



Paris local Division

**UPC\_CFI\_494/2023**  
**Procedural order**  
**of the Court of First Instance of the Unified Patent Jurisdiction, handed**  
**down on *24/09/2024***

PLAINTIFF (DEFENDANT in the main proceedings)

**Unilever France**

20 rue des Deux Gares -  
92500 - Rueil Malmaison CEDEX -

FR Represented by Tiemen REIJNS  
and Grégoire DESROUSSEAUX

RESPONDENT (APPLICANT in the main proceedings)

**I.G.B. S.r.l.**

Via Pontaccio, 14 -  
20121 - Milan - IT

Represented by Anne-Charlotte Le Bihan

LITIGATION PATENT

<i>Patent number</i>	<i>Owner(s)</i>
<b>EP3997002</b>	I.G.B. S.r.l.

JUDGE WHO RULES :

Judge-Rapporteur **Carine Gillet**

LANGUAGE OF PROCEDURE: French

ORDER

On 02 September 2024, UNILEVER FRANCE, the defendant in the infringement action brought against it by IGB, in its rejoinder (rejoinder to the infringement claim, rejoinder to the counterclaim for invalidity of the patent and defence to the application to amend the patent), requested leave to amend its claims, pursuant to rule R263 of the Rules of Procedure, in the event that the Court considered that these new claims fell within the scope of the aforementioned rule, stating that it had

amended its requests as to the terms and conditions for implementing the ancillary measures, if granted (deferment and time limit for implementing the measures, and provision of a guarantee by IGB), in response to IGB's request for these measures, aimed at prohibiting, recalling and destroying the disputed products.

On 19 September 2024, invited by the judge-rapporteur by email dated 18 September 2024 to submit its written observations, IGB objected to this request, considering that the request for authorisation to make new claims, pursuant to rule R263 of the Rules of Procedure, was inadmissible as being out of time, or failing that, requesting authorisation to submit its observations on these new claims.

### **Arguments of the parties**

UNILEVER asks the court :

In the alternative, if the request for recall were to be ordered :

- that the 60-day period runs from the expiry of the 120-day deadline for enforcing the ban,
- in application of Rule 352 RoP, that the execution of this measure be subject to the provision by IGB of a guarantee in the amount of 1 million euros,

In the alternative, should the application for a prohibition be granted :

- in addition to setting a deadline for performance of 120 days from the date of service of the the decision,
- the execution of this measure is subject, in application of Rule 352 RoP, to the provision by IGB of a €20 million guarantee.

In the alternative, if the application for destruction were to be ordered :

- that the 60-day period runs from the expiry of the 120-day deadline for enforcing the ban,
- in application of Rule 352 RoP, that the execution of this measure be subject to the provision by IGB of a guarantee in the amount of 3 million euros,

In the event that Rule R263 RoP is applied, UNILEVER requests authorisation under Rule R36 RoP to include these new requests.

In support of its claims, UNILEVER states that :

-it amended its subsidiary claims in its rejoinder of 02 September 2024, in response to the application for prohibition, recall and destruction of the infringing products, on account of a new factor, namely the use since August 2024 of allegedly infringing packaging to market OMO brand washing powder capsules,

It considers that rule R263 of the Rules of Procedure should not apply, as there is no modification of the claim and that, in any event, IGB is in no way prevented from pursuing its action, that the timetable for the pre-trial proceedings is in no way affected and that each of the parties will have the opportunity to express their views on these claims during the final exchanges of pleadings.

In response IGB asks :

A tire principal , de :

- reject new applications
- remove the UNILEVER certificates from the debates

In the alternative :

- Authorise IGB to respond to new applications and certifications in accordance with R36 RoP.

In support of its claims, IGB submits that :

-the amended claims are inadmissible as untimely because UNILEVER had been aware of the facts invoked to justify its amended claims for months, or even years,

-the amendments constitute new applications and fall within the scope of the rule invoked, which applies even to subsidiary applications. The conditions set out in R263 RoP are not met.

### **Legal basis**

Rule 263 RoP - Permission to change the application or the nature of the case

1. A party may, at any stage of the proceedings, apply to the Court for leave to amend its claim or to change the nature of its case, including adding a counterclaim.

