



No. APP_33670/2025
UPC_CFI_460/2025

ORDER
of the President of the Court of First Instance
in the proceedings before the Local Division Munich
pursuant to R. 323 RoP (language of the proceedings)
Issued on 18/08/2025

HEADNOTE:

- When deciding on an application to change the language of the proceedings to the language in which the patent was granted for reasons of fairness, all relevant circumstances must be considered. However, if the respective size of the parties is to be taken into account, this must be weighed with regard to the conditions in which they will communicate internally, especially regarding their need for coordination and exchanges between legal departments and technical support.
- Considering the additional work and potential difficulties incurred by continuing with the case management in English and preparing for the oral phase in another language, this specific arrangement should preferably be discussed with the Judge-rapporteur at a later stage.

KEYWORDS:

Change of the language of the proceedings – Art. 49 (5) UPCA and R. 323 RoP

APPLICANTS (DEFENDANTS IN MAIN PROCEEDINGS):

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2- OnePlus Technology (Shenzhen) Co., Ltd.

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3- Realme Chongqing Mobile Telecommunications Corp., Ltd

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4- OROPE Germany GmbH

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5- OTECH Germany GmbH

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6- Realme Germany GmbH

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7- Oleading B.V.

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RESPONDENT (CLAIMANT IN MAIN PROCEEDINGS):

Innovative Sonic Corporation

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Represented by: Peter-Michael Weisse Wildanger Kehrwald Graf von Schwerin & Partner
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PATENT AT ISSUE: EP2765731

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SUMMARY OF FACTS

By a statement of claim filed on 23 May 2025, Innovative Sonic Corporation filed an infringement action against the Applicants based on EP2765731 (No. ACT_24699/2025 UPC_CFI_460/2025).

By generic procedural application dated 25 July 2025, the abovementioned defendants in the main proceedings (hereinafter “The Defendants”), referring to R. 323 RoP, requested that the language of the proceedings be changed from German to English. Pursuant R. 323.1. RoP, the request was forwarded to the President of the Court of First Instance of the UPC by email dated 28 July 2025. By order dated 29 July 2025, the Claimant in the main action (No. ACT_24699/2025 UPC_CFI_410/2025) was subsequently invited, in accordance with R. 323.2 RoP, to indicate within 10 days its position on the admissibility of the request and on the use of the language in which the patent was granted (namely English) as language of the proceedings.

Innovative Sonic Corporation submitted their written comments on 8 August 2025.

The panel of the LD Munich has been consulted in accordance with R. 323.3 RoP.

INDICATION OF THE PARTIES’ REQUESTS:

The Applicants request that the Court, pursuant to Art. 49 (5) UPCA and R. 323 RoP, change the language of the proceedings from German to English.

Innovative Sonic Corporation requests that the Court:

- 1- Dismiss the Application.
- 2- In the alternative, consider the preferences of the first instance panel when issuing an order on the language of the proceedings.
- 3- In the further alternative, in the event of a change of the language of the proceedings, allow the parties to conduct the oral proceedings in German.

POINTS AT ISSUE:

The Applicants first state that Art. 49 (5) UPCA does not mandate the respective request to be submitted with the Statement of Defence according to UPC_CoA_207/2024 APL_24598/2024, and that a change of the language of the proceedings to the language of the patent in dispute shall be granted in the present case for the following reasons:

- According to the existing case law, the language chosen by the Claimant is not appropriate and significantly disadvantages the Defendants who belong to the Chinese OPPO group. OPPO is a leading global smart devices manufacturer which is headquartered in China and uses Chinese and English as its business languages.
- Even though three of the Defendants are registered in Germany, they expressly agree to the requested change given that they operate in an international context and communicate in English with their legal representatives, other advisers and IP Departments, particularly with regard to the present proceedings.
- The need to translate German pleadings into English places a considerable time and organizational burden on the Defendants even if they are assisted by German legal representatives.
- The language of the patent is in principle not unfair to the Claimant and the same applies to Innovative Sonic Corporation in the present action, as is demonstrated by parallel proceedings filed with the UPC – Munich local division (ACT_28220/2025).
- As prior discussions between the parties and more than half of the submitted documents are in English, there is no legitimate interest for the Claimant to conduct the dispute in German.
- English is the language of the underlying technology and state of the art.
- It has already been clarified that the working environment and communication channels through which the defendants provide legal and technical support in their defence against the allegation of infringement must be taken into account. This statement is transferable to the present case and calls for the requested change.
- Changing the language of the proceedings to English would not impair the course of the proceedings or lead to delays.

