



File number:
UPC_CoA_288/2025
APL_15039/2025
UPC_CoA_290/2025
APL_15067/2025
UPC_CoA_291/2025
APL_15072/2025

Order
of the Court of Appeal of the Unified Patent Court of 6
October 2025
concerning an appeal against the rejection of an opposition

GUIDING

PRINCIPLE:

1. R. 19.1 RP contains an exhaustive catalogue of admissible grounds for opposition (see order of 3 September 2024, UPC_CoA_188/2024, APL_21943/2024, *Aylo v. Dish*, para. 32). This includes the jurisdiction of the court (R. 19.1 (a) RP), and thus also the question of the validity of the relevant rules of jurisdiction.
2. Insofar as an alleged violation of Art. 47(2) EU CFR and Art. 6 ECHR does not relate to any of the grounds for objection mentioned in R. 19.1 of the ORP, an objection based on this is not admissible.
3. The allocation of competences to the Unified Patent Court pursuant to Art. 31 UPCA in conjunction with Art. 71a f. Brussels Ia Regulation and Art. 32 UPCA does not constitute an interference with the division of tasks between the Court of Justice of the European Union and the national courts as regulated by Art. 19 TEU and Art. 267 TFEU.
4. In accordance with Art. 87 para. 2 UPCA, the Administrative Committee was analogously authorised to determine that Milan would take the place of London as a division of the central chamber with the responsibilities set out in Annex II UPCA.
5. The fixed fee to be paid for the appeal proceedings pursuant to R. 228 of the Rules of Procedure and, if applicable, the fee for the infringement action depending on the value in dispute must be paid for each appeal proceeding. This also applies if the appeals concerning the same parties raise the same issues.

KEYWORDS:

- a) Grounds for opposition (R. 19.1 VerFO)
- b) Validity of jurisdictional provisions
- c) Compatibility of Art. 31 UPCA in conjunction with Art. 71a f. Brussels Ia Regulation and Art. 32 UPCA with Art. 19 TEU and Art. 267 TFEU
- d) Power of the Administrative Committee to amend pursuant to Art. 87 para. 2 UPCA

e) Reduction of court fees in accordance with R. 228 of the Rules of Procedure

APPELLANTS AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE

1. **Roku International B.V.**, Amsterdam, Netherlands,
2. **Roku, Inc**, San Jose, USA,

(hereinafter for both together in the singular: "Roku")

represented by: Attorney Dr Andreas Kramer and other attorneys of the law firm Vossius & Partner Patentanwälte Rechtsanwälte mbB, Düsseldorf, Germany

APPELLANT IN PROCEEDINGS APL 15039/2025 AND PLAINTIFF BEFORE THE COURT OF FIRST INSTANCE

Dolby International AB, Dublin, Ireland

(hereinafter: "Dolby")

represented by: Dr Tilman Müller, Rechtsanwalt, Bardehle Pagenberg Partnerschaft mbB Patentanwälte, Rechtsanwälte, Hamburg, Germany

APPELLANT IN PROCEEDINGS APL 15067/2025 AND APL 15072/2025 AND PLAINTIFF BEFORE THE COURT OF FIRST INSTANCE

Sun Patent Trust, New York, USA

(hereinafter: "Sun")

represented by: Dr Volkmar Henke, Attorney-at-Law, Bardehle Pagenberg Partnerschaft mbB Patentanwälte, Rechtsanwälte, Hamburg

LANGUAGE OF THE PROCEEDINGS

German, with the consent of the parties the language of the oral proceedings was English

PANELS AND DECIDING JUDGES

Panel 2,

Rian Kalden, presiding judge and legally qualified judge Patricia Rombach, legally qualified judge and rapporteur Ingeborg Simonsson, legally qualified judge

CONTESTED ORDERS OF THE COURT OF FIRST INSTANCE

Date: 18 March 2024, Local Chamber Munich, Reference

number of the Court of First Instance:

- ORD_69038/2024 concerning objection App_45195/2024 in the main proceedings concerning the infringement action in ACT_27821/2024 UPC_CFI_235/2024
- ORD_69030/2024 concerning objection App_47531/2024 in the main proceedings concerning the infringement action in ACT_29956/2024 UPC_CFI_254/2024 and

