

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

Order for provisional measures

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]

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] provisional measures; application lodged before / after proceedings on the merits have been commenced; order issued *ex parte* / *inter partes*; protective letter; entitlement to commence proceedings; urgency; order to restrain infringement; interim injunction; seizure of goods; delivery up; precautionary seizure; weighing up parties' interests; potential harm for either of the parties; interim award of costs; adequate security for compensation of injury; security by deposit / bank guarantee; notice without delay to Defendant (*ex parte*) ... (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 provisional measures lodged after proceedings on the merits have been commenced before the Court?
 - If yes, the present Order should indicate main action n°....
- 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 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. 62(5), 60(9) UPCA, R. 213.1 RoP))
[time period must not exceed 31 calendar days or 20 working days from ... [date] (R. 213.1 RoP)]
- Has a Protective letter been lodged by the Defendant (R. 207 RoP)?
 - If yes the Registrar shall forward a copy of the Protective letter to the panel or the judge appointed to decide on the Application (R. 207.8 RoP).

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]

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 issuing the Order]

This Order has been issued ... by the presiding judge ..., the legally qualified judge ..., 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 legally qualified judge ... and the legally qualified judge ... (R. 208.2 RoP)

or: ... by the legally qualified judge acting as single judge... (R. 208.3 RoP)

or: ... by the presiding judge acting as single judge ... (R. 208.3 RoP)

or: ... by the standing judge (R. 209.3 RoP)

SUMMARY OF FACTS *[MANDATORY, R. 351.2(b) RoP]:*

[Free text]

STATEMENT OF THE FORMS OF ORDER SOUGHT BY THE PARTIES *[MANDATORY, R. 351.2(a) RoP]:*

[For Optional standard text see below "Order (OPERATIVE PART, OPTIONAL STANDARD TEXT)"]

Claimant seeks (e.g.)

- An injunction against the Defendant with regard to ... *[in case of a EP or a SPC: names of the Member States concerned; in case of a UP: "the participating Member States on ..." (date of publication by the EPO of the mention of the grant of the European Patent in the European Patent Bulletin, Art. 4 Reg. (EU) 1257/2012) (if any) with the exception of ... (names of the participating Member States excluded, e.g. with regard to Art. 28 UPCA)]* *[Art. 62(1) UPCA, R. 211.1(a) RoP]*
 - Without hearing the Defendant *[Art. 62(5), 60(5) UPCA]*
- A seizure or delivery up of the products suspected of infringing the patent right so as to prevent their entry into or movement within the channels of commerce *[Art. 62(3) UPCA, R. 211.1(b) RoP]*

- Without hearing the Defendant [Art. 62(5), 60(5) UPCA]
- A precautionary seizure of the movable and immovable property of the Defendant including the blocking of his bank accounts and other assets [Art. 62(3) UPCA, R. 211.1(c) RoP]
 - Without hearing the Defendant [Art. 62(5), 60(5) UPCA]
- An interim award of costs [R. 211.1(d) RoP]

[If *inter partes*]

The Defendant seeks

- Dismissal of the request for an injunction/seizure or delivery up/precautionary seizure.
- An interim award of costs [R. 211.1(d) RoP]

[Free text]

POINTS AT ISSUE

[Free text]

a) Order to grant provisional measures without having heard the Defendant, Art. 62(5) and 60(5) UPCA, R. 212 RoP

GROUND FOR THE ORDER [MANDATORY, R. 351.2(c) RoP]:

[Optional standard text]

- Any delay is likely to cause irreparable harm to the Applicant ...
- The risk of evidence being removed or destroyed has been demonstrated by the Applicant ...
- ... [other reasons, e.g. extreme urgency]

ORDER [R. 351.1(e) RoP] (OPERATIVE PART)

[Optional standard text]