Innovative Sonic Corporation contends that the Application should be rejected for the following reasons:

- The Claimant has legitimately chosen German as one of the two procedural languages of the Munich Local Division and there are no apparent reasons of fairness calling for the requested change, as the Defendants are not disadvantaged by the current language of the proceedings.
- None of the Defendants has its registered office in an English-speaking country, while three of them are domiciled in Germany. This has been considered by the Court of appeal as an important factor (UPC_CoA_207/2024 -Advanced Bionics v Med-EL).
- When determining the balance of interests, the CoA has repeatedly ruled that multinational companies have more resources to handle and coordinate international disputes in various languages.

- The assertion that parallel proceedings have been filed in English before the UPC is incorrect, as it refers to actions brought by third parties which are not related to the present case. Instead, the Claimant has sued some of the Defendants – obviously used to litigating in German – before the Munich Regional Court.
- All parties involved are represented by German lawyers able to conduct the proceedings in German even more efficiently and with a better linguistic quality than in English. Conversely, working translations can easily be produced with AI-based programs.
- In general, it should be possible to assume that proceedings before a German local division will regularly be conducted in German.

As a precautionary measure the Claimant adds that they will not oppose the requested change if the panel agrees. However, they point out that there is no need for oral hearings to be held in English. Indeed, almost everyone involved is a German speaker and simultaneous interpretation for foreign clients can easily be arranged.

Further facts and arguments as raised by the parties will be addressed below if relevant for the outcome of this Order.

GROUND FOR THE ORDER:

It is first noted that the admissibility of the Application is not disputed in the present case.

1- Merits of the Application

According to Art. 49 (1) UPCA, the language of the proceedings before a local division must be an official language of its hosting Member State or alternately the other language designated pursuant to Art. 49 (2). It is further provided by R. 323 RoP that “1. If a party wishes to use the language in which the patent was granted as language of the proceedings, in accordance with Article 49(5) of the Agreement (...) [t]he President, having consulted [the other parties and] the panel of the division, may order that the language in which the patent was granted shall be the language of the proceedings and may make the order conditional on specific translation or interpretation arrangements”.

Regarding the criteria that may be considered to decide on the Application, Art. 49 (5) UPCA specifies that “(...) the President of the Court of First Instance may, on grounds of fairness and taking into account all relevant circumstances, including the position of parties, in particular

the position of the defendant, decide on the use of the language in which the patent was granted as language of proceedings (...)."

By an order dated 17 April 2024, the UPC Court of Appeal (hereinafter "CoA") ruled that when deciding on a request to change the language of the proceedings to the language of the patent for reasons of fairness, all relevant circumstances must be taken into account. These circumstances should primarily relate to the specific case, such as the language most commonly used in the relevant technology, and to the position of the parties, including their nationality, domicile, respective size, and how they could be affected by the requested change (UPC_CofA_101/2024, Apl_12116/2024, para. 22-25). It was furthermore stated that the internal working language of the parties, the possibility of internal coordination and of support on technical issues are relevant circumstances, while other proceedings pending before a national court, which do not relate to the dispute, are in themselves of less relevance (UPC_CoA_354/2024, Apl 38948/2024, Order dated 18 September 2024, para. 26-27).

In the event that the result of the balancing of interests is the same in the context of this overall assessment, the CoA found that the emphasis placed "in particular" on the position of the defendant under Art. 49 (5) UPCA is justified by the flexibility afforded to the claimant which frequently has the choice of where to file its action – since any local or regional division in which an infringement is threatened or taking place is competent – and can generally choose the most convenient timeframe to draft its Statement of Claim, while the defendant is directly bound by strict deadlines. The position of the defendant(s) is consequently the decisive factor if both parties are in a comparable situation.

In the same decision, the CoA also held that *"for a claimant, having had the choice of language of the patent, with the ensuing possibility that the claimant/patentee may have to conduct legal proceedings in that language, as a general rule and absent specific relevant circumstances pointing in another direction, the language of the patent as the language of the proceedings cannot be considered to be unfair in respect of the claimant"* (para. 34).

