Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC_CoA_317/2025
APL_16185/2025
(appeal)
UPC_CoA_376/2025
APL_19989/2025
(cross-appeal)

ORDER

of the Court of Appeal of the Unified Patent Court
issued on 28 November 2025
concerning an Application for provisional measures (R. 206 RoP)

HEADNOTES:

1. For reasons of efficiency (see RoP preamble 4) and in view of the urgency of an application for interim measures, R. 19.5 RoP shall apply mutatis mutandis to proceedings for provisional measures. A referral to the competent division is therefore also possible in such proceedings (R. 19.5 RoP).

2. If the division seised considers that a defence raised on the competence of the local division is well-founded and the applicant for provisional measures indicated another division that is competent, it shall refer the Application to that division.

3. Competence of the divisions of the Court of First Instance, regulated in Art. 33 UPCA, is a UPC internal matter. Internal competence is not governed by the Brussels I Recast Regulation.

4. For the purpose of establishing the competence of a local division, there is no hierarchy between competence based on the place where the actual or threatened infringement has occurred or may occur in Art. 33(1)(a) UPCA, and competence based on the residence or principal place of business of the defendant in Art. 33(1)(b) UPCA.

5. There is no need to look for connecting factors in the territory of the local division seised in relation to each defendant to establish competence. To determine competence under Art. 33(1)(a) UPCA, the existence of infringing activities, for example an offer or the possibility to obtain the allegedly infringing devices through a website accessible in the Contracting Member State hosting the local division, needs to be established.

6. The establishment of whether a first instance division is competent should not be based on a comprehensive evaluation of the evidence in relation to disputed facts that are relevant both to the question of competence and to the existence of the claim, since such an assessment would improperly anticipate the outcome. Rather, the Court will take a cursory look at the parties' allegations and evidence as provided, if any.

7. As a rule, potential changes of products on the market do not justify a delay within the meaning of R. 211.4 RoP.

8. An interim award of costs may also be ordered in favour of the defendant in proceedings for provisional measures.

9. In proceedings for provisional measures, there will often be reasons to allow the successful party an interim award of costs. This allows the successful party to recover, on an interim basis, at least part of the costs incurred from the unsuccessful party, pending the subsequent start and final conclusion of separate proceedings for cost decision as set out in R. 150 et seq RoP.

10. An interim award of costs up to the applicable ceiling for cost compensation effectively makes the procedure for cost decision pursuant to R. 150 et seq RoP largely redundant. While the Scale of ceilings for recoverable costs only applies to representation costs (see R. 152.2 RoP and Article 1(2) of the Scale of ceilings), and there can be additional costs in the form of recovery of court fees, costs of witnesses, costs of experts, and other expenses (see R. 151(d) RoP), representation normally forms the bulk of the costs. Even though the Court of First Instance has broad discretion in this matter, the Court of Appeal considers that an interim costs award of up to equal to half of the ceiling is generally more appropriate.

11. A different consideration may apply if parties have submitted and discussed cost specifications during the proceedings or agreed on the costs to be reimbursed.

KEYWORDS:
Application for provisional measures, competence of the local division, urgency, interim award of costs

APPELLANT, RESPONDENT IN THE CROSS-APPEAL (AND APPLICANT IN THE PROCEEDINGS BEFORE THE CFI)

Barco N.V., Kortrijk, Belgium

(hereinafter referred to as Barco)

represented by attorney-at-law Christian Dekoninck, TaylorWessing N.V., Brussels, Belgium, and other representatives from that firm

RESPONDENTS AND CROSS-APPELLANTS (AND DEFENDANTS IN THE PROCEEDINGS BEFORE THE CFI)

1. **Yealink (Xiamen) Network Technology Co. Ltd.**, Xiamen City, Fujian, Peoples Republic of China
2. **Yealink (Europe) Network Technology B.V.**, Amsterdam, The Netherlands

(hereinafter jointly referred to as Yealink)

represented by attorney-at-law Ruud van der Velden, Hogan Lovells International LLP, Amsterdam, The Netherlands, and other representatives from that firm

PATENT AT ISSUE

EP 3 732 827

LANGUAGE OF THE PROCEEDINGS

English

ORAL HEARING

22 September 2025

PANEL AND DECIDING JUDGES

Panel 2

Rian Kalden, presiding judge and legally qualified judge
Ingeborg Simonsson, legally qualified judge and judge-rapporteur
Patricia Rombach, legally qualified judge
Christoph Norrenbrock, technically qualified judge
Andrea Perronace, technically qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Order in the proceedings for provisional measures, UPC_CFI_582/2024, issued by the Brussels Local Division on 21 March 2025.

SUMMARY OF THE DISPUTE

1. Barco is the registered proprietor of the patent at issue, relating to methods and systems for making functional devices available to participants of meetings, as well as software for carrying out such methods. The patent application was filed on 21 December 2018, and the application was published on 4 November 2020. It claims priority from US 201715858668 (29 December 2017). The formal communication by the EPO of its intention to grant a European Patent was on 6 May 2024. The date of publication and mention of the grant of the patent was 12 June 2024. Unitary effect was requested on 2 July 2024 and registered on 23 August 2024 with effect from 12 June 2024.

2. The patent is in force in (inter alia) the territories of the following Contracting Member States (CMSs): Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Portugal, Slovenia, and Sweden (the territories).