- ORD_69037/2024 concerning opposition App_47532/2024 in the main proceedings concerning the infringement action in ACT_36560/2024 UPC_CFI_339/2024

PATENTS IN SUIT

EP 3 490 258 (in proceedings APL_15039/2025)

EP 2 903 267 (in proceedings APL_15067/2025)

EP 3 200 463 (in proceedings APL_15072/2025)

ORAL PROCEEDINGS

The joint oral hearing of all proceedings (R. 302.3 VerFO) took place on 1 July 2024 PROCEEDINGS

1. In the three proceedings, Dolby (ACT_27821/2024) and Sun (ACT_29956/2024, ACT_36560/2024) are suing the two defendants (hereinafter for both: Roku) before the Munich Local Court for alleged infringement of the patents in dispute.
2. Roku filed an objection in all proceedings and essentially requested that the action be dismissed as inadmissible or, alternatively, that the present proceedings be stayed and that the following question be referred to the Court of Justice of the European Union for interpretation of Union law: "Is it compatible with Article 267 TFEU that the Unified Patent Court established by individual Member States by means of an international agreement is entrusted with the application of Union law in the field of patent law instead of the courts of the Member States and is subject to the supervision of the ECJ by means of preliminary rulings pursuant to Article 21 UPCA?". Dolby and Sun have each requested that the opposition be dismissed.
3. In the contested orders, the rapporteurs rejected Roku's objections and allowed the appeal. The contested orders were essentially justified as follows:
 - Insofar as Roku based the objection on R. 19.1 (a) RP and justified it with the incompatibility of the UPCA with primary law of the European Union, the (alleged) violation of the statutory judge and the lack of active legitimacy of the respective plaintiff, the objection was inadmissible, but in any case unfounded.
 - R. 19.1 (a) of the RP only mentions the lack of jurisdiction of the UPC as a ground for objection. In this respect, reference is only made to Art. 31, 32 and 83 UPCA. The validity and applicability of the aforementioned articles is, as it were, presupposed.
 - The question referred by Roku to the Court of Justice of the European Union was not directly relevant to the question of the UPC's jurisdiction.
 - The Munich Local Division had territorial jurisdiction pursuant to Art. 33 (1) (a) UPCA.
 - The fact that the alleged acts of infringement were committed by Roku Inc. in part before the UPCA entered into force is irrelevant for the question of jurisdiction.
 - Roku argues without success that it cannot be ruled out that the composition of different chambers would have been different if there had been a central chamber based in London. The composition of individual panels of a (permanent and previously established by law) court does not affect the right to the statutory judge. Only if the judge specifically

appointed judge is not independent and/or not impartial, this could constitute a violation of Art. 47 para. 2 EU CFR and Art. 6 ECHR. The latter is not alleged by Roku.

- The preconditions for the jurisdiction of the central chamber are not apparent. A violation of the statutory judge was not recognisable in this respect.
- Sun had effectively withdrawn from the opt-out.

4. Roku has filed appeals against these orders.

FORM OF ORDER SOUGHT BY THE PARTIES

5. In summary, Roku requests that the contested order be set aside, the appeals be upheld and the actions be dismissed as inadmissible or, in the alternative, that the present proceedings be stayed pursuant to Article 21 UPCA, Article 38(2) Annex I to the UPCA and that the question of the compatibility of the UPCA with Union law, in particular the question set out in paragraph 2, be referred to the European Court of Justice.
6. In proceedings APL_15067/2025 and APL_15072/2025, Roku requests that only one court fee be fixed for both proceedings in total.
7. Dolby and Sun jointly request that the appeal be dismissed in its entirety and that Roku be ordered to pay the costs of the appeal proceedings.

ARGUMENTS OF THE PARTIES

8. Roku objects to the contested orders, repeating and expanding on its submissions at first instance. Roku does not contest the local division's view regarding territorial jurisdiction, the question of jurisdiction with regard to acts of infringement prior to the entry into force of the UPC, the right to sue and the effectiveness of the opt-out.

