



Case No.: UPC 2296/2025

Action for annulment

Procedural order
**of the Court of First Instance of the Unified Patent Court, Central Division
(Munich Section)**
made on 24 March 2026

HEADING

The lack of standing to sue and the effect of *res judicata*, which the defendant in an action invokes to deny the court the power to rule on the merits of the claim, have no bearing on the court's subject-matter or territorial jurisdiction and do not fall within the list of preliminary objections set out in Rule 19.1 RdP, which must be regarded as exhaustive.

KEYWORDS

Preliminary objection; R. 19; standing to sue; principle of *res judicata* (no)

PLAINTIFF (DEFENDANT TO THE PRELIMINARY OBJECTION)

REEL International
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Represented by Thomas BOUVET and Colin

Devinant DEFENDANT (PLAINTIFF IN THE PRELIMINARY OBJECTION)

Fives ECL
100 Rue Chalant, 59790, Ronchin, FR

Represented by Konstantin SCHALLMOSER

PATENT IN DISPUTE

European Patent No. EP 1 740 740

DIVISION AND COMPOSITION

Panel 1 of the Munich Section of the Central Division.

The order is made by the Presiding Judge and Reporting Judge, Mélanie Bessaud.

LANGUAGE OF THE PROCEEDINGS: FRENCH

SUBJECT MATTER OF THE PROCEEDINGS: Action for revocation. Preliminary objection.

STATEMENT OF FACTS

1. On 31 December 2025, REEL International (“the applicant”) filed an application with the Munich Section of the Central Division of the Unified Patent Court (UPC) seeking the revocation of European patent EP 1 740 740 (EP’740) entitled “Compact service module for aluminium electrolysis plants”, of which Fives ECL (“the defendant”) is the proprietor.
2. On 23 February 2026, the representative of Fives ECL filed a preliminary objection seeking to have the JUB decline jurisdiction on the grounds that Reel International lacked standing to bring proceedings and that the decisions handed down by the German courts on an action for invalidity of the German part of patent EP’740 were res judicata. In the alternative, he made submissions regarding the conduct of the proceedings, requesting that a ruling be made on Reel International’s lack of standing to bring proceedings and on the res judicata effect, prior to any discussion of the merits. At the same time, it filed a request for an extension of the time limit for filing its defence, pursuant to Rule 9.3 of the Rules of Procedure (hereinafter ‘Rdp’), on the grounds that a ruling should first be given on the preliminary objection.
3. On 26 February 2026, the reporting judge issued a procedural order rejecting the application for an extension of time and stating that Fives ECL must file its statement of defence to the action for annulment within two months of the service of the statement of claim.
4. On 9 March 2026, Reel International filed its observations on the preliminary objection raised by Fives ECL.
5. The preliminary objection raised by Fives ECL concerns the lack of jurisdiction of the JUB.
 - Primarily, it requests the court to decline jurisdiction on the grounds that Reel International’s action for invalidity against the French, Dutch and German parties to patent EP’740 is inadmissible due to lack of standing;

