

ORDER
of the Court of Appeal of the Unified Patent Court
concerning an Application to annul a decision of the Office to reject a request for unitary effect
(R. 97 RoP)
issued on 16 September 2025

HEADNOTES

- In accordance with the provisions of Rule 85.2 RoP, Rule 91 RoP (interlocutory revision by the EPO) does not apply to an expedited action against a decision of the Office issued under Rule 97 RoP concerning an Application to annul a decision of the Office to reject a request for unitary effect.
- In view of the three-week period within which an Application for reversal may be lodged against a decision taken by the EPO (Rule 97.1 RoP), the time frame (“as soon as practicable”) within which the Registry must forward this Application to the standing judge, and the three-week period within which the latter must decide the Application (Rule 97.4 RoP), an Application lodged under Rule 97 RoP constitutes an expedited action falling under the exception provided for in Rule 85.2 RoP.
- Rule 97 RoP, as *lex specialis*, establishes the specific provisions applicable to an Application to annul a decision of the Office to reject a request for unitary effect.

KEYWORDS

Application to annul a decision of the European Patent Office to reject a request for unitary effect (R. 97 RoP)

APPELLANTS

- 1. Bodycap**, 6, rue du docteur Laënnec, 14200 Herouville Saint Clair, France;
- 2. Centre National de la Recherche Scientifique (CNRS)**, 3, rue Michel-Ange, 75016 Paris, France;
- 3. Université de Rennes**, Campus de Beaulieu, 263 avenue du Général Leclerc, CS 74205 35042 Rennes, France;

together represented by Mr Geoffroy Cousin, representative before Unified Patent Court, Cabinet FIDAL Innovation, France.

RESPONDENT

European Patent Office, Munich, Germany (hereinafter: EPO)

PATENT AT ISSUE

EP 3 691 518

DECIDING JUDGE

Standing judge

Emmanuel Gougé, Legally qualified judge

LANGUAGE OF PROCEEDINGS

French

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Central Division (Milan section) of 6 August 2025
References:
 - UPC_CFI_628/2025
 - App_32529/2025
 - ORD_33325/2025

SUMMARY OF FACTS, PROCEDURAL HISTORY AND REQUESTS

1. The appellants are co-proprietors of the patent at issue. The mention of its grant was published in the European Patent Bulletin on 18 December 2024.
2. A request for unitary effect in respect of the patent at issue was filed on 17 January 2025 by the representative of the co-proprietors, within the one-month period laid down in Article 9(1)(g) of Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (hereinafter 'UP Regulation').
3. Pursuant to Rule 7(3) of the Rules relating to Unitary Patent Protection (hereinafter 'UPR'¹), the European Patent Office (hereinafter 'EPO'), by a communication dated 27 January 2025, invited the proprietors of the patent at issue to correct certain deficiencies noted in the request for unitary effect, stating that the name and address of the third co-proprietor indicated in the request (Université Rennes 1, 2 rue du Thabor, CS 46510, 35065 Rennes Cedex) differed from the name and address recorded in the European Patent Register (which lists Université de Rennes, Campus de Beaulieu, 263 avenue du Général Leclerc, CS 74205, 35042 Rennes). The communication stated that the deficiencies had to be corrected within a **non-extendable period of one month** and that, failing such correction of the deficiencies within the prescribed period, the request for unitary effect would be **rejected**, in accordance with Rule 7(3) UPR (the terms appearing in bold type replicate the formatting of the communication as sent by the EPO).

¹ Rules adopted by decision of the Select Committee of the Administrative Council of the European Patent Organisation of 15 December 2015 and as amended by decision of the Select Committee of the Administrative Council of 13 November 2024.