3. Barco brought an Application for provisional measures against Yealink before the Court of First Instance, Brussels Local Division. Barco asserted that Yealink infringes claims 1, 12 and 13 of the patent either directly or indirectly in the territories by specific Yealink devices.

4. The alleged infringement relates to the following devices:
    - The Yealink MeetingBar Product, an all-in-one video bar. Currently there are different variations of this video bar within Yealinks' product range, e.g. Yealink MeetingBar A10, Yealink MeetingBar A20,

Yealink MeetingBar A30, Yealink MeetingBar A40, etc. ("Yealink MeetingBar Products").

- The Yealink WPP30, which allegedly allows for a wireless connection between the meeting participant's device and the video bar.
- The Yealink RoomCast, which allows the use of other meeting room devices (video- and audio devices other than the Yealink MeetingBar Products, and thus even devices from third parties, e.g. Logitech, Poly, Jabra, etc.).

These are allegedly infringing in two different setups. The first setup comprises the Yealink WPP30 and a MeetingBar Product in which the MeetingBar Product is an all-encompassing video bar, while the second setup comprises the Yealink WPP30, the Yealink RoomCast and a stand-alone video/audio device.

5. Yealink objected to the Application and presented the following lines of defence:
   - The Brussels Local Division is not the competent division (R. 19.1(b) RoP, Art. 33(1) UPCA).
   - The Yealink devices do not infringe the patent; the patent claims invoked are invalid for lack of novelty and inventive step, added matter and insufficiency of disclosure;
   - Lack of factual and temporal necessity (urgency),
   - A weighing of interests should lead to the conclusion that Barco's request for provisional measures should be rejected.

6. In reply, Barco advanced that the Preliminary objection is inadmissible and, in any event, unfounded, and that the patent is valid. Barco further developed its view on the necessity of the requested measures and weighing of interests.

7. In the impugned order, the Brussels Local Division held that it is competent to hear Barco's Application for provisional measures but dismissed the Application for lack of urgency and ordered Barco to bear reasonable and proportionate legal costs and other expenses incurred by Yealink, up to the applicable ceiling of € 112.000.

8. On competence, the Local Division held that territorial competence of a division of the UPC is a matter of the internal organisation of the UPC and that Art. 33(1)(a) UPCA is not a provision which is structured as a derogation from a general rule which points out the courts of the defendant's domicile, and therefore to be interpreted restrictively. In this respect, Art. 33(1)(a) UPCA differs from Art. 7(2) Brussels I Recast Regulation (Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matter). Art. 33(1) UPCA allows a claimant, to a certain extent, to bring an action before a local division where the defendant is located or where the threatened infringement occurs or may occur. Any connecting factor in application of Art. 33(1)(a) UPCA or Art. 33(1)(b) UPCA justifies the (territorial) competence of a local division. The established case law of the CJEU is based on national rights (be it copyrights or national trademarks), which are clearly of a different nature to European patents with unitary effect. Barco had alleged and sufficiently proved that Yealink devices on which it bases its infringement allegations were ordered from and delivered to Belgium. Further, Barco had alleged and sufficiently proved that Yealink is actively promoting and offering the Yealink devices to end-customers in Belgium via their website and their Benelux Account Manager. As such, the Local Division Brussels as the local division in a "Contracting Member State where the actual or threatened infringement had occurred or may occur" should be considered (territorially) competent in application of Art. 33(1)(a) UPCA. Whether Yealink China and/or Yealink Europe committed the infringement

falls within the scope of the examination of the substance of the action.

9. On urgency, the Local Division considered that since the UPC has substantive jurisdiction to hear infringement actions or provisional measures for European patents, and Barco was granted a European patent on 12 June 2024, it is not 23 August 2024 (date of the registration of the unitary effect) that should be considered as the objective earliest date for Barco to file an action with the UPC. With knowledge of the allegedly infringing Yealink devices on or before 12 June 2024, Barco could have purchased the Yealink devices in Belgium on that date and subsequently conducted an infringement analysis and initiated proceedings on 15 July 2024, rather than on 2 October 2024 as was the case. Additional circumstances led the Local Division to find that Barco could already have taken the necessary preparatory steps even earlier than on 12 June 2024 and this would have accelerated the introduction of the procedure for requesting provisional measures.

10. Barco appealed. Yealink cross-appealed.

INDICATION OF THE PARTIES' REQUESTS

Barco's appeal

11. With the appeal, Barco is requesting the Court of Appeal to confirm the impugned order insofar as the Brussels Local Division ruled it had territorial competence to hear the case, but to set it aside in all other aspects and grant the provisional measures as requested by Barco in its Application for provisional measures (see paras 27-28 of the impugned order). This includes a request that the Court of Appeal orders Yealink to jointly and severally bear reasonable and proportionate legal costs and other expenses incurred by Barco in these proceedings and orders, that such costs are to be determined in separate proceedings, and that Yealink pay to Barco by means of an interim award of costs the sum of € 11.000 or another amount as the Court may order.

12. Yealink has requested that the appeal be rejected and that Barco, by immediately enforceable order, be ordered to pay to Yealink all reasonable and proportionate legal costs and other expenses incurred by Yealink in these appeal and cross-appeal proceedings, in an amount of € 112.000 or another amount specified by the Court of Appeal as interim costs.

