Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Central Division Paris Seat

Order
of the Court of First Instance of the Unified Patent Court
UPC_CFI_799/2026
concerning the Preliminary Objection according to R. 19 RoP
issued on 07/05/2026

HEADNOTES

1. The Court is competent to hear actions seeking a declaration of non-infringement of a patent under Art. 32(b) UPCA if the patent is granted and published in the European Patent Bulletin after the action has been filed but before the statement of defense is submitted.

2. The Court is also competent to hear actions seeking a declaration of non-infringement if the patent has been granted pursuant to Art. 97(1) EPC before the statement of defense is submitted, but the grant has not yet been published in the European Patent Bulletin at that time.

KEYWORDS

Preliminary objection, Declaration of Non-Infringement, patent application

CLAIMANTS (RESPONDENTS in the PO)

OMNIA TECHNOLOGIES S.P.A.
Via Feltrina 72, 31040, Trevignano (TV), IT

ACMI LABELLING S.R.L.
Via G. Di Vittorio 60, 43045, Fornovo di Taro (PR), IT

ACMI S.P.A
Via Enzo Ferrari 1, 43058, Sorbolo Mezzani (PR), IT

Hereinafter: Claimants

Represented by **Luca Pellicciari and Lorenzo Battarino**
Trevisan & Cuonzo

Lorenzo Lualdi and Luca Frasson
TCBM

DEFENDANT (APPLICANT in the PO)

SIDEL PARTICIPATIONS SAS
Avenue de la Patrouille de France, 76930, Octeville-sur-Mer, FR

Hereinafter: Defendant

Represented by **Véronique Pede**
Geverse IP Law

Michael Moreels
GEVERS Patents

Agata Sobol
LEXSENTIAL

Thomas Eltzer and Davide Aldo Falzoni
SIDEL

PATENT AT ISSUE

Patent no.	*Proprietor*
EP 4 594 194	SIDEL PARTICIPATIONS SAS
EP 4 624 351	

PANEL/DIVISION

Panel 1 of the Central Division (Paris Seat)

DECIDING JUDGE

This order has been issued by the reporting judge Maximilian Haedicke.

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS

Declaration of Non-Infringement, Preliminary Objection according to R. 19 RoP, patent application

SUMMARY OF THE PROCEEDINGS AND APPLICATIONS

1. On 3 March 2026, Claimants introduced their Statement of claim (SoC) and requested a declaration of non-infringement of Sidel's EP 4 594 194 (EP '194) and EP 4 624 351 (EP '351) pursuant to Art. 32(1)(b) of the Unified Patent Court Agreement (UPCA) and R. 61 of the Rules of Procedure (RoP).

2. Service of the Statement of claim on the Defendant was completed on 9 March 2026. The service became effective on 19 March 2026 according to R. 271(6)(b) RoP.

3. Defendant filed applications to opt EP '194 and EP '351 out of the UPC system on 2 April 2026 (for EP '194) and 8 April 2026 (for EP '351).

4. The grant of EP '194 has been published in the Bulletin of the European Patent Office on 22 April 2026 (Exhibit 21).

5. EP '351 has been granted and the mention of the grant is expected to be published in the European Patent Bulletin on 20 May 2026 (Exhibit 22). The EPO register shows as follows (part of Exhibit TC22; red lining implemented by Claimant):

EP About this file: EP4624351

EP4624351 - LABELLING MODULE CONFIGURED FOR LABELLING WITH PARTIAL LABELS [Right-click to bookmark this link]			
Status	The patent has been granted *Status updated on 17.04.2026* *Database last updated on 18.04.2026*		
Most recent event	17.04.2026	(Expected) grant	published on 20.05.2026 [2026/21]
Applicant(s)	For all designated states Sidel Participations Avenue de la Patrouille de France		

DEFENDANT'S ARGUMENTS

6. In its preliminary objection dated 9 April 2026, Defendant challenges the Court's jurisdiction under Art. 32 UPCA.

7. The position of Defendant can be summarized, in its essential arguments, as follows:

8. For proceedings according to Art. 32 UPCA, a "patent granted under the provisions of the EPC" is required. In the present case, the Claimants' action in the main proceeding is based on two patent applications. Therefore, the UPC lacks jurisdiction, and the action should have been brought before national courts pursuant to Art. 32(2) UPCA.