Order for provisional measures

- **Injunction for direct infringement** [Art. 62(1), 25 UPCA]:
 - Defendant is ordered to cease and desist from ...
 - [in case of a direct infringement of a product patent and to the extent requested by the Applicant and found necessary to prevent an infringement or to prohibit the continuation of the infringement by the Court, Art. 62(1), 25(a) UPCA:] making, offering, placing on the market, using or importing or storing for these purposes a ... [wording of the product patent claim that is to be infringed with a sufficient degree of certainty and, if given, as specified by Applicant's requests and found appropriate by the Court] with regard to ... [in case of a EP or a SPC: names of the Member States as specified by the Applicant and found appropriate by the Court; in case of a UP: "the participating Member States on ..." (date of publication by the EPO of the mention of the grant of the European Patent in the European Patent Bulletin, Art. 4 Reg. (EU) 1257/2012) (if any) with the exception of ... (names

of the participating Member States excluded, e.g. with regard to Art. 28 UPCA), as specified by the Applicant and found appropriate by the Court]]

- *[in case of a direct infringement of a process patent and to the extent requested by the Applicant and found necessary to prevent an infringement or to prohibit the continuation of the infringement by the Court, Art. 62(1), Art. 25(b) UPCA:]* using or offering for use a ... *[wording of the process patent claim that is found to be infringed with a sufficient degree of certainty and, if given, as specified by Applicant's requests and found appropriate by the Court]* with regard to ... *[in case of a EP or a SPC: names of the Member States as specified by the Applicant and found appropriate by the Court; in case of a UP: "the participating Member States on ..." (date of publication by the EPO of the mention of the grant of the European Patent in the European Patent Bulletin, Art. 4 Reg. (EU) 1257/2012) (if any) with the exception of ... (names of the participating Member States excluded, e.g. with regard to Art. 28 UPCA), as specified by the Applicant and found appropriate by the Court]].*
- *[in case of a direct infringement of a process patent from which a product is directly obtained and to the extent requested by the Applicant and found necessary to prevent an infringement or to prohibit the continuation of the infringement by the Court, Art. 62(1), 25(c) UPCA]:* offering, placing on the market, using, or importing or storing for these purposes a ... *[product as specified by Applicant's requests and found appropriate by the Court]* obtained by a ... *[wording of the process claim that is found to be infringed and, if given, as specified by Claimant's requests and found appropriate by the Court]* with regard to ... *[in case of a EP or a SPC: names of the Member States as specified by the Applicant and found appropriate by the Court; in case of a UP: "the participating Member States on ..." (date of publication by the EPO of the mention of the grant of the European Patent in the European Patent Bulletin, Art. 4 Reg. (EU) 1257/2012) (if any) with the exception of ... (names of the participating Member States excluded, e.g. with regard to Art. 28 UPCA), as specified by the Applicant and found appropriate by the Court]].*

□ **Injunction for indirect infringement** [Art. 62(1), 26 UPCA]:

- Defendant is ordered to ... *[as specified by Applicant's requests and found appropriate by the Court]* with regard to ... *[in case of a EP or a SPC: names of the Member States as specified by the Applicant and found appropriate by the Court; in case of a UP: "the participating Member States on ..." (date of publication by the EPO of the mention of the grant of the European Patent in the European Patent Bulletin, Art. 4 Reg. (EU) 1257/2012) (if any) with the exception of ... (names of the participating Member States excluded, e.g. with regard to Art. 28 UPCA), as specified by the Applicant and found appropriate by the Court]].*

□ **Provision for periodic penalty payment in case of non-compliance with the injunction**

[Art. 62(1) UPCA, R. 354.3 RoP]:

- Any failure to comply with this injunction will render the Defendant liable to pay to the Court a penalty of ...
 - up to ... EUR *[or]*
 - ... EUR per item *[or]*
 - ... EUR per day for each day the Defendant fails to comply with this injunction

[as specified by the Applicant and found appropriate by the Court].

- **Provisional seizure or delivery up**
 - It is ordered to seize or to deliver up ... *[wording of the product patent claim that is found to be infringed with a sufficient degree of certainty and, if given, as specified by Applicant's requests. e.g. by naming the product, and found appropriate by the Court]* so as to prevent their entry into or movement within the channels of commerce *[as further specified by Applicant's request with regard to the requirements of the law of the Contracting Member State in which Applicant intends to enforce this order and found appropriate by the Court]*.

- **Precautionary seizure**
 - It is ordered
 - to seize the following movable and immovable property of the Defendant: ... *[to be specified by Applicant's requests and found appropriate by the Court – could also be specified with regard to which property]*
 - up to the value of ...
 - and/or
 - to block the bank account(s) of the Defendant: ... and the following assets of the Defendant: ... *[to be specified by Applicant's requests, in particular with regard to which bank account(s), and found appropriate by the Court]* [R. 211 (c) RoP]
 - up to the value of ...