Yealink's cross-appeal

13. With its cross-appeal, Yealink is requesting

I. that the impugned order be set aside insofar as the Local Division Brussels has held itself territorially competent to hear Barco's application for provisional measures, and that Barco's application for provisional measures be dismissed for lack of territorial competence.

II. in the event that the Local Division determines that it did not already grant an immediately enforceable interim costs award of € 112.000 to Yealink, or in the event the Court of Appeal would interpret the impugned order in this manner, that the impugned order be set aside insofar as it fails to order such immediately enforceable interim costs award, and to order Barco, by immediately enforceable order, to pay to Yealink all reasonable and proportionate legal costs and other expenses incurred by Yealink in first instance, in an amount of € 112.000 or another amount specified by the Court of Appeal as interim costs.

III. to order the reimbursement to Yealink of the full court fees of € 11.000 paid in connection with the

cross-appeal, or, in the alternative, order the partial reimbursement of € 9.500 to Yealink.

14. Barco is requesting that the cross-appeal be dismissed and that Yealink be ordered to bear the costs relating to the cross-appeal and preliminary objection in first instance.

SUBMISSIONS OF THE PARTIES

Barco; appeal

15. With regard to the specific arguments on infringement and validity, Barco refers to its submissions and evidence as relied upon in first instance, as the Local Division has not decided on them.

16. The Local Division wrongfully dismissed the application due to a lack of urgency. Here, Barco reiterates and expands on its first-instance submissions.

17. The Local Division wrongfully ordered only Barco to bear the legal costs although Yealink was partially unsuccessful itself as a result of the outcome of the Preliminary objection (competence of the Local Division).

18. Finally, in an order on provisional measures, the court can only decide on an interim award of costs. By simply allocating the full amount of € 112.000 without any further clarification the Local Division did not take into account the different factors determining the amount of the recoverable legal costs, let alone consider the interim nature of its decision.

Yealink; response to the appeal

19. Yealink agrees with the reasoning and conclusion of the Local Division on lack of urgency and reiterates and expands on the arguments put forward at first instance.

20. Barco is the fully unsuccessful party in these proceedings while Yealink is fully successful. The outcome of individual objections is not relevant within the context of Art. 69(2) UPCA. If not, Barco is still required to bear all costs given the small extent of unsuccess of Yealink, and the decision to apportion costs equitably remained within the Local Division's discretion.

21. The Local Division ordered Barco to pay an amount of € 112.000 to Yealink by interim award (R. 211(1)(d) RoP) and this order is "directly enforceable from [its] date of service" (R. 354(1) RoP). Yealink requested an interim award of costs before the Local Division and indicated and showed that the legal expenses exceeded the ceiling. This matter was addressed at the oral hearing. It was correct that the full amount of the ceiling was awarded.

Yealink; cross-appeal

22. The Local Division wrongly accepted territorial competence under Art. 33(1)(a) UPCA. Under consistent CJEU case-law, the special rule regarding competence based on the place of infringement constitutes a derogation from the general rule of competence at the defendant's domicile and must therefore be interpreted restrictively. This leads to the following conclusions:
    - The Local Division wrongly considered third-party acts within the context of establishing competence. Territorial competence must be based solely on acts of the defendants themselves, not on acts of (unrelated) third parties.

- The Local Division failed to distinguish between the actions of Yealink China and Yealink Europe. It must be alleged and sufficiently proven that an actual or threatened infringement has occurred (or may occur) with respect to each defendant individually. This is also in direct conflict with R. 303(1) RoP.
- The Local Division failed to critically assess Barco's infringement allegations within the context of establishing competence, effectively enabling "competence manipulation" through incorrect, irrelevant and otherwise unsupported infringement allegations which goes against the restrictive nature of Art. 33(1)(a) UPCA.

23. On the conditional cross-appeal: If the Local Division determines that it did not already grant an enforceable interim cost award of € 112.000 to Yealink or if the Court of Appeal would interpret the impugned order in this manner, Yealink requests that the Court of Appeal rectify this by ordering Barco to pay the full ceiling amount for the first instance proceedings as an interim award of costs without further delay.

Barco; response to the cross-appeal

24. The Local Division was right to decide it had territorial competence to hear the case based on Art. 33(1)(a) UPCA. An actual infringement has occurred in Belgium, where infringing products and devices have been offered for sale and supplied to end-customers. As Barco is based in Belgium, this is also a place where damage is suffered. Furthermore, both Yealink companies are involved in infringing activities in Belgium. Both are explicitly mentioned on the products sold in Belgium and Yealink China is actively promoting the relevant products in Belgium via its website and through its Benelux Account Manager.

25. Should the preliminary objection be successful, the Court of Appeal should refer the case to the competent division.

26. On the conditional cross-appeal: On 8 May 2025 the Local Division ruled that the rectification was not deemed necessary as in its reasoning the Local Division held that the legal costs are to be awarded for the ceiling of € 112.000, based on the fact that both parties held that the legal expenses exceed the applicable ceiling. As a consequence, the conditional cross-appeal of Yealink is without object.

GROUNDS FOR THE ORDER

The Preliminary objection; competence of the Local Division

27. The Local Division Brussels was right to find that it was competent pursuant to Art. 33(1)(a) UPCA. While taking as a starting point that R. 19(1)(b) RoP, which sets out that the defendant may lodge a Preliminary objection within one month of service of the Statement of claim concerning the competence of the division indicated by the claimant, as such is not applicable to applications for provisional measures, the Local Division nevertheless tried whether it had competence pursuant to Art. 33(1)(a) UPCA.

