

EIP

UPC Clarifies Time Limit Flexibility in Nanoval v ALD

Nanoval GmbH & Co. KG v ALD Vacuum Technologies GmbH (UPC_CFI_63/2025 relating to EP3083107)

Order of 22 July 2025 (ORD 25245/2025 [1])

This Decision from the Munich Local Division of the Unified Patent Court relates to EP3083107. On 3 February 2025, the applicant, Nanoval GmbH & Co. KG ("Nanoval"), was granted an order for preservation of evidence and inspection against ALD Vacuum Technologies GmbH ("ALD"). The Court set the start date for calculation of the time limit for Nanoval to initiate the main proceedings on the merits to 28 February 2025, pursuant to Rule 198.1 RoP.

Due to delays in the expert report describing the evidence found pursuant to the order being released to Nanoval, the Court issued a subsequent order on 18 March 2025, amending the start date for the calculation of the time limit to the day on which the expert report was made available to Nanoval. In the event, the expert report was made available to Nanoval on 2 April 2025. Nanoval subsequently initiated the proceedings on the merits on 3 May 2025, 31 days after the day following the day on which the expert report was received.

ALD requested a revocation of the February order, arguing that a modification of the start time for calculation of time limits pursuant to Rule 198.1 RoP effectively amounted to an extension of time, and that according to Rule 9.4 RoP, a time limit under Rule 198.1 cannot be extended. The Court denied ALD's request, stating that it cannot be inferred from the Rules of Procedure that the Court may not subsequently change the start of the period determined by it in accordance with Rule 198.1.

Interpretation of Rule 198.1 RoP

Rule 198.1 sets out the criteria for revocation of an order to preserve evidence, based on an applicant's failure to initiate proceedings on the merits within 31 calendar days or 20 working days (whichever is the longer) from a start date specified in the Court order, to be determined by the Court "with due account to the date where the Report referred to in Rule 196.4 shall be presented".

ALD argued that based on Rule 9.4 RoP, the Court cannot extend a time limit under Rule 198.1, and therefore requested a revocation of the order for the preservation of evidence and inspection based on Nanoval not initiating the proceedings on the merits pursuant to Rule 198.1 RoP, by 31 March 2025.

The Court stated that the time limit specified in Rule 198.1 RoP may not be extended, but in this context, a distinction must be made between the length of the time limit and the start of the time limit: Rule 198.1 RoP grants the Court discretion in determining the start of the time limit, based on an estimate at the time of the order of when an expert report would be made available to the applicant.

The Court stated that it would be an error of discretion not to order a change in the start of the time limit if the submission of the report is delayed contrary to the Court's original forecast. In this case ALD only released the expert report in redacted form by written submission dated 31 March 2025, and the judge rapporteur ordered on 2 April 2025 that the redacted version be made available to Nanoval. Based on the original calculation of the deadline, the applicant would have to initiate the main proceedings without the evidence that was needed, which is contradictory to the point of the preservation of evidence procedure. It would be absurd to order a preservation of evidence procedure, and order the applicant to initiate proceedings on the merits without the evidence of the expert report.

ALD argued based on a decision of Munich Local Division of 9 December 2024, UPC_CFI_755/2024 [2], that the Court had no discretion to extend time limits under Rule 213.1 RoP. The Court stated that ALD's representative misrepresented the statements

made in the cited order, and referred ALD's representative to Article 48(6) UPCA, issuing a final warning.

p3

Decision

The Court denied ALD's request for revocation of the order for preservation of evidence and inspection, and ordered ALD to bear the costs of the proceedings.

[1] <https://www.unifiedpatentcourt.org/en/node/136566>

[2] <https://www.unifiedpatentcourt.org/en/node/13239>