- **Interim award of costs [R. 211.1(d) RoP]**
 - Applicant is awarded the amount of ... € as interim costs.

- **Security**
 - This order is enforceable only after security by deposit or bank guarantee in the amount of ... € has been provided by the Applicant in favour of the Defendant. *[The Court shall consider ordering a security especially in case of ex parte proceedings unless there are special circumstances not to do so, R. 211.5 RoP]*
 - This order is immediately enforceable.

- **Service upon Defendant**
 - The present order shall be served personally at ... [place] by ... [representative of applicant] together with a copy of the application for the present order including exhibits and other materials relied upon in the application before or at the time of the execution of this order as well as the Notice of Provisional measures and instructions for access to proceedings (provided by the CMS) [R. 212.2, 276.1 RoP].

- **Notice of the right for a review**
 - Defendant may request a review of the present order within 30 days after the execution of the measures [Art. 62(5), 60(6) UPCA, R. 212.3, 197.3 RoP].

- **Notice of the right for an appeal**

- Defendant may bring an appeal against the present order within 15 days of service of this order [Art. 73(2)(a), 62 UPCA, R. 220.1(c), 224.2(b) RoP].
- **Notice that proceedings on the merits have to be started within a time limit**
 - If proceedings on the merits are not started within a period not exceeding 31 calendar days or 20 working day whichever is longer from the time of service upon Defendant, the Court may order, upon request of the Defendant, that the present Order be revoked or otherwise ceases to have effect (Art. 62(5), 60(8) UPCA, R. 213.1 RoP)

Appendix to the Order

- Where provisional measures are ordered without the Defendant having been heard (*ex parte*), the Defendant shall be given notice, without delay and at the latest immediately at the the time of execution of the measures (R. 212.2 RoP)
- An Order issued by the Standing judge shall set out the procedure to be followed on the Application (R. 209.3 RoP).

b) Order to summon the Applicant to an oral hearing without the presence of the Defendant, R. 209.1 (c) RoP

GROUNDS FOR THE ORDER

- [Optional standard text]
- Having regard to the reasons for not hearing the Defendant set out by the Applicant
 - urgency of the action
 - delay likely to cause irreparable harm to the Applicant
 - demonstrable risk of evidence being destroyed or otherwise ceasing to be available [R. 209.2, 212.1 RoP]

ORDER [R. 351.1(e) RoP]

- The Applicant is summoned to an oral hearing without the presence of the Defendant on ... [date]

Follow-up:

[In case the Court, after having conducted an oral hearing, decides to grant provisional measures]:

- continue as in a) Order to grant provisional measures without having heard the Defendant

c) Order not to grant provisional measures without hearing the Defendant, Art. 62(5), 60(5) UPCA, R. 209.4 RoP

GROUNDS FOR THE ORDER

[Free text]

ORDER [R. 351.1(e) RoP]

- The Court will not decide on Applicant's request without hearing the Defendant.
- Applicant may withdraw the Application and request that this Order and the Application and the contents of the Application remain confidential by ... [date up to which the Applicant may make that request] [R. 209.4 RoP].
- In case the application will not have been withdrawn by Applicant within the aforementioned time-limit the Court will inform Defendant on the Application and invite him to lodge an Objection to the Application and summon the parties to an oral hearing.

[follow-up order in case the Application has not been withdrawn within the deadline]

- The Court orders
 - the Defendant shall be informed about the Application and be invited to lodge by ... [date] an Objection to the Application [R. 209.1(a) RoP]
 - the parties are summoned to an oral hearing on ... at ... [date, place] [R. 209.1(b) RoP]

An Order issued by the Standing judge shall set out the procedure to be followed on the Application [R. 209.3 RoP].

d) Order on provisional measures after having informed the Defendant about the Application and invited him to lodge an Objection to the Application or where the Applicant has not requested an order without having heard the Defendant and where an oral hearing took place, R. 209.1, 210, 211 RoP

FOUNDATIONS FOR THE ORDER [MANDATORY, R. 351.2 (c) RoP]

[Optional standard text]

- Being satisfied that
 - the Applicant is entitled to commence proceedings pursuant to Art. 47 UPCA
 - the patent in question is valid and
 - the Applicant's right is being infringed, or that such infringement is imminent (R. 211.2 RoP)
- In the exercise of its discretion, the Court has
 - weighed up the interests of the parties and
 - in particular taken into account the potential harm for either of the parties resulting from the granting or the refusal of the injunction (R. 211.3 RoP)
- Having regard to the following delay in seeking provisional measures which the Court considers as unreasonable (R. 211.4 RoP): ...