28. In doing so, the Local Division rightly treated the objection as a defence brought by Yealink. R. 19 - 21 RoP (Procedure when the defendant raises a preliminary objection) apply to infringement proceedings on the merits. They do not apply to provisional measures proceedings as meant in Art. 62 UPCA and R. 205 et seq. RoP. For this type of proceedings, a specific provision – R. 209 RoP – deals with the possibility to raise objections to an Application for provisional measures. These may include similar objections as those mentioned in R. 19 RoP, but an interim ruling on such objections is not foreseen (UPC_CoA_500/2023,

order of 26 April 2024, AIM Sport Development vs Supponor, para 12).

29. This raises the question of the applicable legal remedy if there is a well-founded objection against the first instance division's competence, brought as a defence pursuant to R. 209.1 (a) RoP.

30. R. 19.5 RoP provides, when a Preliminary objection is lodged in a case on the merits, that the Registry as soon as practicable shall invite the claimant to comment on the Preliminary objection. Where applicable, the claimant may of his own motion correct any deficiency [paragraph 1(b) or (c)], within 14 days of service of notification of the Preliminary objection. Alternatively, the claimant may submit written comments within the same period. The judge-rapporteur shall be informed of any correction made or written comments submitted by the claimant. If the deficiency referred to in paragraph 1(b) is corrected and the claimant has indicated another division, which is competent, the judge-rapporteur shall *refer the action to the division indicated by the claimant*.

31. For reasons of efficiency (see RoP preamble 4) and in view of the urgency of an application for interim measures, R. 19.5 RoP shall apply mutatis mutandis with regard to the possibility of referral. A referral to the competent division is therefore also possible in proceedings concerning an Application for provisional measures. If the division seised considers that a defence raised on the competence of the local division is well-founded and the applicant for provisional measures indicated another division that is competent, it shall refer the application to that division.

32. Absent a request to refer the application for provisional measures to a competent division, the division seised must dismiss the application and order the applicant to pay the costs.

33. Barco did not indicate that another division may be competent. Instead it replied that the Brussels Local Division was competent.

34. Against this background, if the Local Division had found that it did not have competence under Art. 33(1)(a) UPCA, it would have had to dismiss the Application without trying it in substance. Similarly, and given that Yealink has lodged a cross-appeal, the Court of Appeal should be able to dismiss the Application without trying it in substance *if* the defence raised in relation to the Local Division's internal competence is well-founded. This demonstrates that the defence related to the Local Division's competence must be tried in substance.

- The relation between jurisdiction and competence

35. Pursuant to Art. 31 UPCA, the international jurisdiction of the Unified Patent Court shall be established in accordance with the Brussels I Recast Regulation, or, where applicable, on the basis of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano Convention).

36. Prior to the "patent package" which led to the establishment of the UPC and the creation of unitary patent protection, there were other international agreements concluded by Member States. The relation between the Brussels I Recast Regulation and those agreements are governed by Art. 71 of the Regulation. The first paragraph of this provision reads "This Regulation shall not affect any conventions to which the Member

States are parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments."

37. According to a long line of case law, a convention on a particular matter takes precedence over the Brussels I Recast Regulation (and its predecessors). In the event of parallel rules, the conventions apply (see for example judgment of 6 December 1994, C-406/92, EU:C:1994:400, Tatry v Maciej Rataj, para 25, and judgment of 21 March 2024, C-90/22, Gjensidige, EU:C:2024:252, para 41).

38. When the provision in Regulation 44/2001 corresponding to Art. 71 of the Brussels I Recast Regulation was interpreted by the CJEU, it was considered clear that the conventions referred to included those which had been concluded only by some Member States. It was not a condition that one or more third countries were also parties to the convention (judgment of 14 July 2016, C-230/15, EU:C:2016:560, Brite Strike Technologies, paras 49-50).

39. However, that provision did not enable the Member States, by concluding new specialised conventions or amending conventions already in force, to introduce rules which would prevail over those of that regulation (Brite Strike Technologies, para 51).

40. It was against this background that Arts. 71a – d of the Brussels I Recast Regulation were enacted as part of the patent package (see Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM/2013/0554 final). The amendments had twofold objectives. First, to ensure compliance between the UPCA and the Brussels I Recast Regulation, and second, to address the particular issue of jurisdiction rules vis-à-vis defendants in non-EU States.

41. The UPC is a court common to the Contracting Member States and subject to the same obligations under Union law as any national court. It has exclusive competence, thus *replacing* national courts, for the matters governed by the UPCA. The UPCA regulates the internal distribution of competences between the different divisions of the UPC and the enforcement of the decisions of the UPC in the Contracting Member States (see COM/2013/0554 final at 1.2).

42. The preparatory works made a distinction between on the one hand the *clarification* of the operation of the rules on jurisdiction with respect to the UPC insofar as defendants domiciled in Member States are concerned, and on the other hand the *creation* of uniform rules for the international jurisdiction vis-à-vis third State defendants in situations where the Brussels I Regulation did not itself provide for such rules but referred to national law (COM/2013/0554 final at 1.2).