4. The representative of the co-proprietors responded to the EPO's communication on 3 March 2025.
5. The EPO's Unitary Patent Protection Division then notified its intention to reject the request for unitary effect under Rule 7 UPR and invited observations from the representative of the co-proprietors of the patent at issue, who requested that the intention to reject be set aside. By decision of 17 June 2025, the EPO rejected the request for unitary effect on the grounds that the response to the invitation to correct the deficiencies noted had been filed after the expiry of the non-extendable period of one month set out in Rule 7(3) UPR.
6. On 8 July 2025, the appellants lodged an Application to reverse the EPO's decision, seeking, as their principal request, an interlocutory revision by the EPO of its decision of 17 June 2025 rejecting the request for unitary effect and, in the alternative, annulment of that decision and confirmation that the request for unitary effect dated 17 January 2025 had been properly filed.
7. Within the three-week period referred to in Rule 97(4) RoP, the Court of First Instance rejected the request to reverse the EPO's decision (impugned Order of 6 August 2025), holding in particular that
 - in accordance with Rule 85.2 RoP, a request for interlocutory revision (R. 91 RoP) is not provided for in the context of an Application to reverse a decision to reject a request for unitary effect lodged pursuant to the provisions of Rule 97 RoP;
 - the request for unitary effect had to be made in accordance with Rule 41 (Request for grant) of the Implementing Regulations to the European Patent Convention (hereinafter: EPC) by indicating the new legal address of the co-proprietor concerned;
 - the fact that the request for transfer of ownership from Université Rennes 1 to Université de Rennes was filed by a third party, without informing the representative of the co-proprietors in the unitary effect procedure, has no bearing, especially since the registration of said transfer during the examination procedure was notified by the EPO to the said representative;
 - with regard to the information that must appear in the request for unitary protection, Rule 6(2)(a) UPR clearly states that 'the request for unitary effect shall contain [...] particulars of the proprietor of the European patent making the request [...]' as provided for in Rule 41, paragraph 2(c) EPC, in particular, 'the name, address and nationality of the applicant and the State in which their residence or principal place of business is located,' and that the publication of this information is intended to safeguard the rights of third parties and legal certainty;
 - the period of one month for correcting deficiencies, which the EPO is required to observe under Rule 7(3) UPR, is mandatory and non-extendable. Failure to comply with this time limit automatically results in rejection of the request for unitary effect, and the EPO cannot accept documents submitted after this non-extendable one-month period, as doing so would undermine legal certainty regarding requests for unitary effect.
8. The appellants lodged an appeal against the impugned order by filing a Statement of appeal on 26 August 2025. They seek interlocutory revision by the EPO of the rejection decision dated 17 June 2025, the reversal of the impugned order, and the annulment of the EPO's decision of 17 June 2025.
9. The appellants notably argue that:

- the exclusion referred to in Rule 85.2 RoP applies only to expedited actions; therefore, since the appellants did not request expedited proceedings, interlocutory revision by the EPO is possible;
- the address of the third co-proprietor was indicated clearly enough to allow it to be reliably identified as a co-proprietor of the patent at issue;
- the co-proprietors and applicants for unitary effect legitimately relied on the EPO to recognize, on its own initiative, that the applicants for unitary effect - including Université Rennes 1 - were the proprietors recorded in the European Patent Register - including Université de Rennes - and that the EPO accepts a certain degree of tolerance regarding discrepancies between, on the one hand, the forms filed by the parties and, on the other hand, the information appearing in the register;
- The one-month response period (Rule 7(3) UPR) is an unusual time limit for communications issued by the EPO; in this case, the delay in response was only two working days and has no impact on third parties.

10. In its written observations filed on 3 September 2025, the EPO argues that no new and substantial elements have been presented by the appellants; therefore, the EPO maintains the observations it submitted on 29 July 2025 before the CFI (App_32529/2025 UPC_CFI_628/2025), namely that:

- under the exception set out in Rule 85.2 RoP, the possibility of interlocutory revision is excluded in the context of an Application for annulment lodged pursuant to Rule 97.1 RoP;
- the time period for correcting deficiencies (Rule 7(3) UPR) is non-extendable; any extension of the time period would allow the beneficiary to profit from its own failure, and providing the full address is required for reasons of legal certainty regarding the identity of the European patent proprietor.

GROUNDS FOR THE ORDER

11. In accordance with Rule 97.5 RoP (first sentence), a Statement of appeal by the patent proprietor or the President of the European Patent Office against the decisions of the standing judge pursuant to paragraph 4 may be filed within three weeks of service of the said decision.

