

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

Order on Application of Article 33(3) UPCA

ORDER

of the Court of First Instance of the Unified Patent Court

Local division in ... / Regional division in ...

Issued 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]

KEYWORDS ... [required by R. 67 REGR] [to be provided by the Judge-rapporteur] : application of Article 33(3) UPCA; discretion to proceed with case; allocation of technically qualified judge; discretion to refer counterclaim for revocation to central division; discretion to stay of infringement proceedings; discretion to proceed with infringement proceedings; likelihood that claims be held invalid; criteria for exercise of discretion; referral of case to central division; agreement of parties (*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 ...

DECIDING JUDGE [R. 351.1(c) ROP]:

This order has been issued by the presiding judge ..., the legally qualified judge ... and [,] the legally qualified judge ..., (if already allocated to the panel) and the technically qualified judge ... [or] the single judge ...

SUMMARY OF FACTS [OPTIONAL, except if leave to appeal is granted, R. 351.2(b) RoP]

[Free text]

STATEMENT OF THE FORMS OF ORDER SOUGHT BY THE PARTIES [Optional, except if leave to appeal is granted, R. 351.2(b) RoP.]

The claimant requests that the Court

- proceeds with both the action for infringement and with the counterclaim for revocation;
- refers the counterclaim for revocation for decision to the central division and suspend the action for infringement;
- refers the counterclaim for revocation for decision to the central division and proceed with the action for infringement;
- refers the case for decision to the central division.

In case the Court decides to proceed with both the action for infringement and with the counterclaim for revocation, the Claimant requests

- the allocation of a technically qualified judge (if not already allocated)

[Further requests, if any]

The defendant requests that the Court

- proceeds with both the action for infringement and with the counterclaim for revocation;
- refers the counterclaim for revocation for decision to the central division and suspend the action for infringement;
- refers the counterclaim for revocation for decision to the central division and proceed with the action for infringement;
- refers the case for decision to the central division.

In case the Court decides to proceed with both the action for infringement and with the counterclaim for revocation, the defendant requests

- the allocation of a technically qualified judge with qualifications and experience in the following field of technology:

[Further requests, if any]

POINTS AT ISSUE [OPTIONAL]

[Free text]

FOUNDATIONS FOR THE ORDER [Mandatory, R. 37.1 RoP]

[Indication of relevant criteria in exercising discretion]

Having considered in particular the following aspects of the case

- procedural expediency

- eg parallel proceedings: if a revocation action against the same patent has already be started at the central division
- the risk of delay
- the language of proceedings at the local or regional division and at the central division

[In the case where the Court orders the referral of the counterclaim for revocation for decision to the central division and the stay of the infringement proceedings]

Considering that there is a high likelihood that the relevant claims of the patent will be held to be invalid on any ground by the final decision in the revocation proceedings

ORDER

Optional standard text (for example)

For these grounds, after having heard the parties, the Court of First Instance of the Unified Patent Court, Panel *[in divisions having more than one panel number of the panel: ...]* of the Local *[or: Regional]* Division in ...

orders that it shall

- proceed with both the action for infringement and with the counterclaim for revocation;
- refer the counterclaim for revocation for decision to the central division and suspend the action for infringement pending a final decision in the revocation proceedings;
- refer the counterclaim for revocation for decision to the central division and proceed with the action for infringement;
- refer the case for decision to the central division. *[with the agreement of the parties, Art. 33(3) (b) UPCA].*

INSTRUCTIONS TO THE JUDGE-RAPPORTEUR

[this section may be mandatory under R. 37.3 and .5 RoP]

(where the panel decides to proceed with the infringement action and the counterclaim for revocation)

- The judge-rapporteur shall request the President of the Court of First Instant to allocate to the panel a technically qualified judge (if not already allocated pursuant to R. 33 and 34 RoP)

(where the panel decides to refer the counterclaim for revocation to the central division)

- The judge-rapporteur shall communicate to the central division the dates set for the interim conference and for the oral hearing pursuant to R. 28 RoP (R. 37.5).
- If the decision is not to suspend the infringement proceedings, the judge-rapporteur of the panel of the central division shall accelerate proceedings as laid down in R. 40 (b) RoP.)

Issued on ...

NAMES AND SIGNATURES	
Judges <i>[Art. 8 UPCA, Art. 35(5) UPCS]</i> Presiding judge: ... Judge-rapporteur: ... Legally qualified judge: ...	Deputy-Registrar ... <i>[Art. 35(5) UPCS]</i> Deputy-Registrar ...

INFORMATION ABOUT APPEAL

The present order may either

- be the subject of an appeal by any party which has been unsuccessful, in whole or in part, in its submissions together with the appeal against the final decision of the Court of First Instance in the main proceedings, or
- be appealed by any party which has been unsuccessful, in whole or in part, in its submissions at the Court of Appeal with the leave of the Court of First Instance within 15 days of service of the Court of First Instance's decision to that effect (Art. 73(2)(b) UPCA, R. 220.2, 224.1(b) RoP).