9. The UPCA clearly distinguishes between “patent” and “patent application.” Herein, the term “patent application” is addressed only in Art. 3(d) UPCA and Art. 32(1)(f) UPCA. Furthermore, Art. 3 UPCA, with regard to the scope of the UPCA, distinguishes between European patent applications, European patents, and patents with unitary effect.

10. According to Art. 49(6) UPCA the language of proceedings at the central division shall be the language in which the patent concerned “was granted”.

11. If a lawsuit could be based on a patent application, the territorial scope of the action would be uncertain. It is still unknown in which contracting states of the EPC the two disputed patent applications will be validated or whether they will even become a European patent with unitary effect.

12. Defendant further refers to a decision of Brussels Local Division of 21 March 2025 (UPC_CFI_582/2024 – Barco v. Yealink), where the Court emphasized that the date of grant of the European Patent should be considered as the objective earliest date to file an action with the UPC.

13. Defendant also submits that not an action for non-infringement, but rather an Arrow declaration is sought, which is not covered by Art. 32(1)(b) UPCA and also cannot be combined with non-infringement proceedings.

14. Furthermore, such a procedure would deprive the patent applicant, pursuant to Art. 83(3) UPCA, of the possibility to declare an opt-out.

15. Defendant requests the Court to

- *Uphold the present Preliminary objection pursuant to R. 19.1(b) RoP and declare that the UPC Central Division lacks jurisdiction or competence to hear the present action known as proceedings UPC_CFI_0000799/2026 pursuant to Art. 32(1)(b) UPCA;*
- *Dismiss the Statement of claim filed by the Claimants Omnia Technologies S.p.A., ACMI Labelling S.r.l. and ACMI S.p.A. accordingly in its entirety;*
- *Order that Claimants bear the reasonable and proportionate legal costs and other expenses incurred by Defendant in the present action pursuant to Art. 69 UPCA and R. 118.5 RoP, including by means of an interim award of costs.*

16. Further, Defendant requests the Court to

- *Dismiss the action on the basis that it is manifestly bound to fail pursuant to R. 361 RoP;*
- *Order that Claimants bear the reasonable and proportionate legal costs and other expenses incurred by Defendant in the present action pursuant to Art. 69 UPCA and R. 118.5 RoP, including by means of an interim award of costs pursuant to R. 150.2 RoP.*

17. In the alternative, Defendant requests the Court to stay the proceedings.

CLAIMANTS’ ARGUMENTS

18. By communication dated 9 April 2026, in applying R. 20.1 RoP, the Court invited the Claimants to submit their comments regarding the Preliminary Objection.

19. Claimants request to dismiss the Preliminary Objection and raise the following arguments:

20. The UPCA is competent even if the patent has not yet been granted at the time of the filing of the action provided that the patents have been granted during the course of the proceedings. In a large number of cases where the action was filed in connection with patents shortly before their grant, the Court has assumed jurisdiction.

ADMISSIBILITY OF THE PRELIMINARY OBJECTION

21. The Preliminary Objection was filed on 9 April 2026 within one month (R. 19.1. RoP) after service of the Statement of claim.

22. By means of a preliminary objection pursuant to R. 19(1)(a) RoP, the lack of jurisdiction of the UPC under Art. 32 UPCA may be asserted (Court of Appeal, Decision of 2 June 2025 – UPC_CoA_156/2025 – XSYS v. Esko-Graphics; Court of Appeal, Decision of 6 October 2025 – UPC_CoA 288/2025 – Roku v. Dolby). The preliminary objection concerns the competence of the Court under Art. 32 UPCA and is therefore admissible.

ON THE MERITS OF THE PRELIMINARY OBJECTION

23. Under Art. 32 UPCA, the UPC has exclusive jurisdiction in proceedings under Art. 32(1) UPCA, while, pursuant to Art. 32(2) UPCA, jurisdiction in other cases remains with national courts. Pursuant to Art. 32(b) UPCA, the UPC has jurisdiction, in particular, over "actions for declaration of non-infringement of patents".

24. Art. 2(e), (f), and (g) UPCA provide a definition of the term "patent". According to these provisions, a patent as considered by the UPCA must be a "patent granted under the EPC". Therefore, a patent application does not fall under the definition of a "patent".