43. The first aim was achieved by the explicit inclusion of the UPC as a 'court' within the meaning of the Brussels I Recast Regulation in Art. 71a of the Regulation and was motivated as follows (ibid at 3.1):

> As a result of the internal division of competences within the Unified Patent Court a defendant could find him/herself before a division which would not be situated in the Member State of the court designated by the rules of the Brussels I Regulation. For instance, a Dutch defendant expecting to be sued at its domicile on the basis of Art. 4(1) of the Brussels I Regulation (recast) may be brought before the competent central, regional or local division which may be situated in France, Germany or the United Kingdom (or any other Member State, depending on where regional or local divisions will be set up). This is also relevant when the defendant is

domiciled or habitually resident in a Member State which is not a Contracting Party to the UPC Agreement (e.g. a licensee domiciled in Spain had to perform an obligation under the license agreement in the Netherlands; proceedings are brought before the German central division instead of the Netherlands as place of performance of the obligation). [….] While Article 71 of the Brussels I Regulation allows conventions on particular matters which already exist, it does not allow any such new conventions. As a result, it is necessary to clarify that […] the Unified Patent Court and the Benelux Court of Justice are to be considered as courts of a Member State in the sense of the Brussels I Regulation, thus ensuring that the Regulation applies fully to the these courts. […] … in particular it will be ensured that defendants which would expect to be sued in a specific Member State on the basis of the rules of the Brussels I Regulation may be sued before either a division of the Unified Patent Court or before the Benelux Court of Justice which is located in another Member State than the national courts designated on the basis of the Brussels I Regulation.

44. The second aim was achieved by Art. 71b Brussels I Recast Regulation, paragraph 2 first sentence, which reads: “where the defendant is not domiciled in a Member State, and this Regulation does not otherwise confer jurisdiction over him, Chapter II shall apply as appropriate regardless of the defendant’s domicile”. It was explained in the preparatory works how it: “extends the Regulation's jurisdiction rules to disputes involving third State defendants domiciled in third States.[…] As a result of this extension, access to the Unified Patent Court [….] will be ensured in situations where the defendant is not domiciled in an EU Member State as access is ensured in situations where the defendant is domiciled in an EU Member State. In addition, such access is ensured independently of which instance or division within the Unified Patent Court is seized of a claim.”(COM/2013/0554 final at 3.3).

45. The fact that a defendant could face action brought against it before the UPC at a location situated in a Member State other than the one designated by the rules of the Brussels I Recast Regulation is repeated in para. 4 of the preamble of Regulation (EU) no 542/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice.

46. Similarly, it is repeated in the preamble at para 5 that the amendments are intended to establish the international jurisdiction of the UPC and do not affect the internal allocation of proceedings among the divisions of that Court nor the arrangements laid down in the UPCA concerning the exercise of jurisdiction, including exclusive jurisdiction, during the transitional period provided for in that Agreement.

47. Competence of the divisions of the Court of First Instance, regulated in Art. 33 UPCA, is a UPC internal matter.

48. The case law on Art. 71 of the Brussels I Recast Regulation (and its predecessors) make clear that application of conventions referred to in Art. 71 cannot compromise the principles which underlie judicial cooperation in civil and commercial matters in the EU, such as the principles of free movement of judgments in civil and commercial matters, predictability as to the courts having jurisdiction and therefore legal certainty for litigants, sound administration of justice, minimisation of the risk of concurrent proceedings, and mutual trust in the administration of justice in the EU (see for example judgment of 4 May 2010, C-533/08, EU:C:2010:243, TNT Express Nederland, at para 49).

49. The UPCA was already signed when the amendments to the Brussels Regulation were enacted (see Regulation 542/2014, preamble at para 1, see also COM/2013/0554 final). The content of the UPCA was

well-known to the legislator, as were of course the principles established in case law referred to in the previous paragraph. Against this background the UPC competence rules must have been considered to comply with the said principles.

50. According to Art. 33(1)(a) UPCA, actions referred to in Article 32(1)(a), (c), (f) and (g) UPCA shall be brought before the local division hosted by the CMS where the actual or threatened infringement has occurred or may occur, or the regional division in which that CMS participates.

51. The Court of Appeal has decided that the place "where the actual or threatened infringement has occurred or may occur" as referred to in Art. 33(1)(a) UPCA must be interpreted in the same way as the place "where the harmful event occurred or may occur" of Art. 7(2) of the Brussels I Recast Regulation is interpreted in relation to alleged patent infringements, because the provisions have a similar purpose, namely to define a ground of jurisdiction or competence on the basis of the connection between the subject-matter of the dispute and the court or division respectively (*Aylo vs Dish et al*, para 26). Here, the Court used CJEU case law as a source of inspiration to set out the principles for Art. 33(1)(a) UPCA autonomously in relation to alleged patent infringements.

52. This does not mean that the UPC has incorporated the substance of Art. 7(2) Brussels I Recast Regulation and its body of case law into Art. 33(1)(a) UPCA. Neither does it mean that competence of the divisions of the Court of First Instance is governed by EU law pertaining to the Brussels I Recast Regulation, as Yealink seems to suggest when stating that case-law interpreting Art. 7(2) of the Brussels I Recast Regulation (and its predecessor, Article 5(3) of the Brussels Regulation) is directly applicable to the interpretation of Art. 33(1) UPCA.