- In the alternative, it requests the court to decline jurisdiction on the grounds that the action for invalidity is inadmissible due to the res judicata effect of the decision of the Bundesgerichtshof of 26 November 2024 in respect of the German part of patent EP'740, and on the grounds that the action for nullity brought by Reel International against the French and Dutch parts of patent EP'740 is inadmissible due to lack of standing to sue.
 - In the event that the Central Division rejects its claims under Rules 19.1(a), 361 and 362 of the Rules of Procedure or decides to deal with the preliminary objection in the main proceedings (Rule 20.2) Fives ECL requests that, prior to any discussion on the merits, a ruling be made on Reel International's lack of standing to bring proceedings and on the res judicata effect in accordance with Rules 332(b) and (d), 334(d), (e), (f) and (g), 336, and that the application for annulment brought by Reel International be dismissed.
6. In essence, Fives ECL argues that Reel International, the parent company of Reel GmbH, has not demonstrated a legitimate interest in bringing an action for invalidity against patent EP'740, which had expired by the date its application was filed. It argues that the right to bring proceedings is not defined either in the Agreement on the JUB (AJUB) or in the Rules of Procedure. However, Article 47(6) of the AJUB provides that any natural or legal person, or any body authorised to bring proceedings under its national law, which is concerned by a patent, may bring proceedings in accordance with the Rules of Procedure. The concept of standing must therefore, in her view, be assessed in the light of the case-law of the UPC as well as the national laws of the Member States. However, it maintains that it has never sued Reel International for infringement, either in any parallel proceedings in Germany or before the JUB. Furthermore, in a letter dated 5 February 2026, it confirmed clearly and in a legally irrevocable manner that it was waiving any action against Reel International on the basis of the patent in question. It concludes that Reel International has no legal interest in bringing an action for the invalidity of its expired patent. It adds that the latter has no personal and direct interest in this action, since it cannot demonstrate any financial or reputational harm specific to itself. It emphasises that the argument that the revocation of patent EP'740 would deprive the claims for damages brought against its subsidiary Reel GmbH before the Hamburg Local Division is ineffective, since the proceedings concerning the determination of damages in which Reel GmbH is involved before the JUB arise directly from the infringement proceedings brought in Germany against Reel GmbH, which resulted in a decision that has become final. Fives ECL concludes that Reel International has no legal standing to bring proceedings.
7. With regard to the res judicata effect of the decisions of the German national courts, Fives ECL argues that Reel International and Reel GmbH must be regarded as a single party. It adds that Reel International cannot, without contradicting itself, maintain, on the one hand, it has an interest in bringing proceedings on the ground that it is 'affected' by patent EP'740 due to the takeover of Reel GmbH, now its wholly-owned indirect subsidiary, that it bears the legal and defence costs, and that it suffers reputational damage as a result of the proceedings brought

on the one hand, to challenge that judgment and, on the other hand, to rule out any res judicata effect by asserting that it cannot be regarded as the same party as Reel GmbH.

8. Reel International requests that:

- As a primary claim, DECLARE the preliminary objection raised by Fives ECL to be inadmissible and unfounded;

In the alternative:

- o REJECT the request for a dedicated hearing made by Fives ECL;
- o DECLARE the pleas of inadmissibility and res judicata raised by Fives ECL to be unfounded;
- In any event:
 - o REJECT all the claims made by Fives ECL in its preliminary objection;
 - o EXEMPT Reel International from the obligation to translate the documents it submits where the original language is English;
 - o ORDER Fives ECL to pay the costs relating to the preliminary objection.

9. Reel International primarily argues that the preliminary objection is inadmissible on the grounds that the list of grounds for a preliminary objection is exhaustive and cannot be extended to other defences, as has been held on several occasions by local divisions and by the JUB Court of Appeal. In its view, it follows that any preliminary objection relating to matters other than jurisdiction (of the JUB or the division concerned) within the meaning of Article 32 AJUB, or the language of the statement of claim, is inadmissible.

She adds that Rules 361, 362 or 363 of the Rules of Procedure, which allow the court to dismiss claims by way of orders, are reserved for exceptional circumstances and concern 'cases in which the claims are manifestly liable to be dismissed' (Chapter 12 of the Rules of Procedure), that is to say, where the alleged inadmissibility or res judicata is beyond dispute, which is not the case here.

Reel International contends that the admissibility of its claims is a matter that must be decided on the merits and objects to the holding of a hearing specifically to address issues of admissibility and res judicata prior to the hearing on the merits.