25. However, it is sufficient that the patent has been granted before the Statement of Defense was filed with the court. The court has jurisdiction over actions seeking a declaration of non-infringement of a patent under Art. 32(b) UPCA if the patent is granted after the action is filed but before the statement of defense is large. This sufficiently ensures that the decision ultimately pertains to a valid and clearly defined subject matter of the proceedings. Therefore, the Court is competent to hear the case relating to EP '194 because the grant of EP '194 was subsequently published in the European Patent Bulletin on 22 April 2026 (Exhibit 21).

26. The Court is also competent to hear the case relating to EP '351 The patent has been granted pursuant Art. 97(1) EPC, but has not yet been published and the related mention of grant is expected to be published in the European Patent Bulletin on 20 May 2026 (Exhibit 22).

27. This reduces the risk that a national court, where national law provides for proceedings relating to patent applications, might be involved in proceedings whose subject matter, once the patent has been granted, is to be reserved for the UPC pursuant to the clear provision in Art. 32(1) UPCA.

28. In addition, this avoids the situation – which runs counter to the principle of procedural efficiency and proportionality – that the court would first have to declare that it lacks jurisdiction, only for new proceedings to be initiated immediately once the patent is granted. This would lead to the unusual result that a new lawsuit could be initiated with regard to EP '194 immediately after his action would have been denied because in the meantime, on 22 April 2026, the grant of the patent has been published in the Bulletin of the European Patent Office (Exhibit 21). Similarly, a new action regarding EP '351 could be filed two weeks later.

29. This view is confirmed by a corresponding practice in proceedings, in which the lawsuit was already filed at a time when the patent at issue had not yet been formally granted (cf. Munich Local Division, Order of 19 Sept. 2023 – UPC_CFI_2/2023 – NanoString v. 10x Genomics; Hamburg Local Division, Order of 26 June 2024 – UPC_CFI_124/2024 – Alexion v. Amgen).

30. This result does not contradict the decision of the Brussels Local Division of 21 March 2025 (UPC_CFI_582/2024 – BARCO v. YEALINK). The Local Division stated in Headnote No. 4 and para. 57 that the date of patent grant should be regarded as the objectively earliest possible date on which an infringement action within the meaning of Art. 32(1)(a) UPCA or an application for provisional measures within the meaning of Art. 32(1)(c) UPCA can be filed. However, this finding concerned the question of when an application for interim measures is still timely (cf. Local Division Brussels, Order of 21 March 2025 – UPC_CFI_582/2024 – BARCO v. YEALINK para. 55 et seq.). It does not concern the issue whether the filing of lawsuit is admissible before the grant of the patent.

31. This result does also not contradict Art. 49(6) UPCA which provides that the language of proceedings before the Central Division is the language in which the patent was granted. This provision concerns the language regime and allows no conclusions to whether a lawsuit can be based on a patent application or only on proceedings in which the patent has been granted. This is also evident from the fact that, pursuant to Art. 33(7) UPCA the Central Division also has jurisdiction over an action under Art. 32(1)(f) UPCA to hear a case that does not yet involve a granted patent at all.

32. The possibility of filing a lawsuit prior to the patent grant does not unreasonably impair the option to opt out. Pursuant to Art. 83(3) UPCA an opt-out is possible even before the patent is granted if the patent is still at the application stage. An opt-out is therefore admissible provided that no lawsuit has yet been filed.

33. The objection raised by Defendant that the scope of the future patent and hence also Claimants' request is indefinite does not carry weight in the current proceeding because the patent has been granted / is close to being granted and there is no indication for an alteration.

34. The jurisdiction of the Court is not precluded by an opt out of the patents pursuant to Art. 83(3) UPCA. Since they were entered into the opt-out register after this action was (permissibly) lodged with the Court, the applications to opt out the Defendant has filed for EP '194 and EP '351 (on 2 April and 8 April 2026) are ineffective pursuant to Art. 83(3) UPCA and R. 5(6) RoP.

35. Based on the foregoing, the preliminary objection is unfounded on the merits.

ON THE ALTERNATIVE APPLICATION SEEKING A PRELIMINARY RULING UNDER R. 361 ROP

36. Defendant also alleges that the action is manifestly bound to fail according to R. 361 RoP and requests the court to dismiss the action on this basis. Defendant states that the action is manifestly inadmissible, Claimants filed an action based on a New Opera Omnia Module, an embodiment that was never asserted by the Defendant and for which there is no proof that there is any legal uncertainty pending that is the basic requirement for a DNI action; the Claimants' action is manifestly lacking any foundation in law, as it is based on or aimed at patent applications and not granted patents.

