



Paris Local Division

UPC_CFI_530/2025
Order
of the Court of First Instance of the Unified Patent Court
issued on 27/11/2025
concerning R.19 and R.334 (g) RoP

APPLICANT

KEEEX SAS

(Parties to the main proceedings - Claimant) - 5
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Represented by Thibaud Lelong

DEFENDANTS

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Represented by David Por

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Represented by Benjamin May

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PATENT IN SUIT

<i>Patent number</i>	<i>Owner(s)</i>
EP2949070	KEEEX SAS

JUDGE RULING

Judge-Rapporteur **Camille Lignieres**

LANGUAGE OF PROCEEDINGS: French

ORDER

In the context of an infringement action initiated by KEEEX before this Division on 17 June 2025, the defendants challenged the UPC's international jurisdiction by preliminary objections pursuant to Rule 19.1(a) RoP, filed on the following dates:

- 22 August 2025 for OpenAI Irl (Defendant 5)
- 8 October 2025 for OpenAI LP and OpenAI Opco LLC (Defendants 3 and 4)

- 3 November 2025 for the two ABOBE entities (Defendants 1 and 2), for TRUEPIC (Defendant 6) as well as for Joint Developments Foundation Project LLC (or "JDFF" Defendant 7) and Coalition for Content Provenance and Authenticity (or "CCPA" Defendant 8).

OPENAI Irl asks the Court to:

Declare the preliminary objection admissible;

Declare that it has no jurisdiction to rule on the alleged infringement of the Swiss, Spanish, United Kingdom, Irish, Norwegian and Polish parts of EP 2 949 070, and to order measures in respect of the alleged infringement of the national parts of EP 2 949 070 in Switzerland, Spain, the United Kingdom, Ireland, Norway and Poland;

Dismiss the action in so far as infringement of the Swiss, Spanish, UK, Irish, Norwegian and Polish parts of EP 2 949 070 is claimed and in so far as relief is sought in respect of the alleged infringement of the national parts of EP 2 949 070 in Switzerland, Spain, the UK, Ireland, Norway and Poland.

The other defendants put forward similar arguments in support of their preliminary objection (PO) concerning the challenge to the international jurisdiction of the UPC based on Art. 32 UPCA.

In addition, TRUEPIC challenges the internal jurisdiction of the Paris Local Division (Art. 33 UPCA) and adds specific arguments questioning the evidential value of exhibits 7 and 8 in support of the statement of claim and requesting that these exhibits (the procès-verbal de constat and the associated report, as well as the supplementary report in support of KEEEX's reply on the PO) be set aside by the judge-rapporteur at this stage of the proceedings, on the basis of R. 334(g) RoP. In support of this request, TRUEPIC argues that the reporting officer did not comply with the prerequisites set out in French case-law and that the minutes therefore do not have sufficient evidential value since the reporting officer merely used deep links or direct URLs to access the Defendant's incriminating logi-ciel 6) and failed to describe the full access path from a neutral source (homepage or search engine). TRUEPIC maintains that the ex-perts' reports linked to the statement of facts suffer from the same methodological flaws. TRUEPIC concludes from this that, in the absence of these documents, the claimant does not meet the criterion of jurisdiction on the territory of a UPC Member State based on Article 7.2 of Regulation (EU) No 1215/2012 (place of the harmful event).

TRUEPIC also argues that it has no territorial link with the territory of the UPCA Member States, that the disputed site was not accessible to the public, that it was a private prototype intended only for its American partners.

Finally, TRUEPIC, in order to contest the internal jurisdiction of the Paris Division, maintains a strict apprehension to determine territorial jurisdiction by relying on the French case law of a website "dedicated", and not only "accessible", to a certain territorial market.

In its last reply dated 20 November 2025, KEEEX asked for all the OOPs to be rejected, putting forward the following main arguments:

- TRUEPIC promotes its disputed technological tool "Truepic C2PA display" on its website open to the public (truepic.com), which is presented as available without a geographical limit with a worldwide impact, and in particular in Europe, and it disputes the witness statement produced by TRUEPIC to the effect that the disputed tool is not accessible to the public.
- In particular, it describes the full access path from a neutral source, specifying the browser used, and the site <https://display.truepic.com/>, which is a public site that is freely accessible. The same is true of the expert's report (exhibit 8) that was criticised, which was connected via a VPN equivalent to a technical proxy.
- It is settled case law that the establishment of an online content report by a French judicial commissioner constitutes essential proof that the content is accessible in France. This proof makes it possible to base the jurisdiction of a French court on the criterion of the place of the damage or harmful event (CJEU, 22 January 2015, Hejduk, aff. C-441/13).
- The plaintiff chose to benefit from the special jurisdiction option provided for in Article 7.2 of the Brussels I bis European Regulation, which allows the plaintiff to bring proceedings in tort, delict or quasi-delict before the courts for the place where the harmful event occurred.
- The open source provision of verification software by ADOBE and free of charge by TRUEPIC constitutes acts of uncontrollable infringement in all the States covered by the Patent in dispute.
- The combination of Article 14 of the French Civil Code and Article 71 ter gives the UPC extraterritorial jurisdiction, enabling it to extend its jurisdiction beyond the borders of its territorial jurisdiction.
- Under Article 71 ter (3) of the Brussels I bis Regulation, KeeeX is entitled to claim damages not only for infringement committed in France and in the other UPCA Member States, but also for infringement committed in non-member and non-UPCA Member States in which the patent is in force.

