

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

Order to freeze assets

ORDER

of the Court of First Instance of the Unified Patent Court

Local division in ... / Regional division in ... / Central division (Paris Seat or Munich Section)

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]

order not to remove assets; order not to deal in any assets; order issued *ex parte* / *inter partes*; application lodged before / after proceedings on the merits have commenced; reasonably available and plausible evidence in support of [imminent] infringement [yes / no]; removal from the Court’s jurisdiction; irreparable harm [yes / no]; no use of information obtained; security by deposit or bank guarantee; review of order (*ex parte*); objection to application; entry on the register after notice given to the Defendant; penalty if failure to comply; protection of natural person; ceiling; ... [non-exhaustive list for illustrative purposes]

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

Particular circumstances which should be taken into account

- **Is the Application for the Order to freeze assets lodged after proceedings on the merits have been commenced before the Court?**
 - If yes, the Application should be lodged at the division where the Applicant has commenced proceedings on the merits, in the language of the proceedings [R. 200.2, 192.1 and 192.4 RoP], and the present Order should indicate the number of the main action
- **Is the Application lodged before proceedings on the merits have been commenced before the Court?**
 - If yes, the present Order should inform the Applicant that he must start proceedings on the merits of the case before the same division of the Court on ... [date] at the latest. (If proceedings on the merits are not started, the Court may order, upon request of the Defendant, that the present Order be revoked or otherwise ceases to have effect) [Art. 61(2), 60(8) UPCA, R. 200.2, 192.1, 198.1 RoP]
- **Is the Order issued without having heard the Defendant (*ex parte*)?**
 - If the Defendant has not been heard, a review of the present Order may be requested by the Defendant within 30 days after its execution with a view to decide whether the Order should be modified, revoked or confirmed [Art. 61(2), 60(6) UPCA, R. 200.2, 197.3 RoP] [time period: within 30 days after the execution of the Order] [R. 197.3]

- If a review is requested, the Court shall order an oral hearing to review the Order without delay [R. 197.4, 195 RoP]
- The Application shall not be entered on the register until notice has been given to the Defendant [R. 192.3, last sentence RoP]

CLAIMANT / APPLICANT:

... [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 n° ... [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 JUDGES [R. 351.1(c) RoP]:

[in case the panel is delivering the Order]

This Order has been issued by the presiding judge ..., the judge-rapporteur ..., the legally qualified judge ... and the technically qualified judge ... [when proceedings on the merits have been already started and a technically qualified judge has been allocated, R. 208.3, 33, 37.3 RoP, or where else such allocation took place]

[or: ... by the presiding judge..., the judge-rapporteur ... and the legally qualified judge ...]

[in case one judge is issuing the Order]

This Order has been issued by the presiding judge / judge-rapporteur / standing judge / single judge.

SUMMARY OF FACTS

[Free text]

STATEMENT OF FORMS OF ORDER SOUGHT BY THE APPLICANT

[Optional standard text]

The Applicant seeks an Order of the Court prohibiting the Defendant from

- removing the following assets of the Defendant: ... from the territory of ...
[Contracting Member States to be specified by the Applicant], e.g. any money standing to the credit of any bank account of the Defendant
 - including account number xx-xx-xxxxxx held at the following bank:
- dealing in the following assets: ... [whether located in the Contracting Member States or not] [as specified by the Applicant] [Art. 61(1) UPCA, R. 200.1 RoP]

The Order is sought

- without hearing the Defendant (*ex parte*) [Art. 61(2), 60(5) UPCA, R. 197 RoP]

[If *inter partes*]

The Defendant seeks

- the dismissal of the Application for an Order to freeze assets
- the limitation of the Order to freeze assets to the following
 - assets ... located in ...
 - assets up to a value of EUR ... [*ceiling*]
 - money standing to the credit of the Defendant in bank account

POINTS AT ISSUE

[Free text]

GROUND FOR THE ORDER

[Optional standard text for orders *ex parte*]

This Order was issued without the Defendant having been heard because the Applicant has presented evidence that

- any delay would cause irreparable harm to the Applicant ...
- the following assets: ... could be removed from the Court's jurisdiction
- the Defendant could deal in the following assets: ... which are located in ...
- [other reason or material fact, as specified by the Applicant (R. 192.3 RoP) and found appropriate by the Court]
[Art. 61(2), 60(5) UPCA, R. 192.3, 197 RoP]

ORDER [R. 351.1(e) RoP]

Optional standard text for the following outcomes:

- (a) Application granted (*inter partes*)
- (b) Application granted (*ex parte*)
- (c) Application rejected (*ex parte*)
- (d) Application dismissed (*inter partes*)

(a) GRANT OF THE APPLICATION FOR AN ORDER TO FREEZE ASSETS (*inter partes*)

[Optional standard text]

Defendant is ordered not to

- remove the following assets: ... from the territory of ... [Contracting Member States as specified by the Applicant and deemed appropriate by the Court]
- deal in the following assets: ... [whether located in the Contracting Member States or not] [as specified by the Applicant and deemed appropriate by the Court [Art. 61(1) UPCA, R. 200.1 RoP]