- Whether Art. 33(1)(a) UPCA should be interpreted restrictively

53. Yealink advances that Art. 33(1)(a) UPCA is a special rule in relation to what Yealink asserts as a general rule in Art. 33(1)(b) UPCA, a provision which points out as competent the local division hosted by a CMS where at least one defendant has its residence, or principal place of business. Yealink considers that Art. 33(1)(a) UPCA must be read restrictively, relying on case law where the CJEU established that Art. 7(2) of the Brussels I Recast Regulation shall be interpreted restrictively, because it is a rule of special jurisdiction (judgment of 16 May 2013, C-228/11, EU:C:2013:305, *Melzer*, para 24). Yealink's view is however based on an incorrect understanding.

54. In *Aylo vs Dish et al* the Court of Appeal observed in relation to jurisdiction, and subsequently competence, how the place where the harmful event occurred or may occur is intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (para 12 ii). With respect to allegations of infringements committed via the internet the place where the alleged damage occurred may vary according to the nature of the right allegedly infringed (para 12 iii). At the stage of examining the competence of a division, the identification of the place where the harmful event giving rise to that damage occurred cannot depend on criteria which are specific to the examination of the substance (para 12 vii). It does not require, in particular, the activity concerned to be 'directed to' the Member State in which the court seised is situated (para 12 viii).

55. In doing so, the Court of Appeal did not interpret Art. 33(1)(a) UPCA in a restrictive manner.

- Whether Art. 33(1)(b) UPCA has a preference over Art. 33(1)(a) UPCA

56. Going back to the Agreement, the linguistics of Art. 33(1) UPCA speak against an interpretation where preference is generally given to the local division of a CMS where the defendant has its residence, or principal place of business. Not only is the competence of the local division hosted by the CMS where the actual or threatened infringement has occurred or may occur mentioned first in Art. 33(1)(a) UPCA, prior to Art. 33(1)(b) UPCA. But importantly, there is an "or" between these options, making them alternatives.

57. During the oral hearing before the Court of Appeal, Yealink has advanced that if the alleged infringer is domiciled outside the UPC Contracting Member States, the applicant for provisional measures should seek information about who the distributor is and direct the application accordingly. Barco has argued that if Yealink's line of defence is followed, a patent proprietor must act against the distributors rather than try to stop the infringement at the source.

58. The view that Art. 33(1)(b) UPCA has a preference over Art. 33(1)(a) UPCA cannot be accepted. For the purpose of establishing the competence of a local division, there is no hierarchy between competence based on the place where the actual or threatened infringement has occurred or may occur in Art. 33(1)(a) UPCA, and competence based on the residence or principal place of business of the defendant in Art. 33(1)(b) UPCA. It follows that it is for the applicant to decide on whom to bring proceedings against.

- Whether competence under Art. 33(1)(a) UPCA must be established separately for each defendant, based on their own alleged acts of infringement in the territory of the local division

59. The next question is if, as brought forward by Yealink, competence under Art. 33(1)(a) UPCA must be established separately for each defendant, based on their own alleged acts of infringement in the territory of the local division.

60. Yealink's view is based on an incorrect understanding of *Aylo vs Dish et al*. The relevant question is not whether the alleged infringement may be attributed to the defendant, because this will be addressed when the Court adjudicates in substance (*Aylo vs Dish et al* at para 12(vii)).

61. There is no need to look for connecting factors in the territory of the local division seised in relation to each defendant to establish competence. To determine competence under Art. 33(1)(a) UPCA, the existence of infringing activities, for example an offer or the possibility to obtain the allegedly infringing devices through a website accessible in the Contracting Member State hosting the local division, needs to be established.

- The extent of the Court's verification of the competence

62. Before proceeding with an evaluation of the evidence, the Court of Appeal will address what Yealink is asserting about shortcomings in the Local Division's assessments of Barco's infringement allegations, or at least the plausibility thereof, at the phase of establishing competence.

63. When an infringement action or an application for provisional measures is lodged, it shall include an indication of the division which shall hear the action (Art. 33(1) to (6) UPCA) with an explanation of why that division has competence (R. 13.1(i) RoP, R. 206.2(a) RoP). The first instance division will examine on its own

motion whether it is competent, which can be done without formalities. The assessment at that stage shall be made on the hypothetical assumption that the facts brought forward by the claimant or applicant are correct.

64. If the defendant does not lodge a Preliminary objection or raises a defence based on R. 209 RoP as regards the competence of the division, the facts relied on by the claimant or applicant will normally not be revisited in relation to competence. However, in case of such an objection or defence, the Court will look at the written evidence presented by the parties, for the purpose of establishing competence. Here, the Court must examine competence in the light of all of the information available to it, including, where appropriate, that provided by the defendant to rebut allegations made by the claimant or applicant.

65. The establishment of whether a first instance division is competent should not be based on a comprehensive evaluation of the evidence in relation to disputed facts that are relevant both to the question of competence and to the existence of the claim, since such an assessment would improperly anticipate the outcome. Rather, the Court will take a cursory look at the parties' allegations and evidence as provided, if any.

- Application of these principles to the facts

66. Barco asserts that by offering and / or placing on the market and / or importing and / or storing the Yealink Set Ups in the territories, Yealink infringes claims 1, 12 and 13 of the patent either directly or indirectly. Barco alleges that the Yealink companies are involved in the commercialization of the infringing products and devices in Belgium, and that Yealink China is actively promoting the relevant products via its website and through its Benelux Account Manager. According to Barco, Yealink China is responsible for the manufacturing and actively promoting the infringing products, and Yealink Europe is actively involved in the commercialization of the infringing products.