REASONS

The Judge-Rapporteur will rule on the present requests, after consultation with the other members of the panel.

Preliminary application under Rule 334 (g) RoP to disregard exhibits 7 and 8 Rule 334 - Powers relating to the handling of cases

Unless otherwise provided in the Agreement, the Statutes or these Rules, the Judge-Rapporteur, the President or the Chamber may: *(g) reject or rule on an application where a decision on a preliminary issue renders a decision on other issues that are irrelevant to the outcome of the case.*

In the present case, TRUEPIC requests that the judge-rapporteur, at this early stage in the proceedings, rule on the probative value of exhibits 7 and 8 in support of the statement of claim and remove them from the proceedings for lack of probative value.

TRUEPIC alleges that the findings and subsequent expert reports (exhibits 7 and 8 of Keeex and the additional report in exhibit 1 of its response to the OP) lack probative value under French law, arguing that the bailiff merely used deep links or direct URLs to access the Defendant's incriminating software and failed to describe the full access path from a neutral source (homepage or search engine). TRUEPIC concludes that these exhibits should be disregarded and therefore that the accessibility of the sites in France on which the acts of infringement are alleged has not been demonstrated.

However, the reference to the case law of French national law to call into question the probative value of the official report drawn up by a court commissioner is not relevant in that the UPCA is governed by specific rules of evidence: Article 53 of the UPCA and Rules 170 to 189 RoP lay down a system of evidence for the UPCA. Rule 170 in particular lays down the principle of freedom of evidence and does not require any particular formalism to prove infringement. UPC judges assess the probative value of documents produced in support of the parties' allegations on a case-by-case basis.

In the light of the rules of evidence governing proceedings before the UPC, the Court considers that the applicant's allegations concerning the making available via the internet on French territory of the digital tools at issue in the infringement proceedings are sufficiently substantiated by the production in evidence of the report of the online commissioner of justice and the subsequent expert report (exhibits 7 and 8 to the statement of defence), at least at the stage of the discussion of the jurisdiction of the court. There is therefore no reason to simply disregard the documents criticised in the context of the discussion of jurisdiction; their probative value will be assessed in the decision on the merits, but at this stage of the proceedings, these documents are considered sufficient to support the claimant's allegations relating to the existence of acts of infringement on French territory.

Consequently, TRUEPIC's requests to set aside the report and the subsequent expert reports (exhibits 7 and 8 Keeex), the probative value of which is disputed, on the basis of rule 334(g) RoP, will not be granted.

The international jurisdiction of the UPC under article 31 UPCA in the context of an OP (R.19.1 (a) RoP)

The international jurisdiction of the UPC finds its source in the Brussels Regulation 1215/2012 or the Lugano Convention, according to Article 31 of the UPCA.

Under Article 32.1 (a) UPCA, the UPC has jurisdiction to rule on acts of opposition to a European patent.

of a European patent.

OpenAI Irl argues that the principle of jurisdiction is based on the fact that defendants must be sued in the country where they are domiciled, according to Articles 4 and 8(1) of the Brussels Regulation.

However, in this case, the basis of the UPC's jurisdiction is not the domicile of the defendants, since none of the defendants is domiciled in a Contracting Member State of the UPCA. All the defendants in the action are companies incorporated in the United States, with the exception of OpenAI Ireland, which is part of the EU but not yet a member of the UPC. Although Ireland has signed the UPCA, it has not yet ratified it, and the Luxembourg Court of Appeal has already clearly stated that "Only countries that have not only signed but also ratified the UPCA are members of the JUB".

Contracting Member States". (Court of Appeal, 19 August 2024, UPC_CoA_388/2024, Sibio v Abbott, §10: *"Only countries that have not only signed but also ratified the UPCA are Contracting Member States. 'Contracting Member State' is defined in the UPCA as a Member State of the European Union party to the Agreement. Art. 84.2 UPCA provides that the Agreement shall be subject to ratification in accordance with the respective constitutional requirements of the Member States. It follows that a Member State who signed can only be regarded as a Contracting Member State after ratification."*).

On the other hand, the plaintiff relies on the criterion of the place where the harmful event produces its effects. It is therefore the application of Article 7.2 of the Brussels Regulation that is alleged by the claimant in this case to establish the jurisdiction of the UPC.