This Order is limited to

- assets up to a value of EUR *[ceiling]*
- Any failure to comply with this Order may render the Defendant liable to pay to the Court a penalty [Art. 82(4), 61(2) UPCA, R. 196.3 last sentence RoP] of
 - up to EUR ... [or]
 - EUR ... per day for each day the Defendant fails to comply with this Order
 - ...
- This Order is immediately enforceable [R. 196.3 RoP].
[A certified translation of the Order in the official language of the Contracting Member State in which the enforcement shall take place may be required by the law of that State or useful for practical reasons.]
- This Order shall become effective only after security by deposit or bank guarantee in the amount of ... € has been provided by the Applicant in favour of the Defendant.
[R. 200.2, 196.3(b) and 196.6 RoP]
[The Court shall consider ordering a security especially in case of ex parte proceedings, R. 196.6 RoP]

[If the Application was lodged before proceedings on the merits have been commenced before the Court]

- This Order shall be revoked or otherwise cease to have effect, at the Defendant's request, if the Applicant does not bring an action leading to a decision on the merits of the case before the Court within a period not exceeding 31 calendar days or 20 working days, whichever is longer, after the execution of this Order [Art. 61(2), 60(8) UPCA, R. 200.2, 198.1 RoP]

INFORMATION ABOUT APPEAL [Art. 73(2)(a), 60 UPCA, R. 220.1(c), 224.2(b) RoP]

The Defendant may bring an appeal against the present Order within 15 days of service of this Order.

(b) GRANT OF THE APPLICATION FOR AN ORDER TO FREEZE ASSETS (*ex parte*)

[Optional standard text in addition to text under (a) above]

- This Order shall be served upon Defendant personally at [place] by [representative of Applicant] together with a copy of the Application for the present Order including any evidence relied upon in the Application, immediately at the time of the execution of this Order [R. 200.2, 197.2, 275.2 and .3 RoP]
- The Defendant is ordered to inform, by dd month in words yyyy at the latest, the Applicant about his assets in the following Contracting Member States or in third States: (above a threshold of EUR), whether in his own name or not and whether thoroughly or jointly owned, giving the value, location and details of such assets
- This Order shall become effective only after security by deposit or bank guarantee in the amount of ... € has been provided by the Applicant in favour of the Defendant.
[R. 200.2, 196.3(b) and .6 RoP]
[The Court shall consider ordering a security especially in case of ex parte proceedings, R. 196.6 RoP]

INFORMATION ABOUT REVIEW [Art. 60(6) UPCA, R. 197.3 RoP] Defendant may request a review of the present order to preserve evidence within 30 days after the execution of the measures.

(c) REJECTION OF THE APPLICATION FOR AN (*ex parte*) ORDER TO FREEZE ASSETS

[Optional standard text]

- The Court will not grant the Application for an Order to freeze assets without hearing the Defendant [Art. 61(2) UPCA, R. 192.3 RoP]
- The Applicant may by ... [dd month in words yyyy] withdraw the Application and request that this Order as well as the Application and its contents remain confidential [R. 194.5 and 6 RoP]
- In case the Application is not withdrawn by the Applicant within the aforementioned time period, the Court will inform the Defendant about the Application and invite him to lodge an Objection to the Application and summon the parties to an oral hearing [R. 195 RoP]

[In case the Application is not withdrawn within the time period]

The Court

- invites the Defendant to lodge by ... [dd month in words yyyy] an Objection to the Application [R. 194.1(a) RoP]
- summons the parties to an oral hearing on ... [dd month in words yyyy] at ... [place] [R. 194.1(b) RoP] *[The Court shall in particular consider summoning parties to an oral hearing if a relevant Protective letter has been filed by the Defendant (R. 194.6 RoP).]*

(d) DISMISSAL OF THE APPLICATION FOR AN ORDER TO FREEZE ASSETS (*inter partes*)

The Application is dismissed.

INFORMATION ABOUT APPEAL [Art. 73(2)(a), 60 UPCA, R. 220.1(c), 224.2(b) RoP]

The Applicant may bring an appeal against the present Order within 15 days of service of this Order.

Issued on ... [R. 351.1(b) RoP]

| NAMES AND SIGNATURES | |
|---|---|
| Judges [Art. 8 UPCA, Art.35(5) UPCS] | Deputy-Registrar [Art. 35(5) UPCS] |
| [The Order should be signed by the full panel [R. 200.2, 193.1 and .2, 17.2, 18 RoP] or by one judge only (R. 200.2, 193.3, 194.3 and .4 RoP)] | |
| <u>Panel</u> Presiding judge ... Judge-rapporteur ... Legally qualified judge ... Technically qualified judge [if already allocated to the panel] ... | <u>One judge</u> Presiding judge ... <u>Or:</u> Legally qualified judge acting as judge-rapporteur ... <u>Or:</u> Single judge <u>Or:</u> Standing judge |
| Deputy Registrar ... | |

INSTRUCTIONS TO THE REGISTRY AND THE PARTIES

- Where the Applicant requests orders without hearing the Defendant, the Application shall not be entered on the register until notice has been given pursuant to R. 197.2, 192.3 last sentence RoP]
- Where an Order to freeze assets is issued without the Defendant having been heard (*ex parte*), the Defendant shall be given notice, without delay and at the latest immediately at the time of the execution of the Order (R. 200.2, 197.2 RoP)
- The present Order may only be served between ... and ... [e.g. between 9:00 and 17:00 h] on ... [e.g. any working day] [as specified by the Applicant and/or found appropriate by the Court within the limits of the law of the Contracting Member State where the enforcement will take place]

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.