



## Central Division (Section Munich)

### UPC\_CFI\_80/2023 Procedural Order Rule 9 RoP of the Court of First Instance of the Unified Patent Court delivered on 11/10/2023

HEADNOTES: Parties are under an obligation to use the CMS and the dedicated workflows in the CMS to file their submissions (see e.g. Rule 4.1 RoP). It is the sole responsibility of the parties that this is done properly and timely. The Court will try to be helpful where possible in resolving CMS related issues. Submissions and correspondence outside of the CMS should be limited to an absolute minimum. The notification generated by the system is the "means of electronic communication" as meant in Rule 278.1 RoP or, as the case may be, the "relevant electronic message" as meant in Rule 271.6 RoP.

KEYWORDS: Rule 4.1 RoP. Case Management System (CMS), service of pleadings by means of electronic communication (278.1, 271.6 RoP).

REFERENCE CODE ECLI: Not provided

#### CLAIMANT

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- US  
Represented by David Carling

#### DEFENDANTS

- 1) Healios K.K  
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Represented by James Nicholls
- 2) Osaka University  
1-1 Yamadaoka Suita-shi - 565-0871 - Osaka - JP  
Represented by James Nicholls

## PATENT AT ISSUE

Patent no.

Proprietor/s

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EP3056564

Healios K.K, Osaka University

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## PANEL/DIVISION

Panel 1 of the Central Division (Section Munich).

## DECIDING JUDGE

This Order is an order of the Judge-rapporteur András Kupecz ('JR').

## LANGUAGE OF PROCEEDINGS:

English

## SUBJECT-MATTER OF THE PROCEEDINGS

Revocation action.

## BACKGROUND AND SUMMARY OF THE FACTS AND ARGUMENTS

- On 13 September 2023, Defendants submitted their Defence to Revocation including an application to amend via the Case Management System ('CMS') using the workflow "Application to amend".
- On 29 September 2023, Defendants submitted their Defence to Revocation including an application to amend via the CMS using the workflow "Defence".
- On 4 October 2023, the Claimant wrote to the Court, by e-mail outside of the CMS, that it had not received any electronic communication from the Court confirming the effective date for service of the Defence to Revocation (pursuant to RoP<sup>1</sup> Rule 278). However, the Claimant noted that the Defence and accompanying documents had been dated 29 September 2023 by the Court on the CMS. The "tasks" screen on the CMS also indicates that the Claimant has the opportunity to file a Defence to the Application to Amend and a Reply to the Defence to the Statement for Revocation.
- The Claimant further wrote that in light of this, and in the interest of providing the parties with certainty as to the upcoming deadlines in the case, that it intends to proceed on the basis that service was effected on 29 September 2023.
- In relation to the Defendant's request to stay proceedings pending the outcome of EPO opposition proceedings on the basis of Article 33(10) UPCA, the Claimant noted that it intends to formally respond to the Defendants' application within its Reply, by the deadline stated above.
- Defendants stated in response, upon invitation by the JR by e-mail message of 9 October outside of the CMS, that it is their understanding that the two-month term for the

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<sup>1</sup> Rules of Procedure of the Unified Patent Court ('RoP').

Claimant to lodge a Reply runs from the service of their submissions upon the Claimant (Rules 32 and 51 RoP). Defendants also understand that mere processing of their submissions by the UPC does not equate to service upon the Claimant, but that service requires the UPC to issue specific communications to the Claimant in accordance with Rule 6 RoP UPC and Rule 278 RoP UPC, particularly Rules 6.1(b), 278.1 and 278.5 RoP UPC. According to Defendants, the Claimant's letters of 4 October 2023 specifically state that no communications from the UPC serving their submissions upon the Claimant have been received. Accordingly, the two-month term for the Claimant to lodge a Reply to its Applications to amend the patents and Defences to revocation has not yet started.

- In relation the request for a stay of proceedings (UPC Case No. App\_577540/2023) Defendants believe that it would be procedurally expedient for all parties for the Court to decide on the request for a stay of proceedings at its earliest convenience.

## GROUNDS

The Court pointed out to the parties in its email message dated 10 October 2023, which is confirmed by way of the present procedural Order, that the parties are in principle under an obligation to use the CMS and the dedicated workflows in the CMS to lodge their submissions (see e.g. Rule 4.1 RoP according to which "parties shall make use of the official forms available online"). It is the sole responsibility of the parties that this is done properly and timely.

That said, especially in this early stage of the Court's operations, where the users still have to get used to the CMS, the Court will try to be helpful where possible in resolving CMS related issues. This happened in the present case where the Defendant submitted its Defence to revocation using the wrong workflow ("Application to Amend") and the Defendant was asked by the registry to submit its Defence in the appropriate workflow ("Defence"). The Court also pointed out that in any event, submissions and correspondence outside of the CMS should be limited to an absolute minimum as there is no guarantee that messages are properly received by the Court and/or processed and such communications do not become part of the case file.

In relation to service of the Defence to revocation, the Court noted that if parties use the appropriate workflows provided for in the CMS (which they are obliged to do, see above) the submission of written pleadings will automatically be notified to the other party/parties. The notification generated by the system is the "means of electronic communication" as meant in Rule 278.1 RoP or, as the case may be, the "relevant electronic message" as meant in Rule 271.6 RoP (which rule applies mutatis mutandis to written pleadings, see Rule 278.4 RoP). There is no (further) requirement for the UPC to issue any further "specific communications" in the Rules of Procedure.

In the present case, as no objections have been brought forward by the Defendants, the Court accepts the Claimant's deemed date of service of the Defence to revocation of 29 September 2023.

In relation to the requested stay of proceedings, the Court will issue a separate (preliminary) order in the workflow that was opened by the Defendant (App\_577540/2023) setting a deadline for the Claimant to reply to the application.

## ORDER

- The Defence to Revocation is deemed to be served on the Claimant on 29 September 2023.
- A separate Order will be issued in App\_577540/2023 setting a deadline for the Claimant to reply to the application to stay proceedings.

11 October 2023  
KUPECZ  
Judge-rapporteur

## REVIEW

Pursuant to Rule 333 RoP, this Order shall be reviewed by the panel on a reasoned Application by a party. An Application for the review of this Order shall be lodged within 15 days of service of this Order.

## ORDER DETAILS

Order no. ORD\_579545/2023 in ACTION NUMBER: ACT\_465342/2023  
UPC number: UPC\_CFI\_80/2023  
Action type: Revocation Action