *Valeo v ROBERT BOSCH e.a.*, para. 20).

8. In the present case, the impugned order allows the Preliminary objection relating to Request 5 and does not terminate the proceedings as regards any of the parties. Sandoz was therefore correct in bringing the appeal on the basis of R. 220.2 RoP, for which leave has been duly granted by the Central Division in the impugned order.

9. It follows that Novo must lodge the Statement of response within 15 days of service of the Grounds of appeal (R. 235.2 RoP).

PROCEDURAL ORDER

The Court of Appeal

- qualifies the appeal filed by Sandoz as an appeal pursuant to R. 220.2;

- declares that Novo must file the Statement of response within 15 days of service of the Grounds of Appeal.

This order was issued on 26 November 2026.

Peter Hendrik Blok

Digitally signed by Peter Hendrik Blok
Date: 2026.11.26 17:22:09 +01'00'

Peter Blok, legally qualified judge and judge-rapporteur