

**Non-binding Guidance
for the use of the
“General Template for Order – UPC CFI”**

**Decision allowing a Preliminary objection (R. 21.1 1st sentence
RoP)**

DECISION

of the Court of First Instance of the Unified Patent Court
Local division in ... / Regional division in ... / Central division (Paris Seat or Munich Section)
delivered on ... [dd month in words yyyy]
concerning ... [EP/UP/SPC/EP application at issue]

HEADNOTES: ... [required by R. 67 RegR] [to be provided by the Judge-rapporteur]

KEYNOTES: ... [required by R. 67 RegR] [to be provided by the Judge-rapporteur] Preliminary objection; jurisdiction of the UPC; competence of the UPC; competence of division indicated by claimant; opt-out; language of Statement of claim; transfer of case to central division [non-exhaustive list for illustrative purposes]

REFERENCE CODE ECLI: ... [required by R. 67 RegR] [to be provided by the Deputy-Registrar]

CLAIMANT:

... [name and postal address]

represented by ... [academic title (where applicable), name, national professional title, firm]

assisted by ... [academic title (where applicable), name, national professional title, firm]

DEFENDANT:

... [name and postal address]

represented by ... [academic title (where applicable), name, national professional title, firm]

assisted by ... [academic title (where applicable), name, national professional title, firm]

PATENT AT ISSUE (data to be retrieved in databases of the EPO)

European patent n° ... [hereafter referred to by its last three digits, e.g. EP 789]

[or European patent with unitary effect n° ... [e.g. UP 789]

[or Supplementary protection certificate ... [e.g. SPC 789]

[or European patent application n° ... [e.g. EP application 789]

PANEL/DIVISION

Panel [in divisions having more than one panel number of the panel: ...] of the Local [or: Regional] Division in ... [or: of the Central Division (Paris Seat) or: of the Central Division (Munich Section)]

DECIDING JUDGE [R. 350.1(c) RoP]:

This decision has been delivered by the Judge-rapporteur... [or: the Single judge ...]

SUMMARY OF FACTS [R. 350.1(f), 4 RoP]

[Free text]

INDICATION OF THE PARTIES' REQUESTS [R. 350.1(e), 4 RoP]

The Defendant is requesting that

- the preliminary objection to be allowed (R. 21.1 RoP)
- ...

The Claimant is requesting that

- the preliminary objection be rejected
- the preliminary objection be dealt with in the main proceedings (R. 20.2 RoP)
[as main request or as an auxiliary request to the request to reject the preliminary objection]
 - the action be referred to the Local [or] Regional division in ... [or] to the seat [or] section of the Central division in ... (R. 19.5, last sentence RoP)
 - the language of proceedings is changed to ...
- ...

POINTS AT ISSUE [R. 350.4 RoP]

The Defendant argues that

- the court has no jurisdiction over the case
- the division indicated by the Claimant is not competent for the case
 - and suggests that the action be referred to the Local [or] Regional division in ... [or] to the seat [or] section of the Central division in ...
- the language of the statement of claim does not comply with Art. 49 UPCA and R. 14 RoP
 - and suggests a change of the language of proceedings to the following language: ...
- ...

The Claimant argues that

- the court has jurisdiction over the case
- the division indicated has jurisdiction is competent for the case
 - and, if not, the Local [or] Regional division in ... [or] to the seat [or] section of the Central division in ... is competent for the case
- the language of the statement of claim complies with Art. 49 UPCA and R. 14 RoP
 - and, if not, ... complies as language of proceedings with Art. 49 UPCA and R. 14 RoP
- ...

GROUND FOR THE DECISION [R. 350.1(g), 4 RoP]

Optional standard text

- Noting that

- the action does not relate to a patent or a supplementary protection certificate falling within the scope of application of the UPCA [Art. 3 UPCA]
- an application to opt out from the exclusive jurisdiction of the Court
 - the European patent,
 - the European patent application or
 - the Supplementary protection certificate
 which is the subject of the proceedings has been formally recorded in the Registry on *[dd month in words yyyy]* (R. 17 RoP) ...
- the division indicated by the Claimant (R. 13.1(i) RoP) does not have competence under Art. 33(1) to (6) UPCA because
 - reason re. Defendant's domicile: ...
 - reason re. place of infringement: ...
 - other reason: ...
- ... *[language]* is not an admissible language of proceedings under Art. 49 UPCA and R. 14 RoP
 - reason: ...
- Holding that the UPC does not have jurisdiction / competence due to ...

DECISION (OPERATIVE PART) [R. 20, 21 and 350.2, 1st sentence RoP]

Optional standard text

For these grounds, having heard the parties on all aspects of relevance for the following order, the judge-rapporteur

- allows the preliminary objection
- orders that the action shall be referred to the local [or] regional division in ... [or] to the seat [or] section of the central division in ...
- orders that the language of proceedings is ... and that the Claimant lodges the statement of claim in that language
- ...

Optional standard text on costs

[where the Preliminary objection is allowed and the main action lodged by the Claimant is dismissed]

The Court orders that

- the claimant shall pay the defendant's costs
- each party shall bear its own costs
- the Claimant is to bear ... % and the Defendant ... % of the legal costs of the proceedings
- ...

Suggested text for the section INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY (R. 20.1, 3rd sentence RoP) concerning the next steps in the proceedings

The Judge-rapporteur orders that

- the Claimant lodges the Statement of claim in [language] within a time period of ... weeks / months;
- the time period for lodging the Statement of defence shall
 - not be affected by the present Order

- be extended by ...weeks / until ... [dd month in words yyyy]
- the Deputy-Registrar assigns the action to the local [or] regional division in ... [or] to the seat [or] section of the central division in ... to be completed

Delivered on ... [R. 350.1(b) RoP]

NAMES AND SIGNATURES	
<p><i>Judge-rapporteur</i> <i>[Art. 8 UPCA, Art. 35(5) UPCS]</i></p> <p>Judge-rapporteur ...</p>	<p><i>Deputy-Registrar</i> <i>[Art. 35(5) UPCS]</i></p> <p>Deputy-Registrar ...</p>

Suggested text for the section INFORMATION ABOUT APPEAL

The present decision of the Judge-rapporteur allowing the preliminary objection constitutes a final decision of the Court of First Instance and may be appealed by the unsuccessful party within two months of the date of the notification of the decision (Art. 73(1) UPCA, R. 21.1 and 220.1(a), 224.1(a) RoP).

Information about enforcement (Art. 82 UPCA, Art. Art. 37(2) UPCS, R. 118.8, 158.2, 354, 355.4 RoP)

An authentic copy of the enforceable decision or order will be issued by the Deputy-Registrar upon request of the enforcing party, R. 69 RegR.