

Decision
of the President of the Court of Appeal of the Unified Patent Court
issued on 29 June 2026

HEADNOTE

An application to remove an unauthorised application to opt out pursuant to R. 5A RoP must

- a) either demonstrate that the person who filed the application to opt out, at the time of filing the application, was not the person shown in each national patent register for which the European patent was validated as the person entitled to be registered as the proprietor of the European patent, but that it was the applicant of the application to remove the unauthorised application to opt out, see R. 8.5(c) RoP,
- b) or, if the persons mentioned under a) are identical, demonstrate that at the time of filing the application to opt out, the person shown in each national patent register for which the patent was validated as the person entitled to be registered as the proprietor of the European patent, under the law of each Member State for which the European patent was validated, was not entitled to be registered as the proprietor of the patent, but that it was the applicant of the application to remove the unauthorised application to opt out, see R. 8.5(a) RoP.

KEYWORDS

Opt-out, Application to remove an unauthorized application to opt out

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PATENT AT ISSUE

EP 2 581 193

OPT-OUT REFERENCE

UPC_APP_12312/2023

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DECISION OF THE REGISTRAR AT ISSUE

Decision of the Registrar, dated 10 April 2026, concerning the application to remove an unauthorised application to opt-out (UPC_APP_0012025/2026)

DATE OF LODGING OF THE APPLICATION FOR REVIEW

18 May 2026

SUMMARY OF FACTS

1. On 25 November 2015 Polytech Health&Aesthetics GmbH (hereinafter: Polytech) was granted a European patent relating to a method for manufacturing implants and implants produced thereby (EP 2 581 193, hereafter: EP'193).
2. In 2017, the Applicant initiated legal proceedings against Polytech seeking the transfer and consent to the re-registration of all national parts of EP'193 because of non-entitlement before the Landgericht Frankfurt am Main, Germany, and later the Oberlandesgericht Frankfurt am Main and the Bundesgerichtshof.
3. On 30 March 2023, Polytech filed an application to opt-out EP'193 from the exclusive competence of the Unified Patent Court pursuant to Art. 83(3) UPCA (UPC_APP_12312/2023).
4. By decision of 28 November 2024, which became final on 5 January 2026, the Oberlandesgericht Frankfurt am Main ordered Polytech to transfer to the Applicant all national parts of EP'193 and to agree to the corresponding re-registration with the respective national patent offices.
5. On 9 January 2026, PT H&A Management GmbH, a company belonging to the same group of companies as Polytech, filed an action for revocation of the German part of EP'193 before the Bundespatentgericht in Munich, Germany.
6. On 4 February 2026, the Applicant lodged an application to withdraw the opt-out filed by Polytech (UPC_APP_0004145/2026).
7. On 7 April 2026, the Applicant lodged an application for removal of the opt-out registered upon request of Polytech, arguing that the application was filed without authorization (UPC_APP_0012025/2026). The Applicant argued that, following the decision of the Oberlandesgericht Frankfurt am Main, Polytech was never entitled to EP'193 and the invention to which the patent relates.

8. By decision of 10 April 2026, the Registrar rejected the application for removal of an unauthorised opt-out, stating that, pursuant to R. 5.7 RoP, the withdrawal of an opt-out is regarded as effective from the date of entry of the withdrawal application in the register. Since the application to opt-out was effectively withdrawn by the Applicant on 4 February 2026, there was no longer an opt-out to consider for the Applicant's application for removal.
9. On 18 May 2026, and after an extension of the time period for filing the application had been granted by the President of the Court of Appeal, the Applicant lodged an application for review of the Registrar's decision. In its application, the Applicant requests that:
 - I. the Registrar's decision of 10 April 2026 rejecting the application to remove an opt-out be set aside,
 - II. the Registrar be ordered to remove the opt-out of 30 March 2023 in relation to EP'193,
 - III. only if requests I. and II. are granted, the Registrar be ordered to remove the withdrawal of the opt-out of 4 February 2026 in relation to EP'193.
10. According to the Applicant it follows from the wording of and the ratio underlying R. 5A.1 RoP that an opt-out can still be removed regardless of whether an application to withdraw has already been registered.
11. On 1 June 2026, the Applicant submitted a decision of the Landgericht München I, upholding an injunction against Polytech. According to said injunction, Polytech is restrained from interfering with Applicant's property rights. The Applicant submits that in its reasoning the Landgericht München I pointed out that Polytech was never entitled to the EP'193.