37. The Court considers that these arguments do not require an order to be made under R. 361 RoP. The competence of the court is not a topic for R. 361 RoP but a topic for the preliminary objection anddhas been discussed this context. With regard to competence, the action, as described, is also not "manifestly bound to fail".

38. Further there is the need to assess, on the one hand, the facts and points of law and, on the other hand, the features of the New Opera Omnia Module demonstrate that the outcome of the action is not manifest within the meaning of Rule 361 of the Rules of Procedure (Court of Appeal, 18 September 2024 – UPC_CFI_513-514-515_2023 – Network System Technologies v. Audi).

39. The applications for interim orders will therefore be dismissed.

ON THE STAY OF PROCEEDING

40. Defendant submits that the interest of the Claimants to expeditious proceedings does not outweigh the interests of the Defendant not proceeding with the main case before the Preliminary objection is decided upon. Claimants started a very aggressive action without reason and on a non-existing, illegal basis while the correct legal basis in their situation (preliminary DNI in Italy) was obvious. The only reason Claimants can be therefore doing so, is to lock Defendant in fast-track proceedings wherein Defendant is forced to spend money and to defend itself on a speedy basis. There would be a clear disadvantage for the Defendant having to draft the Statement of defense on multiple issues and assumptions, and to dedicate consistent amount of time and financial resources to prepare a defense on the merits where the UPC is not competent to decide on the adversary action.

41. There is no need for a stay of proceedings until the Preliminary objection is decided, as the Preliminary objection has already been resolved (in a timely manner).

42. The court sees no legal basis for a stay of the proceedings.

43. Pursuant to R. 295(m) RoP, the Court may stay proceedings where the proper administration of justice so requires. R. 295(m) RoP must be applied and interpreted in accordance with the fundamental right to an effective legal remedy and a fair and public hearing within a reasonable time as guaranteed by Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and, to the extent that

European Union Law is concerned, Article 47 of the Charter (see Court of Appeal, Order of 28 May 2024 – UPC_CoA_22/2024, APL_3507/2024, App_24693/2024, App_21545/2024 – Carrier v. BLITZER mn 22 with regard to Rule 295(a) RoP).

44. These provisions must also be applied and interpreted in accordance with Art. 41(3), 42 and 52(1) UPCA on the basis of the principles of proportionality, flexibility, fairness and equity (point 2 of the Preamble of the RoP) (see Court of Appeal, Order of 28 May 2024 – UPC_CoA_22/2024, APL_3507/2024, App_24693/2024, App_21545/2024 – Carrier v. BLITZER mn 22 with regard to Article 33(10) UPCA and Rule 295(a) RoP; see also Court of Appeal, Order of 17 Sept. 2024, UPC_CoA_227/2024, APL_26889/2024 – MALA v. NOKIA with regard to the stay of first instance proceedings during the appeal against a rejection of a preliminary objection).

45. The CoA further stated that in accordance with these principles, proceedings must be conducted in a way which will normally allow the final oral hearing at first instance to take place within one year (point 7 of the Preamble of the RoP). It follows that, as a general principle, the Court will not stay proceedings. Otherwise, the Court cannot ensure that the final oral hearing will normally take place within one year (see Court of Appeal, Order of 28 May 2024 – UPC_CoA_22/2024, APL_3507/2024, App_24693/2024, App_21545/2024 – Carrier v. BLITZER mn 23 with regard to Article 33(10) UPCA).

46. These principles are applicable in this case. If the lodging of an action would suffice for a stay of proceedings, this would be at odds with the aforementioned guideline of an oral hearing within one year and clashes with the Claimants' legitimate interest in obtaining a decision by the UPC to determine its freedom to operate in due time.

ON COSTS

47. A decision on the costs of the preliminary objection will be made together with the decision on the merits.

ORDER

For these reasons, the reporting judge

1. DISMISSES the preliminary objection;
2. REJECTS the application for an interim order based on R. 361 RoP;
3. REJECTS the request for a stay;
4. DECLARES that the costs of the preliminary objection will be determined in the decision on the merits.

Issued on 7 May 2026

Maximilian Wilhelm Haedicke

Digital signiert von Maximilian Wilhelm Haedicke
DN: cn=Maximilian Wilhelm Haedicke, c=DE
Datum: 2026.05.07 23:23:51 +02'00'

Maximilian Haedicke, judge rapporteur