



UPC_CFI_628/2025 ORDER
of the Court of First Instance of the Unified Patent Court Central Division
(Milan Section)
concerning an
Action against a decision of the EPO (Rule 97 RPD)
delivered on 6 August 2025

APPLICANTS

- | | |
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| 1) Bodycap
6, rue du docteur Laënnec
14200 - Herouville Saint Clair – FR | Represented by Geoffroy Cousin,
Patent Attorney, Industrial Property
Attorney, residing at
19 avenue Jean Jaurès, 94230
Cachan |
| 2) National Centre for Scientific Research
- CNRS
3, rue Michel-Ange 75016
- Paris - FR | Represented by Geoffroy Cousin,
Patent Attorney, Professional
Representative before the European
Patent Office, residing at 19 avenue
Jean Jaurès, 94230 Cachan |
| 3) University of Rennes
Beaulieu Campus
263 avenue du General Leclerc CS 74205
35042 - Rennes – FR | Represented by Geoffroy Cousin,
Patent Attorney, Industrial Property
Attorney, Authorised Representative
before the European Patent Office,
residing at 19 avenue Jean Jaurès,
94230 Cachan |

Hereinafter referred to collectively as "the appellants"

DEFENDANT

- 1) **EPO**
(EPO) - Not provided

legal representation of the appellants was provided by the latter on 19 July 2025, on which date the proceedings were definitively brought before the Central Division in Milan.

8. The standing judge was appointed as Judge Andrea Postiglione.
9. The EPO submitted its observations on 30 July 2025.
10. The procedure for granting unitary effect to the patent is governed by the UPC Rules as last amended by the decision of the Restricted Committee of the Administrative Council of the EPO dated 13 November 2024.
11. The UPR defines the procedures entrusted to the EPO in accordance with Regulations (EU) No 1257/2012 and No 1260/2012 and provides for the establishment of the Unitary Patent Division. The main provisions of the UPR concern the request for unitary effect, the procedure for obtaining a unitary patent at the EPO and the available remedies.
12. By means of the Implementing Regulation (Rule 1.1), the participating Member States confer on the European Patent Office the tasks set out in Article 9(1) of Regulation (EU) No 1257/2012. In performing these tasks, the European Patent Office shall comply with these Implementing Regulations and shall be bound by the decisions of the Unified Patent Court in respect of actions brought under Article 32(1)(i) of the UPC Regulation.
13. Decisions of the Unitary Patent Protection Division shall be taken by a legal member (Rule 4.3) who shall verify that (a) the European patent was granted with the same set of claims for all participating Member States, and (b) that the holder of the European patent is not subject to the restrictive measure provided for in Article 5(f)(2) of Regulation (EU) No 833/2014, as amended by Regulation (EU) 2024/1745, taking into account Article 5(f)(5) of that amended Regulation.
14. The examiner also checks whether the request meets the requirements of Rules 6.1 and 6.2 of the RPU, in particular whether the request was filed with the EPO within one month of the publication in the European Patent Bulletin of the mention of the grant of the European patent (Rule 6.1) and whether the request contains the elements required by Rule 6.2.
15. The request for unitary effect for the patent was filed by FIDAL Innovation (hereinafter 'FIDAL') on behalf of Bodycap, the CNRS and the University of Rennes on 17 January 2025 (Exhibit 2) with an incorrect name for the university and, for the purposes of these proceedings, the postal address (the difference between the names of the two universities was not noted or was not considered relevant by the EPO, except in its observations of 30 July).
16. On 27 January 2025, the EPO issued a notification under Rule 7.3 RPU stating that the requirements of Rule 6(2) were not met. In particular, the address of the proprietor as stated in the application differed from the name and address registered with the European Patent Office; the EPO therefore granted the appellants a period until 27 February 2025 to remedy the irregularities (using form EPO 7040).
17. The appellants did not provide any explanations until 3 March 2025 (Exhibit 1), four days after the expiry of the time limit set by the EPO.
18. The EPO therefore rejected the request, observing that (1) the time limit for remedying the irregularities was not extendible, (2) any extension of the time limit would have allowed the beneficiary to take advantage of its own failure, which would be contrary to the principle of good faith, and (3) the full address was required for reasons of legal certainty as to the identity of the European patent proprietor.
19. The appellants first invoke Rule 24 of the RPU and request that the EPO correct its decision ex officio pursuant to Rule 91(2) of the Rules of Procedure.
20. According to Rule 24 of the RPU, if the EPO considers a request for revocation or amendment to be well founded, it may proceed to an interlocutory review in accordance with the provisions of Rule 91 RPD. This option was not considered by the EPO, which