Admissibility

12. The present appeal was lodged by a Statement of appeal filed on 26 August 2025, that is, within the three-week period following service of the contested order. It is therefore admissible on that basis.

Groundless appeal

13. The appeal is groundless for the following reasons.

14. In accordance with the provisions of Article 66 (Powers of the Court concerning decisions of the EPO) of the UPC Agreement, the Court may exercise any power entrusted on the EPO in accordance with Article 9 of the UP Regulation. Actions against decisions taken by the EPO in the performance of the tasks referred to in the aforementioned Article 9 are governed by Rules 85 to 98 of the Rules of Procedure of the UPC.

On interlocutory revision

15. These provisions provide, in certain cases, for the possibility of interlocutory revision. If the EPO considers that the Application to annul or alter a decision taken by the Office is well-founded, it must, within two months of the date of receipt of the Application, rectify the contested decision in accordance with the order or remedy sought by the applicant, in accordance with the provisions of Rule 91.1(a) RoP.
16. In accordance with Rule 85(2) RoP, however, Rule 91 RoP does not apply to an expedited action against a decision of the Office issued under Rule 97 RoP concerning an Application to annul a decision of the Office to reject a request for unitary effect.
17. In view of the three-week period within which an Application for reversal may be lodged against a decision taken by the EPO (Rule 97.1 RoP), the time frame (“as soon as practicable”) within which the Registry must forward this Application to the standing judge, and the three-week period within which the latter must decide the Application (Rule 97.4 RoP), an Application lodged under Rule 97 RoP constitutes an expedited action falling under the exception provided for in Rule 85(2) RoP.
18. The Application lodged on 8 July 2025 with the Court of First Instance seeking the annulment of the EPO’s decision to reject the request for unitary effect is an expedited action against a decision of the Office under Rule 97 RoP, which, as *lex specialis*, establishes the specific provisions applicable to an Application to annul a decision of the Office to reject a request for unitary effect.
19. Accordingly, the Application to annul a decision issued by the EPO, submitted by the appellants pursuant to Rule 97(1) RoP, falls within the scope of the exception set out in Rule 85(2) RoP, and thus interlocutory revision by the EPO is excluded in this case.

On the Application to annul the EPO’s decision to reject the request for unitary effect

20. Rule 7(3) UPR provides that if the requirements referred to in Rule 5(2) are met and the request for unitary effect complies with Rule 6(1) but fails to comply with requirements of Rule 6(2), the EPO shall invite the requester to correct the deficiencies noted within a non-extendable period of one month. If the deficiencies are not corrected in due time, the EPO shall reject the request.
21. Failure to observe a time limit may, in principle and under certain conditions, be the subject of a request for re-establishment of rights (Rule 22 UPR). However, Rule 22(6) UPR expressly excludes the one-month period referred to in Rule 7(3) UPR from re-establishment of rights; therefore, a proprietor of a European patent who has not complied with this period cannot have their rights reinstated, regardless of the reasons for failing to observe the said time limit.
22. In the present case, the appellants do not dispute that the indication of the name and address of the third co-proprietor, as it appears in the request for unitary protection, differs from that recorded in the European Patent Register. Nor do they dispute that they responded on 3 March 2025 to the EPO’s communication of 27 January 2025, that is, after the time limit expiring on 27 February 2025, even though the said communication expressly stated that the deficiencies had to be corrected within a non-extendable period of

one month and that, failing such correction of the deficiencies within the specified period, the request for unitary effect would be rejected.

23. Compliance with the time limit under Rule 7(3) UPR being mandatory and excluded from re-establishment of rights, the standing judge of the Court of First Instance therefore rightly dismissed the Application to annul the decision taken by the EPO.
24. It follows from the foregoing that the appellants fail in their Application to reverse the impugned order and annul the EPO's decision of 17 June 2025, without the need to examine the other arguments they have advanced.
25. In accordance with Rule 98 RoP, the parties shall bear their own costs.

ON THESE GROUNDS

The Court of Appeal dismisses the appeal.

Order issued in Luxembourg on 16 September 2025.

Emmanuel Gougé, Legally qualified judge and Standing judge