REASONS:

9. The admissible appeals are unsuccessful.

I. Subject matter of the appeals

10. The grounds of appeal do not deal with the questions set out in paragraph 8. These questions are therefore not the subject of the appeal (R. 226 (b) RP in conjunction with R. 233.3 RP).

II. Merits of the appeals

1. Requirements for international jurisdiction

11. The local division correctly considered the appeals to be admissible insofar as they were based on the ground of lack of jurisdiction. As the Court of Appeal has already ruled (Order of 3 September 2024, UPC_CoA_188/2024, APL_21943/2024, *Aylo v. Dish*, para. 32),

R. 19.1 RP contains an exhaustive catalogue of admissible grounds for objection. This includes the jurisdiction of the court (R. 19.1 (a) RP).

12. The local division correctly assumed that the requirements for international jurisdiction of the UPC under Art. 31 UPCA in conjunction with Art. 71a and Art. 71b of Regulation (EU) No. 1215/2012 (hereinafter: Brussels Ia Regulation) are met here.
 13. According to Art. 31 UPCA, the international jurisdiction of the court is determined in accordance with the Brussels Ia Regulation or, where applicable, on the basis of the Convention on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters (Lugano Convention). The regulation thus refers to Art. 71a and Art. 71b Brussels Ia Regulation.
 14. Pursuant to Article 71a(1) Brussels Ia Regulation, a common court of several Member States pursuant to paragraph 2 ("common court") shall be deemed to be a court of a Member State for the purposes of this Regulation if the common court exercises jurisdiction in matters falling within the scope of this Regulation in accordance with the convention establishing it. Pursuant to Art. 71a para. 2 a) Brussels Ia Regulation, the Unified Patent Court (UPC) is such a court.
 15. Pursuant to Art. 71b (1) Brussels Ia Regulation, a common court has jurisdiction if the courts of a Member State that is party to the agreement establishing the common court would have jurisdiction under this Regulation in a field of law covered by the agreement in question.
 16. Dolby and Sun have conclusively argued that such an act of infringement justifying the jurisdiction of the UPC has taken place.
2. *Incompatibility of Art. 31 UPCA in conjunction with Art. 71a et seq. Brussels Ia Regulation and Art. 32 UPCA with Art. 19 TEU and Art. 267 TFEU equal to ground for objection under R. 19.1 RP?*
- a) *Incompatibility of Art. 31 UPCA equal to ground for objection under R. 19.1 RP*
17. Roku successfully challenges the view in the contested orders that the incompatibility of Art. 31 UPCA in conjunction with Art. 71a et seq. Brussels Ia Regulation with Art. 19 TEU and Art. 267 TFEU cannot be invoked as a ground for objection under R. 19.1 RP.
 18. Since the effectiveness of the jurisdiction regulations is a prerequisite for the UPC to be able to assume its jurisdiction, the asserted invalidity of Art. 31 UPCA in conjunction with Art. 71a et seq. Brussels Ia Regulation must be examined in the context of an objection, contrary to the opinion of the local chamber.
 19. The national courts are obliged to examine the validity of a Union act (in this case Art. 71a and Art. 71b Brussels Ia Regulation) of their own motion or on the basis of the grounds of invalidity put forward by the parties (see CJEU, judgment of 3 July 2019, *Eurobolt*, C-644/17, ECLI:EU:C:2019:555, para. 28). This obligation also applies to the UPC, which is subject to the same obligations under Union law as any national court of the Contracting Member States pursuant to Art. 1 UPCA. It would be contrary to this obligation if such an examination were reserved for the main proceedings.

20. The UPC must interpret its own substantive and procedural law in accordance with EU law and, in cases in which it conflicts with a provision of EU law with direct effect and an interpretation in conformity with EU law is not possible, disregard it *ex officio* (cf. ECJ, judgment of 19 December 2024, *K GmbH*, C-65/23, EU:C:2024:1051, para. 53, UPC Court of Appeal, order of 20 August 2025, *expert/Viosys*, UPC_CoA_380/2025, APL_20125/2025, para. 37).