67. Apart from these general assertions, there is no specific detailed allegation that any of the Yealink companies are actually making, offering, placing on the market or using a product which is the subject-matter of the patent, or importing or storing the product for those purposes, in Belgium.

68. Barco's test purchases were however carried out in Belgium, and there is evidence adduced to support this. In exhibit C3, a bailiff in Belgium is documenting the purchasing activities of a private detective employed by Barco. Yealink products are ordered from bechtle.com and delivered and received in Belgium. There is a Dutch language option. Furthermore, in exhibit C11, an online customer is expressing interest in buying conference room solutions in Belgium, and is then contacted by the Yealink Benelux account manager.

69. Even in the absence of any specific allegation about a connection (contractual or company structural) between the actor that supplied the test product in Belgium and the Yealink companies, what Barco has presented is sufficient to establish competence for the Brussels Local Division. In addition, while Yealink is correct in pointing out that the test purchases were delivered from another actor, the Court of Appeal makes the observation that in C2 the company names and addresses of the two Yealink companies can be seen at a product label on the test purchases. The manuals for the test purchases list the two Yealink companies under "Contact information".

70. The fact that Barco carried out the test purchases in Belgium, a CMS where the patent is protected, does

not amount to “competence manipulation” as asserted by Yealink.

71. To conclude, the defence based on lack of competence (Art. 33(1)(a) UPCA) is unsuccessful. Therefore, there is no reason to consider whether Barco has been late with asking that the Court of Appeal should refer the case to the competent division, should the preliminary objection be successful.

- R. 303.1 RoP

72. Yealink argues that the Local Division erred in failing to distinguish between the actions of Yealink China and those of Yealink Europe, in contravention of R. 303.1 RoP.

73. This argument is unsuccessful. R. 303 RoP does not address competence but regulates plurality of defendants once competence in respect of all of them is established. The Court has established competence in respect of both Yealink companies as has been explained.

Urgency

74. When weighing the interests, the Court shall have regard to any unreasonable delay in seeking provisional measures in accordance with R. 211.4 RoP. If the patent proprietor´s behavior shows that the enforcement of his rights is not urgent, provisional legal protection is not required.

75. The Local Division correctly considered that Barco waited unreasonably long with the application for provisional measures.

76. Delay within the meaning of R. 211.4 RoP shall be calculated from the day on which the applicant became aware, or should have become aware, of the infringement that would enable him, in accordance with R. 206.2 RoP, to file an application for provisional measures with a reasonable prospect of success. Thus, the decisive point in time is when the applicant has, or should have had, after exercising due diligence, the necessary facts and evidence within the meaning of R. 206.2(d) RoP. Whether there has been an unreasonable delay within the meaning of R. 211.4 RoP depends on the circumstances of the individual case (order of 25 September 2024, UPC_CoA_182/2024, *Mammut vs Ortovox*).

77. The timeline in this case is as follows. The EPO announced its intention to grant the patent on 6 May 2024. The mention of the patent grant was published on 12 June 2024, the day from which on all rights were conferred on its proprietor, Art. 64(1) EPC. Barco filed the request for unitary effect on 2 July 2024. Unitary effect was registered on 23 August 2024. Barco made its test purchase on 29 August 2024 and obtained the test product on 4 September 2024. Following technical analysis of the test product, Barco lodged the Application for provisional measures on 2 October 2024.

78. Barco criticizes the Local Division’s reasoning that Barco could have filed an action when the European patent was granted on 12 June 2024, after which it could have amended its procedural claim pursuant to R. 263 RoP when the unitary patent was registered. Barco refers to the need to validate the national parts of this European bundle of patents and that the fastest and most effective way for Barco to acquire substantive patent protection was by requesting unitary protection. However, Barco is misreading the reasons stated by the Local Division. The Local Division did not suggest that Barco should have validated the patent as a bundle patent, but reasoned in relation to Barco’s options between 12 June 2024 (date of grant

of the patent) and 23 August 2024 (date of the registration of the unitary effect) (see para 57 of the impugned order).

79. The Court of Appeal does not accept what Barco has advanced about a series of unfortunate circumstances outside of Barco's control which resulted in it taking far longer than usual between the request for unitary effect and its registration on 23 August 2024. The Court considers that Barco is responsible for the performance of its representatives when applying for unitary protection.

80. Barco also had the means to verify that the application had been made by its representative Questel, but apparently did not do so, or at least not with the necessary urgency. From Barco's own submissions it is clear that there was a gap of over two weeks between 17 June 2024 when Barco's representative Questel confirmed that it would proceed with the application for unitary protection, and 4 July 2024, when Barco followed up and requested a status.

81. As regards Barco's argument that between the moment Barco requested for unitary effect and the actual registration of the unitary effect, Barco could genuinely believe that there were potential issues with its request, the Court of Appeal reminds that the requirements for obtaining unitary effect are of formal nature only. Provided that the European patent has been granted with the same set of claims in respect of all the participating Member States, a request for unitary effect must be submitted in the language of the proceedings no later than one month after the mention of the grant is published in the European Patent Bulletin, together with a translation to one language (only the description needs to be additionally translated when filing the request for unitary effect; the translation of the claims can be reused). If these requirements are met, unitary effect will readily be registered quickly, as is also apparent for the patent at issue.

