



UPC - Court of Appeal  
UPC\_CoA\_354/2024  
APL\_38948/2024  
App\_47290/2024  
App\_47803/2024

**PROCEDURAL ORDER**  
of the Court of Appeal of the Unified Patent Court issued on  
**21 August 2024**  
concerning summons of the parties to the oral hearing

APPELLANTS (AND DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE CFI)

1. **Apple Retail Germany B.V. & Co KG**, Munich, Germany
2. **Apple Distribution International Ltd**, Cork, Ireland
3. **Apple GmbH**, Munich, Germany
4. **Apple Retail France EURL**, Paris, France
5. **Apple Inc.**, Cupertino, United States of America

all represented by: Lawyer Prof. Dr Tilman Müller-Stoy (Bardehle Pagenberg) CLAIMANT (AND

PLAINTIFF IN THE MAIN PROCEEDINGS BEFORE THE COURT)

**Ona Patents SL**, Barcelona, Spain

represented by: Attorney Dr Christof Augenstein (Kather Augenstein) STREITPATENT  
EP 2 263 098

PANELS AND DECIDING JUDGE

Second panel:

Rian Kalden, presiding judge and rapporteur

LANGUAGE OF THE PROCEEDINGS

German

ORDER CONTESTED BY THE COURT OF FIRST INSTANCE

- Order of the President of the Court of First Instance of 18 June 2024
- Action number of the Court of First Instance:

Confirming Order: ORD\_27452/2024 in the proceedings: ACT\_11910/2024, App\_26610/2024,  
UPC\_CFI\_99/2024

### BRIEF PRESENTATION OF THE FACTS

By Order of 18 June 2024, the President of the Court of First Instance in the proceedings before the Düsseldorf local division dismissed the application to change the language of the proceedings to the language in which the patent in question was granted.

The appellants filed an appeal against this Order on 29 June 2024. PROCEDURAL HISTORY

The appellee filed its response to the appeal on 29 July 2024, after the deadline for the response to the appeal had expired with the consent of the appellants by Order dated 25 July 2024 (App\_42156/24) had been extended until 29 July 2024.

### APPLICATIONS BY THE PARTIES

On 15 August 2024, the Appellants filed an R.9 application with the Reply to the Appeal (App\_47290/2024).

On 20 August 2024, the appellee filed an R.36 application (App\_47803/2024) stating that the Reply filed on 15 August 2024 should not be taken into account, or alternatively that the appellant should be granted a further period until 6 September 2024 to respond to the appellants' document.

### REASONS

On 13 August 2024, the rapporteur informed the parties that no interim hearing would take place and summoned the parties to the oral hearing by video conference on 23 August 2024. The parties were also informed of the conclusion of the interim proceedings, after which the oral proceedings would begin immediately (R.110.3 RoP).

According to R.36 RoP, "the judge-rapporteur may, on an application by a party, accompanied by a statement of grounds, submitted before the date on which the judge-rapporteur intends to close the written procedure [Rule 35(a)], authorise the exchange of further documents within a period to be fixed."

For the appeal procedure, R.239.2 RoP conclusively determines when the written procedure is concluded. As soon as the judge-rapporteur considers the appeal proceedings to be ready for an oral hearing, he shall summon the parties to the oral hearing. [...] With the summons, the interim proceedings are deemed to be concluded and the oral proceedings begin. There is no provision for notification in accordance with R.35a RoP.

An application under R.36 RoP must therefore be filed before the conclusion of the interlocutory proceedings and further documents may only be filed after an application under R.36 RoP has been filed.

In this case, the application for the exchange of further documents should therefore have been filed before 13 August 2024. The appellants did not comply with this: The application was not filed until 15 August 2024.

The appellant rightly criticises this.

The appellants' further document dated 15 August 2024 is not to be taken into account. The oral hearing is to take place as planned on 23 August 2024.

ORDER

The Court of Appeal dismisses the document , filed in App\_47290/2024.

Date:

2024.08.21

Rian Kalden

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Rian Kalden, presiding judge and rapporteur