instead filed observations seeking dismissal of the appeal (sic: "*the main claim is therefore unfounded and should therefore be rejected*"). Moreover, the EPO argues that, in accordance with Rule 85(2) PTR, the provisions of Rule 91 PTR do not apply to accelerated proceedings against an EPO decision brought under Rule 97(1) PTR.

21. This exception by the EPO is well founded. In the present case, the appeal lodged on 8 July 2025 challenges the EPO's decision to reject the request for unitary effect in respect of European patent EP '518. This appeal, lodged under Rule 97(1) of the Rules of Procedure, falls squarely within the exception provided for in Rule 85(2) of the Rules of Procedure. An interlocutory review is not provided for in the present case.
22. In the alternative, the appellants base their appeal on two main arguments:
 - the information relating to the address of the third patent proprietor was sufficient to identify him, taking into account also the correct indication of the other two proprietors (and taking into account also the difficulty of manually inserting the amendments in the EPO form and the fact that the EPO itself makes amendments to the proprietors' data at the time of publication of the unitary effect),
 - the time limit for remedying the irregularities was exceeded by a negligible amount.
23. The appellants therefore claim that they indicated the applicant's full address with sufficient precision to avoid any uncertainty as to the correct identification of the third patent holder.
24. The EPO notes in this regard that, in accordance with Rule 97(2) Rp, an application for annulment of a decision by the EPO to reject an application for unitary effect must be based on one or more of the grounds listed in Rule 87 Rp and must clearly state the ground or grounds listed in Rule 88(2)(h) Rp on which the action is based. On the contrary, in the appeal brought by FIDAL, it is not clear which ground or grounds are relied on in support of the action brought against the EPO's decision rejecting the request for unitary effect.
25. This second objection cannot be upheld. The grounds relied on by the appellants to challenge the rejection of the application for unitary protection of the patent were formulated in a sufficiently precise and comprehensible manner and deserve to be examined on their merits.

SUMMARY OF LEGAL GROUNDS

The appeal is unfounded on the merits.

26. The international patent application PCT/FR2018/052418 filed on 2 October 2018 indicated the following owners and their respective addresses:

*BODYCAP 3 rue du Docteur Laënnec 14200 Herouville Sait Clair
Centre national de la recherche scientifique 3 rue Michel Ange 75016 PARIS UNIVERSITE
de Rennes 1 - 2 rue du Thabor CS 46 510 35065 Rennes Cedex*

27. The appellants acknowledge that the mention of the third owner as the University of Rennes at the address 2 RUE DU THABOR was included in the unitary protection application of 17 January 2025. The appellants also assert that on 1 September 2023, without their knowledge (Exhibit 4), the firm Novagraaf requested the transfer of the patent from the University of Rennes 1 to the University of Rennes, indicating as the new address of the university

Beaulieu Campus – 263 avenue du Général Leclerc CS 74205 35042 Rennes (Exhibit 4)

28. The appellants claim that they did receive the notification from the European Patent Office concerning the change of address relating to the patent in question (Exhibit 6) but that this notification was not properly understood, as FIDAL was not aware of any request to change the address (see email from Sankovich Vanessa to Defosse Sandrine and Karine Romano – Exhibit 7).
29. In conclusion, according to the appellants, there is no ambiguity as to the identity of the three effective proprietors of the patent: not only do two of the three proprietors of the patent coincide in the request for unitary effect, but also, as regards the third, there is indisputable evidence that this is a minor error, since even in the procedure for registering addresses with the EPO, the latter does not automatically reproduce the data provided by the appellants, which suggests a more flexible approach to the correct identification of the address required by Rule 41 of the EPC Implementing Regulations.

