



Order
of the Court of First Instance of the Unified Patent Court
issued on 30 January 2025
concerning EP 3 511 174

CLAIMANT:

FUJIFILM Corporation, 26-30, Nishiazabu 2-chome, Minato-ku, Tokyo 106-8620, Japan,

represented by: Tobias Hahn, HOYNG ROKH MONEGIER, Steinstraße 20,
40212 Düsseldorf, Germany

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DEFENDANT:

1. Kodak GmbH, Kesselstraße 19, 70327 Stuttgart,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer
Rechtsanwälte Steuerberater PartG mbB, Feldmühleplatz 1,
40545 Düsseldorf, Germany

electronic address for service: elena.hennecke@freshfields.com

2. Kodak Graphic Communications GmbH, Kesselstraße 19, 70327 Stuttgart,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer
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13, 80333 Munich, Germany

electronic address for service: elena.hennecke@freshfields.com

3. Kodak Holding GmbH, Kesselstraße 19, 70327 Stuttgart,

represented by: Elena Hennecke, Freshfields Bruckhaus Deringer
Rechtsanwälte Steuerberater PartG mbB, Maximiliansplatz
13, 80333 Munich, Germany

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PATENT AT ISSUE:

European patent EP3 511 174

PANEL/DIVISION:

Panel of the Local Division in Mannheim

DECIDING JUDGES:

This order was issued by Judge Prof. Dr. Tochtermann acting as presiding judge and judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: Rule 109.1 RoP – Request for simultaneous interpretation

SUMMARY OF FACTS:

The Claimant is a company based in Japan. It brought an infringement action against the three Defendants, all based in Germany, and chose English as the language of the proceedings. The Claimant filed a request for simultaneous interpretation from English into Japanese at the oral hearing for its attending representatives who do not have the sufficient language skills to follow the course of the oral hearing in English with the necessary level of detail. According to the Claimant, simultaneous interpretation is necessary to enable the Claimant to make use of its procedural rights for reasons of the fair trial principle and equality of arms in the proceedings. The Defendants object to the request only in respect of Rule 109.1 RoP and to the translation costs becoming costs of the proceedings.

PARTIES' REQUESTS:

The Claimant requests (App 1460/2025), the simultaneous interpretation from English to Japanese at the oral proceedings on February 13 and 14, 2025.

The Defendants request (App 3424/2025), to reject the Claimant's request for simultaneous interpretation from English to Japanese at the oral proceedings according to R. 109.1 RoP.

FOUNDATIONS FOR THE ORDER:

Pursuant to Art. 51(2) UPCA, any division of the Court of First Instance shall, at the request of a party and to the extent appropriate, provide interpretation to assist that party in oral proceedings. This general principle is further specified in R. 109.2 (1) RoP to the effect that the Judge-Rapporteur shall decide, upon a timely request pursuant to R. 109.1 RoP, whether and to what extent simultaneous interpretation is appropriate. If he considers it appropriate, he shall instruct the Registry to make all necessary arrangements. The costs of simultaneous interpretation in such a case shall be included in the costs of the proceedings, R. 150 RoP. If the Judge-Rapporteur refuses the request for simultaneous interpretation, a party may, at its own expense, engage a simultaneous interpreter and request that arrangements for simultaneous interpretation be made, as far as is practically possible, at its own expense (Rule 109.2 (2) RoP in conjunction with Rule 109.4 of the RoP; cf. CFI, LD Düsseldorf, UPC_CFI_363/2023, procedural order of 12 July 2024). If a party avails itself of this possibility, the costs incurred shall not be regarded as costs of the proceedings within the meaning of the last sentence of Rule 109.5 RoP; they shall be borne solely by the party instructing the interpreter. LD The Hague and Düsseldorf summarise a two-

step approach for the examination of R. 101 RoP: first, to decide whether it is appropriate to allow interpretation during the oral hearing, and second, to decide whether it is appropriate that the costs of such interpretation shall become cost of the proceedings (cf. CFI, LD The Hague, UPC_CFI_195/2024, procedural order of 25 June 2024, para 5; CFI LD Düsseldorf, UPC_CFI_355/2023, procedural order of 29 November 2024). The LD Mannheim supports this approach.

In the first place the simultaneous interpretation in the present highly complex substance matter appears to be appropriate to ascertain that the representatives of Claimant are in a position to fully understand the exchange during the oral hearing (see CFI Düsseldorf in the parallel case as cited above).

Still it does not seem appropriate that the cost of the simultaneous interpretation should become a part of the cost of the proceedings. Japanese is neither an official language of the Contracting Member States nor an official or designated language of the Local Division Mannheim, where the infringement action was filed in English. The UPC cannot generally be expected to provide interpretation into all languages (see CFI, Local Division The Hague and Düsseldorf cited above). Yet, another argument against making the costs incurred cost of the proceedings is that the Claimant's representatives are able to understand and follow the oral hearing in English as such. They simply put forward that they are unable to follow the oral hearing to a necessary degree of detail without interrupting to ask questions or using additional translation aids. The mere desire to better understand the proceedings in real time, as if they were being conducted in Japanese, does not justify a request for the Court to provide simultaneous interpretation making the costs incurred cost of the proceedings. That is all the more true considering that these arrangements are associated with great organisational effect for the sub-registry. In case of need the oral hearing may be interrupted for a reasonable time so as to align between Claimant and its representatives.

But the Claimant is free to use an interpreter at his own expense (see R. 109.4 RoP), who may, if necessary, use the simultaneous interpretation equipment available in the court room. Due to the multiple requests in this regard in preparation of the oral hearing it has to be pointed out that the technical environment as provided is to be used and no further improvement upon demand of the interpreters may be allowed as the general set-up as provided by the hosting member state has proved to be adequate, sufficient and reliable in the past in other proceedings.

ORDER

1. The Claimant may, at its own expense, engage an interpreter who may, if necessary, use the equipment available in the courtroom for simultaneous interpretation.
2. If the Claimant wishes to make use of this possibility, it shall inform the sub-registry of the Local Division Mannheim in due time before the oral hearing.
3. The request is dismissed in all other respects

Issued in Mannheim on 30 January 2025

NAMES AND SIGNATURES

Tochtermann
Presiding judge and judge-rapporteur