According to the abovementioned caselaw, addressing the issue of fairness involves considering the language of the patent and the language commonly used in the technology in question, alongside all circumstances identified as being relevant in the requested assessment of the respective interests of the parties with a particular consideration for the Defendant(s).

As is rightly emphasized by Innovative Sonic Corporation and indicated above, the claimant has in principle the option to use one of the official "local" languages of the division or alternatively the other language designated pursuant to Art. 49 (2) – namely English for all

locations – as language of the proceedings. This right can only be limited if the balancing of all interests justifies the change to the language in which the patent was granted for grounds of fairness.

In the present case, it is not disputed that English is commonly used in the relevant field of technology – relating to wireless communication and mobile networks – as is evidenced by the volume of exhibits submitted in this language.

Regarding the parties' respective situations, the Claimant is headquartered in Taiwan while three of the nine Defendants are registered in Germany – the other companies involved being Italian, Dutch and Chinese entities of the OPPO group. They consequently all use English as their working language, and for their internal communication.

Innovative Sonic Corporation argues that the Applicants cannot validly invoke their status of leading global manufacturers, which conversely allows the OPPO group to engage extended resources to international disputes.

The respective size of the parties shall indeed be taken into account. However, this must be weighed with consideration to the conditions in which they will communicate internally, especially with regard to their need for coordination and exchanges between legal departments and technical support. As indicated above, these circumstances have been identified as important factors by the CoA (UPC_CoA_354/2024 – APL 38948/2024 – Order dated 18 September 2024). In the present context of nine Defendants operating from four different countries, the language commonly used within the group is decisive while, in contrast, using English rather than German is neutral for the Claimant irrespective of its size and logistic means.

The other circumstances put forward by Innovative Sonic Corporation relate to parallel actions filed against most of the Defendants before the Munich Regional Court – with no indication whether these other disputes are closely linked to the present case – along with language skills of the representatives. As previously said, these circumstances have been considered of less importance according to the existing case law, given the fact that proceedings based on European patents are usually handled by international teams with various and complementary profiles (UPC_CoA_101/2024 APL_12116/2024, order dated 17 April 2024. par. 26 and 30).

Regarding the conditions in which the case will be handled by the Court, it is to be noted that all divisions of the UPC offer English as an alternative to the official language(s) of their hosting Member State. This means that all judges – whether permanently appointed to one division or mainly allocated as the third international member of the panel – equally use English to communicate with each other. The same applies to the cooperation with technically qualified

judges. Furthermore, the CoA has stated on other occasions that any risk of overlooking nuances in the factual and legal aspects of the submissions can be countered by translation and interpretation arrangements (UPC_CoA_101/2024 APL_12116/2024, order dated 17 April 2024 par. 27).

Finally, the requested change will not affect the course of the proceedings nor cause delays, as it can be implemented at an early stage (CoA_101/2024 – APL_12116 – order dated 17 April 2024 – para. 25). This point is not disputed.

It follows from the general principles indicated above, alongside the relevant circumstances of the case, that the balancing of respective interests of the parties call for the requested change of the language of the proceedings to the language in which the patent was granted.

While addressing the possible preference of the panel, the Claimant also suggests that the oral hearing be held in German as an alternative. Considering the additional work and potential difficulties incurred by continuing with the case management in English and preparing for the oral phase in another language, this possibility should preferably be discussed with the Judge-rapporteur rather than being decided at this stage. The respective request must therefore be dismissed.

The present order shall not be conditional on other specific translation or interpretation arrangements, with regard to the proportion of exhibits submitted in English and the language skills of all parties involved – including representatives and judges – composing the panel.

ON THESE GROUNDS

- 1- The language of the proceedings shall be changed to the language in which the patent was granted, namely English.
- 2- The request for oral hearing to be held in German is dismissed.
- 3- The present order shall not be conditional on other specific translation or interpretation arrangements.
- 4- An appeal may be brought against the present order within 15 calendar days of its notification pursuant to Art. 73. 2 (a) UPCA and R.220 (c) RoP.

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY

The next step requires the Applicants to file the Statement of Defence within the time period prescribed by the Rules of Procedure.

ORDER

Issued on 18 August 2025

NAME AND SIGNATURE

Florence Butin
President of the UPC Court of First Instance