21. Dolby and Sun argue, without success, that R. 19.1 of the Regulation serves to clarify certain individual questions, which are typically simple and procedural in nature, as early as possible in the proceedings before the court has to deal with substantive patent law issues. The complex examination for a violation of Art. 19 TEU and Art. 267 TFEU is therefore incompatible. It is true that R. 19.1 of the Regulation serves the purpose of clarifying with legal effect at an early stage that the court has jurisdiction. However, it would be contrary to this purpose if the validity of the standards relevant to jurisdiction could not be examined in the opposition proceedings.

b) Invalidity of Art. 32 UPCA as a ground for opposition under R. 19.1 RP

22. Nothing else applies insofar as Roku bases the opposition on the invalidity of Art. 32(1) UPCA. Art. 32 UPCA grants the UPC exclusive subject-matter jurisdiction for the actions forming the subject-matter of the proceedings at issue here.

3. Incompatibility of Art. 31 et seq. UPCA in conjunction with Art. 71a et seq. Brussels Ia Regulation and Art. 32 UPCA with Art. 19 TEU and Art. 267 TFEU

23. Contrary to Roku's opinion, the allocation of competences to the Unified Patent Court pursuant to Art. 31 UPCA in conjunction with Art. 71a et seq. Brussels Ia Regulation and Art. 32 UPCA does not constitute an interference with the division of tasks between the Court of Justice of the European Union and the national courts as laid down in Art. 19 TEU and Art. 267 TFEU.

24. Pursuant to Art. 19 para. 1 sentence 2 TEU, the Court of Justice of the European Union shall ensure that the law is observed in the interpretation and application of the Treaties. Pursuant to Art. 267 para. 1 a) TFEU, it decides on their interpretation by way of preliminary rulings. If such a question is referred to a court or tribunal of a Member State and that court or tribunal considers that a decision on the question is necessary to enable it to give judgment, it may, in accordance with Article 267(2) TFEU, refer the question to the Court of Justice for a ruling. The Court of Justice of the European Union and the courts of the Member States thus monitor compliance with this legal order (see Opinion 1/09 of the Court of Justice of the European Union of 8 March 2011, EU:C:2011:123 [hereinafter Opinion 1/09], para. 66).

25. Roku argues unsuccessfully that the UPC is not a court of a Member State, but rather an international court. Under Article 1(2) UPCA, the UPC is a court common to the Contracting Member States (see Court of Appeal, order of 3 September 2024, APL_21943/2024, UPC_CoA_188/2024, *Aylo/Dish*, para. 10). It is true that the Unified Patent Court is a court that was established on the basis of an international agreement - the UPCA - i.e. on the basis of international law.

26. However, as the Court of Justice of the European Union has already ruled for the Benelux Court of Justice, there is nothing to prevent a court common to several Member States from referring questions to it for a preliminary ruling (judgement of 4 November 1997, *Parfums Christian D.* Judgment of 4 November 1997, *Parfums Christian Dior*, C-337/95, ECR 1997, I-6013, EU:C:1997:517, paragraphs 21-23; judgment of 14 June 2011, *Miles and Others* C-196/09, EU:C:2011:388, paragraph 40; judgment of 6 March 2018, *Achmea*, C-284/16, ECLI:EU:C:2018:158, paragraph 47).
27. However, the Court of Justice of the European Union objected to the 2009 draft Convention on the European and Community Patents Court as being incompatible with the provisions of the EU Treaty and the TFEU because it provided for a preliminary ruling mechanism which, within the scope of application of this Convention, reserved the possibility of referral to the Court of Justice for the patent court and took it away from the national courts (Opinion 1/09, para. 81). The decisive factor here, however, was the consideration that the position of the Patent Court under the draft convention submitted to the Court of Justice would have been different from that of the Benelux Court of Justice. It was emphasised that the Benelux Court of Justice is a court common to several Member States and thus forms part of the judicial system of the Union, and that its decisions are therefore subject to appropriate mechanisms to ensure the full effectiveness of Union law (Opinion 1/09, para. 82).
28. Nothing else now applies to the Unified Patent Court established on the basis of the UPCA. This is because, unlike in the draft Agreement objected to by the Court of Justice of the European Union, the Agreement was concluded solely by EU Member States, without the participation of the Union or third countries (see Opinion of the Legal Service of the Council of the European Union, 21 October 2011, 15856/11, para. 27). It is clear from Opinion 1/09 of the Court of Justice of the European Union that the creation of such a court common to several Member States is in any case permissible (see Opinion of the Legal Service of the Council of the European Union, 21 October 2011, 15856/11, para. 28).
29. For the UPC to be classified as a court common to several Member States, it is sufficient that the UPC has the task of ensuring the uniform application of the rules of law common to the Contracting Member States and has a sufficient connection with the court systems of the Contracting Member States (see judgment of 14 June 2011, *Miles and Others*, C 196/09, EU:C:2011:388, para. 41; judgment of 6 March 2018, *Achmea*, C-284/16, ECLI:EU:C:2018:158, para. 48). Contrary to Roku's view, such a connection with the court systems does not require the UPC to rule as an intermediate instance in proceedings pending before national courts, as is the case with the Benelux Court of Justice. Nothing to the contrary emerges from the *Achmea* and *Miles* decisions of the European Court of Justice. There, the ECJ denied the existence of a court common to several Member States because there was no comparability with the Benelux Court of Justice because the courts under assessment had "no such links with the judicial systems of the Member States" (emphasis added). This makes it clear that a decision as an intermediate instance is not necessary, rather a comparable connection to the court system of the Member States is sufficient.
30. In this respect, the UPC is comparable to the Benelux Court of Justice. This is because it has sufficient links with the court systems of the member states. The fact that the UPC is a court common to the Contracting Member States has been expressly clarified by the Contracting Member States in Art. 1 UPCA