ORDER (OPERATIVE PART) [R. 351.1(e) RoP]

[For Optional standard text see a) Order to grant provisional measures without having heard the Applicant and the following]

Or in case of dismissal

- Applicant's request(s) is (are) dismissed.
- Defendant is awarded the amount of ... € as interim costs.
- This Order is immediately enforceable.

- Notice of the right for an appeal**
 - The Applicant/Defendant may bring an appeal against the present order within 15 days of service of this order [Art. 73(2)(a), 62 UPCA, R. 220.1(c), 224.2(b) RoP].

e) Order on Defendant's request for a review of the order on provisional measures without having heard the Defendant (Art. 62(5), Art. 60(6) UPCA, R. 212.3, 197.3 and .4 RoP)

GROUNDS FOR THE ORDER [MANDATORY, R. 351.2 RoP]

The Court, on ... [date], has ordered the following provisional measures without hearing the Defendant

ORDER (OPERATIVE PART) [ART. 62(5), 60(6) UPCA, R. 351.1(e) RoP]

[Optional standard text]

- On Defendant's request the order of ... [date] is
 - revoked
 - modified in the following way ... In all other respects Defendant's request is dismissed.
- Defendant's request is dismissed
- Interim award of costs [R. 211.1(d) RoP]
- This Order is immediately enforceable.

- Notice of the right for an appeal**
 - The Applicant/Defendant may bring an appeal against the present order within 15 days of service of this order [Art. 73(2)(a), 62 UPCA, R. 220.1(c), 224.2(b) RoP].

f) Order to revoke or otherwise cease to have effect of an order on provisional measures, because the Applicant has not started proceedings on the merits of the case as provided in Art. 62(5), Art. 60(8) UPCA, R. 213 RoP

GROUNDS FOR THE ORDER [MANDATORY, R. 351.2 RoP]

[For Optional standard text]

- Since the Applicant did not bring an action leading to a decision on the merits of the case before the Court by ...(specific date as mentioned in appendix to Order in a))
...

ORDER (OPERATIVE PART) [ART. 60(8) UPCA, R. 351.1(e) RoP]

[Optional standard text]

- The order of ... [date] is
 - revoked.
 - ... [otherwise ceased to have effect]
- Interim award of costs [R. 211.1(d) RoP]
- Notice of the right for an appeal**
 - The Applicant may bring an appeal against the present order within 15 days of service of this order [Art. 73(2)(a), 62 UPCA, R. 220.1(c), 224.2(b) RoP].

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

NAMES AND SIGNATURES	
<p>Judges [Art. 8 UPCA, Art. 35(5) UPCS]</p> <p><i>[if the application for provisional measures is lodged before proceedings on the merits have been commenced before the Court – full panel or one judge (Single judge or Standing judge) only should sign, R. 208.2, 209.3, 345.5 RoP:]</i></p> <p>Presiding judge ... Legally qualified judge ... Legally qualified judge ... <i>[if allocated to the panel]</i> Technically qualified judge</p> <p><u>Or:</u> Presiding judge ...</p> <p><u>Or:</u> Legally qualified judge ...</p> <p><i>[if main proceedings have already been commenced before the Court – full panel or one judge (Single</i></p>	<p>Deputy-Registrar [Art. 35(5) UPCS]</p> <p>Deputy-Registrar ...</p>

<p><i>judge or Standing judge) only should sign, R. 208.3, 209.3, 345.5 RoP]</i></p> <p>Presiding judge ... Judge-rapporteur ... Legally qualified judge ... <i>[if allocated to the panel]</i> Technically qualified judge ... <u>Or:</u> Presiding judge ... <u>Or:</u> Legally qualified judge ...</p>	
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INFORMATION ABOUT APPEAL

See above at applicable procedural scenario. The Information about appeal should always be added after the signatures.

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.