10. As regards the merits of the preliminary objection, she argues that, since a patent for an invention is of a general nature, any member of the public, whether a natural or legal person, must be regarded as being 'affected by the patent' within the meaning of Article 47.6 of the AJUB, without it being necessary for them to demonstrate developments or investments in the field covered by the patent; only actions brought by 'straw men' may be excluded. In this regard, it notes that Rule 44 of the Rules of Procedure relating to invalidity proceedings, unlike Rule 13.1(f) of the Rules of Procedure concerning infringement actions, does not require the applicant for revocation to explain how they are 'affected' by the patent, which shows that this concept is not regarded as an additional condition that must be substantiated by the applicant for their action for revocation to be admissible.

11. Reel International maintains that it is undeniably 'affected' by patent EP'740 within the meaning of Article 47(6) of the AJUB, given that it is a competitor of Fives ECL, that its wholly-owned indirect subsidiary, Reel GmbH, has been found guilty of patent infringement in Germany, and that proceedings to determine damages are currently pending before the JUB, whilst further proceedings have been announced. It adds that it is incurring expenses (in particular legal and defence costs) as a result of the proceedings brought against Reel GmbH, that it is suffering reputational damage, and that the value of its shareholdings in its subsidiaries would be diminished by a financial penalty imposed on Reel GmbH.
12. In the case of Reel International, only the law of the JUB applies. However, case law has established that a parent company, even if not a party to ongoing proceedings against a subsidiary, has an interest in bringing proceedings within the meaning of Article 47.6 of the AJUB and Rule 44 of the Rules of Procedure.
In any event, under national laws, including French law, which is particularly relevant given the claimant's nationality, Reel International's standing to bring proceedings would also be recognised.
Finally, it considers that Five ECL's decision not to take action against it, which occurred after the proceedings were brought, is irrelevant.
13. On the issue of res judicata, Reel International argues that, in the absence of identical parties and a common cause of action, no res judicata can be invoked.

REASONS

1/ On the preliminary objection

14. Pursuant to Rule 19.1 of the Rules of Procedure, within one month of service of the statement of claim, the defendant may file a preliminary objection concerning:
 - a) the jurisdiction of the Court, including any objection that an exception under Rule 5 applies to the patent that is the subject of the proceedings;
 - b) the jurisdiction of the division indicated by the applicant;
 - c) the language of the statement of claim.
15. In its preliminary objection, Fives ECL challenged the jurisdiction of the JUB within one month of the service of the statement of claim, arguing that Reel International lacked standing to bring the action and invoking the res judicata effect of a previous domestic decision.
16. However, the list of preliminary objections set out in Rule 19.1 of the Rules of Procedure must be regarded as exhaustive and cannot be extended to other defences such as abusive proceedings or manifest lack of merit (JUB Court of Appeal, 3 September 2024, Aylo v DISH, SLING, UPC_CoA_188/2024, which upheld the decision to dismiss the preliminary objection, confirmed in the judgment of the JUB Court of Appeal, 6 October 2025, Roku v Sun, UPC_CoA_288/2025, according to which a preliminary objection based on grounds not covered by Rule 19.1 of the Rules of Procedure is inadmissible).

17. Indeed, the purpose of a preliminary objection is to resolve issues of jurisdiction and language at an early stage of the proceedings, in the interests of efficiency and economy of resources. However, not all issues that may constitute an obstacle to a decision on the merits of the main action, such as an action for patent invalidity as in the present case, fall within the scope of the preliminary objection. Lack of standing and *res judicata*, which the defendant in the present patent invalidity action invokes to deny the court the power to rule on the merits of the claim, have no bearing on the court's subject-matter or territorial jurisdiction.
18. Consequently, the preliminary objection which, under the guise of the JUB's lack of jurisdiction, raises a defence intended to deprive the claimant in the invalidity proceedings of its right to bring proceedings must be dismissed as inadmissible or, at the very least, unfounded. It will be for the court, ruling on the merits of the application for invalidity of the patent, to assess Reel International's standing to bring proceedings and to determine whether the principle of *res judicata* precludes the application for invalidity of the German part of patent EP'740 from being adjudicated.