expressly clarified this. This alone is sufficient to qualify it as a court common to the Contracting Member States (cf. in the case of a derivation from the constitution of a Member State: ECJ, *Achmea* para. 44). In line with this, the UPC as a court common to the Contracting Member States pursuant to Art. 71a Brussels Ia Regulation is deemed to be a court of one of the Contracting Member States - and thus part of its legal system - for the purposes of the Regulation if the UPC exercises jurisdiction on the basis of Art. 32(1) UPCA in matters that fall within the scope of the Brussels Ia Regulation.

31. The link with the court system of the Member States is established for the UPC by the fact that, pursuant to Art. 1 UPCA, it is subject to the same obligations under Union law as any national court of the Contracting Member States. In functional terms, the UPC is thus an inherent part of the court system of the Member States, even if it was established by a treaty (cf. Opinion of the Legal Service of the Council of the European Union, loc. cit. para. 33). The General Court is subject to appropriate mechanisms to ensure the full effectiveness of Union law. According to Art. 20 and Art. 21 UPCA, the common court of the Contracting Member States and part of their court system - like any national court - cooperates with the Court of Justice of the European Union to ensure the correct application and uniform interpretation of Union law, in particular Art. 267 TFEU. Decisions of the Court of Justice of the European Union are binding on the courts.
32. The close connection with the court systems of the Member States also follows from the liability of the Member States and the actions provided for this purpose (cf. Opinion of the Legal Service of the Council of the European Union loc. cit. para. 33).
33. Under Article 22(1) UPCA, the Contracting Member States are jointly and severally liable for damage caused by a breach of Union law by the court of appeal, in accordance with Union law on the non-contractual liability of the Member States for damage caused by breaches of Union law by their national courts.
34. If a question requiring a preliminary ruling arises in the context of an action for damages, the competent body may refer the question to the Court of Justice for a preliminary ruling pursuant to Article 267 TFEU. Contrary to Roku's opinion, the UPC does not completely supersede the national courts.
35. According to Art. 23 UPCA, acts of the UPC are directly attributable to each Contracting Member State individually, including for the purposes of Articles 258, 259 and 260 TFEU, and to all Contracting Member States jointly.
36. In this way, the UPC is subject to the "appropriate mechanisms to ensure the full effectiveness of Union law" required by the Court of Justice (Opinion 1/09 para. 82).

