

**UPC CFI, Central Division Munich, 11 October 2023, Astellas v Healois****PATENT LAW – PROCEDURAL LAW**

**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](#).

Source: [Unified Patent Court](#)

**UPC Court of First Instance,  
Central Division Munich, 11 October 2023**  
(Kupecz)

UPC\_CFI\_75/2023

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**

1) ASTELLAS INSTITUTE FOR REGENERATIVE MEDICINE 9 Technology Drive - MA 01581 - Westborough - US

Represented by David Carling

**DEFENDANTS**

1) Healios K.K Hamamatsu-cho 2-chome Minato-ku - 105- 6115 - Tokyo - JP

Represented by James Nicholls

2) Riken 2-1, Hirose Wako-shi - 351-0198 - Saitama - JP

Represented by James Nicholls

3) Osaka University 1-1 Yamadaoka Suita-shi - 565-0871 - Osaka - JP

Represented by James Nicholls

**PATENT AT ISSUE**

Patent no. Proprietor/s

[EP3056563](#) Healios K.K, Riken, Osaka University

**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.

- 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 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.

**GROUND**

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

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.

**ORDER**

- The Defence to Revocation is deemed to be served on the Claimant on 29 September 2023.

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\_579543/2023 in ACTION NUMBER:

ACT\_464985/2023

UPC number: UPC\_CFI\_75/2023

Action type: Revocation Action

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