This first argument in defence of the appellants is not convincing to the duty judge.

30. Rule 4 RPU provides that "A division of unitary patent protection shall be established at the European Patent Office as a special instance within the meaning of Article 143(2) EPC."
31. Under Rule 6(2)(a) of the UPR, "The request for unitary effect shall be filed in writing in the language of the proceedings and shall contain the information concerning the proprietor of the European patent who files the request [...] as provided for in Rule 41(2)(c) EPC", in particular: *"the name, address, nationality and state of domicile or registered office of the applicant. Natural persons shall be designated by their surnames followed by their first names. Legal persons and companies or firms equivalent to legal persons under the law to which they are subject shall be designated by their official names. Addresses must be indicated in accordance with the usual requirements for prompt delivery by post to the address indicated and must in any case include all relevant administrative details, including, where applicable, the house number. It is recommended that telephone numbers be indicated"* (Rule 41(2)(c) of the EPC Implementing Regulations).
32. The above-mentioned Rule 41 requires that information be provided which objectively identifies the applicant: name, official designation, address and, preferably, telephone number.
33. No interpretation or deduction is therefore required of third parties with regard to the data that must be included in the application for unitary protection. This is a deliberate choice to be precise in specifying the necessary data, with a view to safeguarding the rights of third parties and legal certainty.
34. As regards the address of the University of Rennes, there are significant discrepancies in the data, so that the question of a flexible approach to the data declared in the application of 17 January 2025 does not even arise. The data provided is simply inaccurate as regards the address of the organisation.
35. By Decree No. 2022-1474 of 24 November 2022 (Exhibit 5), the French Ministry of Higher Education and Research created a new higher education institution in the city of Rennes, which took the name University of Rennes; this university replaced the "University of Rennes I" with effect from 1 January 2023 (Articles 3 and 18 of the decree), the University of Rennes I having therefore ceased to exist on the same date. This is in all respects an administrative provision creating a new legal entity with various administrative bodies, placed under the supervision of the Ministry of Higher Education and Research.

research and which has an official name different from that of its predecessor and a completely different address (in this case).

36. It is true that the assets already belonging to the University of Rennes I were transferred to the University of Rennes established by Decree 2022-1474 (Article 10 thereof), but the two entities are therefore distinct, as is also proven by the application submitted by Novagraaf on 1 September 2023 (Exhibit 4), which emphasises that the University of Rennes I ceased to exist on 31 December 2022, accompanied by Decree No. 2022-1474 and rightly requesting the transfer of ownership of the patents to the new university identified as follows: *University of Rennes - Beaulieu Campus - 263 avenue du Général Leclerc CS 74205 35042 Rennes* (Exhibit 4).
37. The two addresses correspond to two different buildings, as clearly indicated on page 7 of the appeal, where the appellants specify that the University of Rennes "still" has premises on Rue du Thabor and therefore admits that the university's main headquarters have been transferred elsewhere.
38. The request for unitary effect therefore had to be made in accordance with Rule 41 of the EPC Implementing Regulations, indicating the new legal address of the organisation ("*Addresses must be indicated in accordance with the usual requirements for prompt delivery by post to the address indicated and must in any case include all relevant administrative details, including, where applicable, the house number*").
39. The fact that the change was made by a third party without FIDAL's knowledge is irrelevant, especially since this notification was communicated by the EPO itself. The fact that this communication was not "understood" by the appellants' administrative services is an internal matter for the appellants which has no bearing on the EPO's compliance with the rules, which is the subject of these proceedings.
40. The EPO therefore correctly exercised the power provided for in Rule 7.3 RPU to request amendments from the applicant, as the requirements of Rule 6.2 RPU were not met.

The appellants' second argument in their defence concerns the failure to comply with the time limit set by the EPO for the submission of the necessary corrections. This argument in defence is also unconvincing.