4. *No referral to the ECJ*

37. It is not necessary to refer the question of the compatibility of the allocation of competences to the Unified Patent Court with Art. 19 TEU and Art. 267 TFEU to the Court of Justice of the European Union. In view of the decisions of the Court of Justice cited in paragraphs 26 and 29 above and the opinion

Opinion 1/09 cited in paragraph 27 above, there is no doubt as to the compatibility of the allocation of competences of the UPC in Art. 71a and Art. 71b Brussels Ia Regulation with Art. 19 TEU and Art. 267 TFEU (cf. October 1982, C-283/81, ECLI:EU:C:1982:335, *CILFIT*, para. 21, judgment of 3 July 2019, *Euro-bolt*, C-644/17, para. 30; ECJ, judgment of 6 October 2021, C-561/19, ECLI:EU:C:2021:799, *Consorzio Ita-lian Management and Catania Multiservizi*).

5. *Violation of the right to a lawful judge pursuant to Art. 47 para. 2 EU-GrCH and Art. 6 para. 1 sentence 1 ECHR*

38. The appeals against the contested decisions were unsuccessful insofar as the appeals were rejected due to a violation of the right to a lawful judge.

a) *Infringement of the statutory judge due to allocation of competences contrary to EU law?*

39. Since the jurisdictional provisions of the UPCA are compatible with Art. 19 TEU and Art. 267 TFEU, no violation of the right to a statutory judge can be established from this point of view.

b) *Infringement of the statutory judge due to the lack of a central chamber based in London*

40. It is also not objectionable that the local division considered the oppositions to be inadmissible insofar as Roku justifies a violation of the statutory judge by the fact that, contrary to Art. 7 (2) UPCA, there is no division of the central division in London.

(1) *No admissible ground for opposition under R. 19 RP*

41. The exhaustive catalogue of admissible grounds for objection in accordance with R. 19.1 RP does not include a violation of Art. 47 para. 2 EU CFR and Art. 6 ECHR. Insofar as a violation of Art. 47 para. 2 EU CFR and Art. 6 ECHR does not relate to any of the grounds for objection listed in R. 19.1 CRPD, an objection based on this is not admissible.

(2) *Unfoundedness of the objection*

42. The Court of Appeal only notes in addition that the objection is also unfounded in this respect.

43. According to Art. 47 para. 2 sentence 1 EU CFR, everyone has the right to have their case heard by an independent and impartial tribunal previously established by law, in a fair trial, in public and within a reasonable time. According to Art. 6 para. 1 sentence 1 ECHR, everyone has the right to have disputes concerning his civil rights and obligations (...) heard by an independent and impartial tribunal established by law in a fair hearing, in public and within a reasonable time.

44. Since a division in London would not have jurisdiction over the dispute, as the local division rightly assumed, a violation of Roku's right to the statutory judge is already excluded from this point of view.

45. Roku argues without success that a violation of Article 47(2) EU CFR and Article 6 ECHR arises from the fact that the absence of a division of the central chamber in London could have had an impact on the specific composition of the adjudicating body.

46. The insertion of the expression "based on law" in Article 6(1) ECHR is intended to prevent the organisation of the judicial system being left to the discretion of the executive and to ensure that this area is governed by a law enacted by the legislature in accordance with the rules governing the exercise of its competence. This expression reflects, in particular, the principle of the rule of law and covers not only the legal basis for the existence of the court, but also the composition of the panel in each case, as well as any other provisions of national law the non-observance of which renders the participation of one or more judges in the hearing of the case irregular, including, in particular, provisions relating to the independence and impartiality of the members of the court concerned (ECJ, judgment of 6 October 2021, W.Z., C-487/19, ECLI:EU:C:2021:798 para. 129).
47. As regards EU law, the Court has therefore held, following the case-law of the European Court of Human Rights, that an irregularity committed in the appointment of judges in the judicial system concerned constitutes a breach of the requirement that a court must be established by law, in particular where the nature and gravity of the irregularity is such that it gives rise to a real risk that other branches of government - in particular the executive - may exercise a discretion to which they are not entitled, thereby compromising the integrity of the outcome of the appointment procedure, that other branches of state power - in particular the executive - may exercise a discretion to which they are not entitled, thereby jeopardising the integrity of the outcome of the appointment procedure and thus raising legitimate doubts in the mind of the individual as to the independence and impartiality of the judge or judges concerned, which is the case where fundamental rules which form an integral part of the establishment and functioning of that judicial system are at issue (ECJ, W.Z. para. 130).
48. Such doubts cannot be derived from the fact that, contrary to Art. 6 UPCA, there is no division of the central chamber in London. The establishment of a division of the central chamber in London has become impossible since the United Kingdom did not ratify the UPCA following its withdrawal from the EU. The lack of such a division and the failure to include British judges in the appointment process therefore does not give rise to justified doubts among individuals as to the independence and impartiality of the judges responsible.
49. Contrary to Roku's view, the Administrative Committee of the UPCA was also authorised under Article 87(2) UPCA to provide, by decision of 26 June 2023, that Milan would replace London as a division of the Central Chamber with the competences set out in Annex II UPCA.
50. According to Art. 87(2) UPCA, the Administrative Committee may amend the UPCA in order to bring it into line with an international treaty in the field of patents or with Union law. The fact that the Agreement does not provide for any power of amendment if the implementation of the UPCA proves to be impossible is based on an unintended loophole. Art. 87 para. 2 UPCA serves the purpose of ensuring that there are no obstacles to the implementation of the Agreement. Since a corresponding need also exists in the case of factual obstacles, Art. 87 para. 2 UPCA is to be applied accordingly in this case.

