

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

Order rejecting a Preliminary objection (R. 21.1, 2nd sentence RoP)

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]

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. 351.1(c) RoP]:

This Order has been issued by the Judge-rapporteur ... [or: the Single judge ...]

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

[Free text]

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

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
- ...

GROUNDS FOR THE ORDER [Optional, Mandatory if leave to appeal is granted, R. 351.2(b) RoP]

Optional standard text

- Noting that
 - the action does 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 certificatewhich is the subject of the proceedings has not 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 have competence under Art. 33(1) to (6) UPCA because
 - reason re. Defendant’s domicile: ...
 - reason re. place of infringement: ...
 - other reason: ...
 - ... [language] is an admissible language of proceedings under Art. 49 UPCA and R. 14 RoP
 - reason: ...
 - Holding that the UPC does have jurisdiction / competence due to ...

ORDER [R. 20, 21 and 351.1 (e) RoP]

Optional standard text

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

- rejects the preliminary objection
- orders that the preliminary objection is to be dealt with in the main 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

Free text

Issued on ...

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

INFORMATION ABOUT APPEAL

The present order of the Judge-rapporteur rejecting the preliminary objection may either

- be the subject of an appeal together with the appeal against the final decision of the Court of First Instance in the main proceedings, or
- be appealed with leave of the Court of First Instance within 15 days of service of the Court's decision to that effect (Art. 73(2)(b) UPCA, R. 21.1 2nd sentence and 220.2, 224.1(b) RoP).