41. It has already been noted that Rule 6.2 RPU requires the address correctly associated with this new entity to be specified in the request for unitary effect.
42. Rule 7.3 RPU provides that "*If the requirements of Rule 5(2) are met and the request for unitary effect complies with Rule 6(1) but does not fulfil the conditions of Rule 6(2), the European Patent Office shall invite the applicant to remedy the deficiencies within a non-extendable period of one month. If the irregularities are not remedied within the time limit, the European Patent Office shall reject the application.*"
43. Under Rule 22.6 RPU, *restitutio in integrum* is not granted in the event of failure to comply with the time limit laid down in Rule 7.3. This time limit is mandatory and failure to comply with it automatically results in the rejection of the application without any possibility, even in this case, of allowing for a more flexible approach.
44. The possibility of remedying formal irregularities in the application for unitary effect within a very reasonable period of 30 days is already an expression of the flexibility of the system in relation to the specific needs of patent holders. However, it is incumbent on patent holders – or, where applicable, their representatives – to ensure that they act within the limits of the flexibility guaranteed by the legal system without relying on additional margins beyond those within which all operators in the sector are required to act on an equal footing.

45. On the contrary, this would pave the way for a particular application of the law in violation of the principle of legal certainty and the consistent and uniform interpretation of legal rules.
46. The EPO is required to apply the one-month time limit in accordance with Rule 7.3 RPU, and this provision does not allow the EPO to accept documents received after the one-month time limit. Furthermore, the RPU does not contain any provision allowing the EPO to extend this time limit. If the EPO were to accept documents received after the time limit, this would call into question the legal certainty of the system, as other users would seek to benefit from it on the basis of the principle of equality before the law; moreover, it would be impossible to establish a time limit for the period, which would render the application of Rule 7.3 RPU meaningless.
47. For this reason, the appellants' argument that the deadline was only exceeded by a few days does not appear to be admissible, as the provision stipulating automatic rejection in the event of non-compliance with the deadline set out in the implementing regulation must have been well known to the appellants and was also expressly mentioned as a time limit in the request for additional information.

FOR THESE REASONS


- The appeal brought by Bodycap, the CNRS and the University of Rennes against the rejection of a request for unitary effect in respect of patent No. EP3691518 filed on 2 October 2018 and granted on 18 December 2024 is dismissed.
- Each party shall bear its own costs in accordance with Rule 98 of the Rules of Procedure.

Order issued in Milan on 6 August 2025

The duty judge Andrea

Postiglione

**ANDREA
POSTIGLIONE**

 Digitally signed by ANDREA POSTIGLIONE
Date: 2025.08.06 19:20:07 +02'00'

INSTRUCTIONS TO THE PARTIES AND THE REGISTRY

In accordance with Rule 19 RPU, the European Patent Office shall file a copy of any decision of the Unified Patent Court which has been transmitted to it and which concerns a European patent with unitary effect, including decisions referred to in Rule 1, in the file relating to the European patent with unitary effect, where it is open to public inspection.

INFORMATION ON APPEALS

According to Rule 97.5 RdP, "An appeal by the patent proprietor or the President of the European Patent Office against decisions of the duty judge pursuant to paragraph 4 may be filed within three weeks of notification of the decision. The notice of appeal shall contain the information previously indicated under paragraph 2 and also the reasons why the contested decision should be set aside. The appellant shall pay the fee for the appeal in accordance with Part 6. Rule 15, § 2 shall apply mutatis mutandis. If the requirements referred to in this paragraph 5 have been met, the registry shall register the appeal in accordance with Rule 230, § 1, and distribute the appeal to the duty judge of the Court of Appeal [Rules 345, § 5 and 345, § 8], who may invite the other party to submit observations on the appeal but shall, in

in any event, on the appeal within three weeks of receipt by the registry of the notice of appeal.

DETAILS OF THE ORDER

Order No.: ORD_33325/2025 in ACTION: App_32529/2025 UPC No.:
UPC_CFI_628/2025

Type of action: Action against a decision of the EPO (Rule 97 PTR)