REASONS FOR THE DECISION

12. The application for reviewing the registrar's decision is admissible but unfounded.
13. The Applicant has not established that the Registrar's decision, to reject Applicant's request is incorrect.
14. The application to opt out, filed by Polytech on 30 March 2023 cannot be considered to be an unauthorised application that gives rise for a removal from the register pursuant to R. 5A RoP.
15. Authorised to lodge an application to opt out, is the proprietor of the European patent subject of the application, Art. 83(3) UPCA, R. 5.1 RoP.
16. For the purpose of opt-out-proceedings under R. 5 RoP, the proprietor of the European patent is to be determined according to R. 8.5 RoP.
17. According to R. 8.5(a) RoP, it is the person entitled to be registered as proprietor under the law of each Contracting Member State in which the European patent has been validated who shall be treated as the proprietor whether or not such person is in fact recorded in the register of patents maintained in such Contracting Member State, R. 8.5 RoP.
18. However, according to R. 8.5(c) RoP, there shall be a rebuttable presumption that the person

shown in each national patent register for which the European patent has been validated is the person entitled to be registered as proprietor of the European patent as the case might be.

19. It follows that an application to remove an unauthorised application to opt out pursuant to R. 5A RoP
 - a) must either demonstrate that the person who filed the application to opt out, at the time of filing the application, was not the person shown in each national patent register for which the European patent was validated as the person entitled to be registered as the proprietor of the European patent, but that it was the applicant of the application to remove the unauthorised application to opt out, see R. 8.5(c) RoP,
 - b) or, if the persons mentioned under a) are identical, demonstrate that at the time of filing the application to opt out, the person shown in each national patent register for which the patent was validated as the person entitled to be registered as the proprietor of the European patent, under the law of each Member State for which the European patent was validated, was not entitled to be registered as the proprietor of the patent, but that it was the applicant of the application to remove the unauthorised application to opt out, see R. 8.5(a) RoP.
20. In the application-at-hand, the Applicant neither demonstrated that Polytech was not shown as the proprietor of EP'193 in the national patent registers of the Contracting Member States for which EP'193 has been validated nor did it establish that Polytech was not entitled to be registered in the national registers of such Contracting Member States under the law of such Contracting Member States.
21. In order to substantiate that Polytech was not entitled to be registered as proprietor of EP'193 in the national registers, Applicant refers to the decision of the Oberlandesgericht Frankfurt of 28 November 2024.
22. By its decision, the Oberlandesgericht Frankfurt am Main ordered Polytech to transfer to the Applicant all national parts of EP'193 and to agree to the corresponding re-registration with the respective national patent offices.
23. Applicant did not show that this decision, which became final, and thus its order (operative part) effective, only on 5 January 2026, has, contrary to its wording, any retroactive effect.
24. Rather Art. II(5) (1) of the Law on International Patent Conventions (Gesetz über internationale Patentübereinkommen, IntPatÜG) on which the Oberlandesgericht Frankfurt based its decision, after the parties of the litigation had agreed that in accordance with Art. 14 Regulation (EC) No 864/2007 (Rome II Regulation) German law shall be applicable in the entitlement dispute with regard to all national parts of EP'193 (see Oberlandesgericht, decision of 28 November 2024 - 6 U 78/19, p. 12 seq.), does only provide for a claim to transfer the European patent from the non-entitled proprietor to the entitled proprietor but not for any retroactive effect, Sec. 894 Code of Civil Procedure (Zivilprozessordnung).
25. Based on the submissions of the Applicant, it therefore, cannot be established that Polytech on 30 March 2023, when it filed the application to opt-out EP'193 from the exclusive competence

of the Unified Patent Court under Art. 83(3) UPCA, was not entitled to be registered as proprietor of the patent in the national registers concerned at that time and, thus, must be considered to have been authorised to opt-out EP'193 from the exclusive competence of the Unified Patent Court pursuant to Art. 83(3) UPCA.

26. As Polytech is not negatively affected by this decision, there was not need to give it an opportunity to be heard.

DECISION

The application for review of the Registrar's decision of 10 April 2026 is rejected.

This decision was issued on 29 June 2026.

Dr Klaus Grabinski
President of the UPC Court of Appeal