In order to justify the occurrence of the damage in a UPC Member State, the claimant submits to the proceedings a court commissioner's report noting that on French territory the digital tools alleged to infringe the KEEEX European patent are made available via the internet on sites accessible on French territory, i.e. one of the Contracting Member States of the UPC.

Contrary to what TRUEPIC alleges, according to the established case law of the CJEU cited by the UPC CoA, it is not necessary to show that the said website is specifically dedicated to the French public; the sole criterion of accessibility of the site on French territory for a counterfeit of a digital product or service placed online is sufficient (UPC CoA, order of 3 September 2024, UPC_CoA_188/2024, Aylo/Dish, §13" *Where the damage is allegedly caused via the internet, the likelihood of such damage may arise from the possibility of obtaining products and/or using services from an internet site accessible within the territory of the Contracting Member State where the European patent has effect."*). In the present case, the infringement alleged by KEEEX occurs through the online availability of a digital tool which is alleged to reproduce the claims of the applicant's patent on an internet site accessible in one of the UPCA's contracting member territories.

In addition, the plaintiff, in its statement of claim (in particular pages 15 to 17 and §2.2-11 on pages 135 to 137 of the statement of claim), sufficiently set out the acts of which it accused each of the defendants in order to justify that the defendants may have contributed to the alleged act of infringement, by designing and/or making available online, at least on one of the UPC's national territories, the digital tools at issue, such as the verification solutions "C2PATOOL" or "VERIFY" or "ADOBE FIREFLY". This is sufficient, at this stage of the proceedings, to justify the UPC's jurisdiction over all the defendants involved in the present action. It is only at a second stage, during the proceedings on the merits, that the liability of each of the defendants for the infringement alleged will be examined.

Concerning the national parts of the European patent corresponding to States outside the territory of the UPC (i.e. Switzerland, Spain, the United Kingdom, Ireland, Norway and Poland), it is appropriate to refer expressly to what was said in a recent decision handed down by the Mannheim LD (UPC LD Mannheim, CFI 162/2024, decision of 2 Oct.2025, HUROM v NUC, §40 and following: *"Contrary to Defendant, the ECJ's ruling in re BSH Hausgeräte, which relates to a case in which jurisdiction was established under Art. 4 (1) Brussels Ia Reg., also applies to cases in which jurisdiction follows from Art. 7 (2) Brussels Ia Reg."*) which explained in detail in its grounds that the decision of the CJEU known as

"(BSH v Electrolux, C-339/22) allowing the jurisdiction of a common European Union (EU) court to be extended to third

European Union (EU) to third territories, applies regardless of whether the jurisdiction criterion is established on the basis of Article 4 Reg. Brussels (domicile of one of the defendants) or on the basis of Article 7.2 Reg. Brussels (place of the harmful event), contrary to what is claimed by the defendants.

It should be pointed out that the application of Article 14 of the French Civil Code supported by the claimant is not relevant since the jurisdiction of the UPC in the case in point is based on Article 7.2 of the Brussels Regulation. Similarly, in the context of an OP, the reference to Article 71 ter (3) of the same Regulation is irrelevant, whereas the combined application of Article 7.2 Brussels Reg. Brussels and the case law of the CJEU known as "BSH" make it possible to establish the jurisdiction of the UPC to rule on damage that occurred outside the Member States of the UPC.

Internal jurisdiction of the Paris Local Division under Article 33.1(a) UPCA (R.19.1(b) RoP)

It follows from the foregoing that the territorial jurisdiction of this Division is sufficiently justified by the finding of the facts alleged in the official report drawn up in France by a court commissioner and the subsequent expert report (exhibits 7 and 8 Keeex), on the basis of Article 33.1(a) of the UPCA, i.e. on the basis of the criterion of the place where the infringement occurs or is likely to occur.

Consequently, the preliminary objections are all rejected in their entirety.

The burden and costs of the preliminary objections will be decided in the decision on the merits. the merits.

For these reasons, the Panel :

1)-Dismiss the application based on Rule 334(g) RoP,

- Holds that this part of the operative part is reviewable under the conditions of Rule 333 RoP. 2)-

Dismiss all the preliminary objections raised by the defendant companies,

-Holds that the defendant companies must file their statement of defence before 2 January 2026,

-Defers the burden and cost of the preliminary objections procedure to the decision on the merits.

-Holds that an appeal may be lodged against the rejection of preliminary objections within 15 calendar days of its notification to the unsuccessful party, in accordance with Article 73(2)(a) UPCA and Rule 220.2 RoP.

Delivered in Paris, on 27 November 2025

Camille Lignières, Judge-Rapporteur

Date: 2025.11.27
Camille Lignières 18:07:37 +01'00'

DETAILS OF THE ORDER

UPC nº : UPC_CFI_530/2025

Type of action: Infringement action Type of
claim: Preliminary objection Date of order:
27/11/2025