2/ Regarding the alternative application for an order declaring Reel International's claims inadmissible

19. Fives ECL requests, in the alternative, that the issues relating to Reel International's standing to bring proceedings and *res judicata* be dealt with prior to the proceedings on the merits.
20. Reel International objects to this, arguing that there is no justification for dealing with the defences raised by Fives ECL prior to the hearing on the merits.
21. The Judge-Rapporteur considers that the dismissal of the preliminary objection does not require an order to be made under Rule 361 of the Rules of Procedure, nor does it require a preliminary hearing to be held on the question of Reel International's standing to bring proceedings, since its direct and personal interest in the action for annulment must be assessed, as well as its economic interest arising from its links with its wholly-owned indirect subsidiary, Reel GmbH. The need to assess, on the one hand, the facts and points of law and, on the other hand, the evidence produced by each of the parties demonstrates that Reel International's lack of standing is not manifest within the meaning of Rule 361 of the Rules of Procedure (JUB, Court of Appeal, 18 September 2024, Network System Technologies v Audi, UPC_CFI_513-514-515_2023).
22. The same applies to the argument based on *res judicata* concerning the German part of patent EP'740, given the dispute regarding the identity of the parties and the subject-matter, which precludes the straightforward application of the principle of *res judicata* as referred to in Rule 362 of the Rules of Procedure.
23. The applications for interim orders will therefore be dismissed.

3/ On the alternative application seeking a preliminary ruling on Reel International's standing to bring proceedings and on the principle of res judicata

24. With regard to the organisation of a hearing to rule in advance on the defences raised by Fives ECL, account must be taken of the objectives of speed and efficiency set out in the preamble to the Rules of Procedure (point 7), according to which the proceedings must be conducted in such a way as to normally allow the final hearing on the issues of infringement and validity at first instance to take place within one year, i.e. in this case at the beginning of 2027. However, by that date, the Court of Appeal's position on the principle of res judicata should be known, since Fives ECL indicates that a hearing is scheduled for September 2026 on a case that will clarify the JUB's case law on this issue. Holding a hearing before the Court of Appeal has delivered its decision would therefore not be in the interests of the proper administration of justice, nor would holding two hearings on the same case a few weeks apart.
25. There is therefore, at this stage, no reason to bring forward the hearing on the preliminary defences raised by Fives ECL; on the contrary, to schedule a single hearing, which meets the requirements of procedural efficiency and economy, without undermining the legitimate interests of all parties and, in particular, of Fives ECL, since the decision on the merits will rule on its arguments seeking to deprive Reel International of its right to bring an action for the invalidity of its patent.

4/ On the exemption from translation

26. In the absence of any objection, the application by REEL International to be exempted from translating the documents it submits, the original language of which is English, should be granted.

5/ Regarding costs

27. No preliminary ruling on costs is necessary, and a decision on the costs of the preliminary objection will be made together with the decision on the merits.

6/ Regarding the right of appeal

28. An order by the Judge-Rapporteur dismissing a preliminary objection may be appealed only at the same time as the appeal against the decision or with the leave of the Court of First Instance, pursuant to Rule 220.2 of the Rules of Procedure (Rule 21.1 of the Rules of Procedure, second sentence). In the present case, there is no need to authorise an immediate appeal, given that no such request has been made.

FOR THESE REASONS,

The Reporting Judge:

- DISMISSES the preliminary objection raised by Fives ECL;
- REJECTS the applications for interim orders based on Articles 361 and 362 of the Rules of Procedure made by Fives ECL;
- REJECTS the request for early consideration of the defences based on Reel International's lack of standing to bring proceedings and on the principle of res judicata;
- EXEMPTS REEL International from translating the documents it submits where the original language is English;
- DECLARES that the costs of the preliminary objection will be determined in the decision on the merits.

Delivered on 24 March 2026

MÉLANIE, JEANNE, LISON BESSAUD
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Presiding Judge
Mélanie BESSAUD