Such a request must explain why the initial submission did not contain the purpose of the change or modification.

2. Subject to paragraph 3, authorisation shall not be granted if, having regard to all the circumstances of the case, the party seeking to effect the variation cannot satisfy the Court that :

a) the modification in question could not have been carried out with reasonable diligence at a reasonable cost.

previous stage; and

b) the modification will not unduly hinder the other party in the conduct of its business.

3. Authorisation to limit an application unconditionally is always granted.

4. The Court may reconsider the fees already paid in the light of a change.

Rule 36 RoP - Subsequent exchanges of memories

Without prejudice to the powers of the judge-rapporteur under Rule 110(1), at the reasoned request of a party lodged before the date on which the judge-rapporteur intends to close the written procedure (Rule 35(a)), the judge-rapporteur may authorise the exchange of new pleadings within a period to be specified. Where the exchange of new pleadings is authorised, the written procedure shall be deemed to be closed on expiry of the specified time limit.

## Reasons for the decision

Rule R263 RoP envisages the possibility of a party being authorised by the Court, at any stage of the proceedings, to amend its submissions, while at the same time preventing new applications being made late without legitimate reason and which are likely to place the other party in an unfavourable procedural position. Such authorisation may only be granted on the twofold condition that the amendment could not have been made diligently at an earlier stage of the proceedings and that it is not such as to unreasonably disrupt the conduct of the case.

The Court considers that authorisation under rule R263 of the Rules of Procedure only concerns amended applications that have the effect of changing the subject matter and scope of the dispute.

It is therefore necessary to assess beforehand whether the modifications made by UNILEVER constitute a modification of a claim and, if so, whether they meet the aforementioned conditions.

In this case, in its initial reply of 25 April 2024, UNILEVER opposed the ancillary requests for prohibition, recall and destruction made by IGN in the statement of claim, requesting, in the event that the ancillary measures requested by IGB were granted, a deferral of the execution of the prohibition measure, the provision of a guarantee of 2 million euros and a deferral of the execution of the recall measure and the rejection of the request for destruction.

The amended claims in UNILEVER's pleading of 02 September 2024 relate exclusively to the methods of execution of these ancillary measures, if granted, the defendant in the main proceedings now seeking, in addition to its initial claims on these points, the provision by IGB of a guarantee of 20 million euros, 1 million if the request to recall the products is granted, and the provision of a guarantee of 3 million euros and a deferral of the execution of the destruction measure.

These amended claims, which merely supplement those previously sought, apart from the fact that they are made in the alternative, do not constitute substantial amendments, which are of such a nature as to alter and prejudice the subject matter of the dispute and its scope, and relate only to the arrangements for implementing and enforcing any judgment.

UNILEVER's amended claims therefore do not fall within the scope of rule R263 RoP and therefore do not need to be authorised, without there being any need to ascertain whether they could have been made at an earlier stage of the proceedings, or to verify their consistency with the initial claims submitted in UNILEVER's defence, it being observed that, moreover, IGB is perfectly capable of responding to them in its next statement of case.

Therefore, for the reasons given above, there are no grounds for authorising UNILEVER to present its new claims and to rule on the parties' respective claims, on the basis of rule R36 RoP.

**FOR ALL THESE REASONS,**

The Court, Paris Local Division

- Declares that there are no grounds for applying rule R 263 RdP and that there are no grounds for granting authorisation to UNILEVER,
- Declares the request based on rule R36 RdP to be without object
- Declares that this order may be reviewed under the conditions set out in rule 333 of the Rules of Procedure.

Paris, 24 September 2024

2024.09.24  
Carine Gillet 10:02:28  
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C.GILLET, Judge-Rapporteur

DETAILS OF THE ORDER

Order No ORD\_52883/2024 in ACTION No ACT\_596431/2023

UPC no.: UPC\_CFI\_494/2023

Type of action: Infringement action Related

proceedings no.: 49796/2024

Type of application: Application for leave to amend the application or change the nature of the case/memorial (Rule 263 of the Rules of Procedure)