51. Contrary to Roku's opinion, the fact that the United Kingdom left the European Union before the UPCA entered into force does not prevent this. The authorisation to amend the UPCA under Art. 87(2) UPCA does not merely concern adaptation in the event of legal changes after the entry into force of the Agreement. The wording "in order to bring it into conformity with an international treaty (...) or with Union law" rather suggests that, in particular, an incompatibility with Union law that already existed when the Agreement entered into force authorises the Administrative Committee to make a corresponding amendment. This is the only way to ensure that there are no obstacles to the implementation of the Convention and that the Administrative Committee can react appropriately to an established incompatibility with Union law. Nothing else can apply in the case of an analogous application of Art. 87 para. 2 UPCA due to factual obstacles.
52. Roku argues unsuccessfully that the change to the court structure, which is based on a de facto impossibility, is a fundamental change that requires democratically legitimised decisions by the contracting member states. The involvement of the contracting member states is sufficiently ensured by analogy due to the right of veto in Art. 87 para. 3 UPCA.
53. Contrary to Roku's opinion, the competence of the Administrative Committee was not limited to deleting London as the competent division. The Administrative Committee decides at its discretion how to harmonise the Agreement with an international treaty in the field of patents or with Union law pursuant to Art. 87(2) UPCA. The same applies in cases in which, as here, Art. 87 para. 2 UPCA applies accordingly due to the impossibility of implementing the Agreement.

III. *Application for the determination of a court fee*

54. Roku's request to fix only one court fee in proceedings APL_15067/2025 and APL_15072/2025 is unsuccessful. For the appeal proceedings, the plaintiff must pay the fixed fee in accordance with R. 228 of the Rules of Procedure and, if applicable, the fee for the infringement action in accordance with Part 6, depending on the value in dispute. A fee must be paid for each infringement proceeding. This is not affected by the fact that the appeals raise the same issues.

IV. *Costs*

55. Dolby's and Sun's applications to order Roku to pay the costs of the proceedings must be rejected. As this is not a final order or decision terminating the main proceedings on the merits, there is no need for a costs order (see UPC Court of Appeal, order of 16 September 2024, UPC_CoA_301/2024, APL_33746/2024, ICPillar/ARM para. 41).

ORDER

- I. The appeals are dismissed.

- II. Roku's request to fix only one court fee in proceedings APL_15067/2025 and APL_15072/2025 is rejected.
- III. Dolby's and Sun's applications to order Roku to pay the costs of the proceedings are dismissed.


Ordered on 6 October 2025

Rian Kalden **Date:**
2025.10.06
14:08:16 +02'00'

Rian Kalden, Presiding Judge and legally qualified judge

Patricia
Ursula
Rombach Digitally signed by
Patricia Ursula
Rombach
Date: 2025.10.06
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Patricia Rombach, Rapporteur and legally qualified judge

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Ingeborg Simonsson Date:
2025.10.06 14:19:47
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Ingeborg Simonsson, legally qualified judge