82. Barco referred to there being third party observations but failed to explain the content or why those observations would have delayed the registration of unitary effect. The Court of Appeal fails to see why this could be a reason. The European patent was granted, and any third party observations filed thereafter would not affect the grant, particularly not change the wording of the claims or other prerequisites for obtaining unitary effect.

83. Furthermore, it is true that the EPO allowed the possibility of requesting a delay in the registration of unitary effect in relation to Romania's ratification of the UPCA (OJ EPO 2024, A61, published online 28 June 2024). Although this possibility existed, it does not explain why Barco did not submit a request for unitary effect before 2 July 2024, nor why Barco effectively allowed a delay in relation to Romania's ratification to become a priority over obtaining unitary protection, in the face of the alleged ongoing infringement.

84. As regards the delay in relation to Romania's ratification, Barco apparently requested such a delay through its representative, only to withdraw it on 22 August 2024. Barco states that it did not instruct Questel to await the grant of unitary effect upon the joining of Romania to the UPC, and only learned on 20 August 2024 about this request. However, such a shortcoming is a matter between Barco and its authorized representative and does not extend the time within which Barco should have acted either directly or by its representative. Furthermore, Yealink has advanced that Barco was provided with a link to the request for unitary effect on 10 July 2024, and could have reviewed it. This is supported by Barco's own written evidence.

85. In summary, the Court of Appeal considers that Barco could have acquired unitary protection at least within a few weeks after the grant of the patent, had it acted diligently.

86. The Local Division was sufficiently convinced, based on the factual circumstances in the US proceedings, that Barco was aware of the allegedly infringing Yealink devices on 12 June 2024 (see para 57). Barco has not denied this in its appeal. Barco has tried to play down the relevance of this important matter by asserting that the Local Division did not take into account the specific circumstances of the case, and that the existence of pending proceedings in the US in relation to similar products cannot be used as an argument against Barco. In Barco's view, it was unclear what Yealink's position was regarding infringement in Europe and Yealink could easily have implemented an update in its products taking away the infringing functionality.

87. The Court of Appeal cannot see how these arguments detract from the finding that Barco knew about Yealink's allegedly infringing devices on 12 June 2024, as found by the Local Division.

88. Barco advances that before 12 June 2024, it could not have acquired the necessary evidence allowing it to initiate proceedings for provisional measures. The products are regularly updated and it could not have conducted an examination at an earlier stage, since otherwise the gathered evidence would have been disregarded as no longer relevant during the front-loaded proceedings before the UPC.

89. It is not clear what Barco would itself consider a relevant date for making the test purchases, if the actual date of 29 August 2024 is not accepted. The Court of Appeal considers that Barco could have made its test purchase on 12 June 2024, or very shortly thereafter. On 12 June 2024, Barco knew that it had a granted European patent, knew the content of the patent claims, and knew about Yealink's allegedly infringing devices. Following the arrival of the test products and the technical analysis (with the same time span as in the actual sequence of events), the Application for provisional measures could have been lodged on 15 July 2024, as rightly observed by the Local Division, or a few days later.

90. Barco is trying to make the point that products that are put on a market can be altered at short notice by Yealink, to avoid patent infringement, and that the risk of such alterations would frustrate Barco's ability to make test purchases and carry out analysis at an earlier point in time. Barco's submissions in this part are basically blank statements and cannot be accepted. Moreover, as a rule potential changes of products on the market do not justify a delay within the meaning of R. 211.4 RoP.

91. The Court of Appeal concludes that Barco did not act with the necessary urgency. The appeal must be rejected. There is no need to adjudicate on infringement and validity.

Barco's appeal against the cost order

92. The Court of First Instance made an interim order for costs and ordered Barco to bear those costs, up to the applicable ceiling of € 112.000. The operative part of the impugned order reads as follows insofar as relevant:

> "Orders NV BARCO to bear reasonable and proportionate legal costs and other expenses incurred by YEALINK (XIAMEN) NETWORK TECHNOLOGY CO. Ltd. and YEALINK (EUROPE) NETWORK TECHNOLOGY BV in these proceedings, up to the applicable ceiling of € 112.000 (Art. 69(1) UPCA; R. 118(5) and R. 150(2) RoP)."

93. Yealink applied on 18 April 2025 to the Local Division for rectification of paragraphs 60-62 of the grounds and

points 3-4 of the operative part of the impugned order. Yealink requested the Local Division to clarify that the order for Barco to bear reasonable and proportionate legal costs and other expenses incurred by Yealink, up to the applicable ceiling of € 112.000 is an interim award of costs. Barco objected to the application. The Local Division dismissed the application for rectification on 8 May 2025, writing:

> "Rectification regarding the awarded amount is not deemed necessary in application of R. 353 RoP as in its reasoning the Court held that the legal costs are to be awarded for the ceiling (€ 112.000) and this based on the fact that both parties held that the legal expenses exceed the applicable ceiling. Where the substantive part of the Final Order held that BARCO should bear the legal costs and other expenses up the applicable ceiling, this should be read together with the motivational part wherein it is clear that BARCO, as its application was dismissed and therefore is to be considered the "unsuccessful party", should bear these costs.
>
> Further, based on its reference to R. 150 (2) RoP (relating to an "interim award" of costs), the Court finds that its Final Order does not contain any "clerical errors", "miscalculations" and/or "obvious slips" and as such does not require rectification and, therefore, dismisses the application based on R. 353 RoP also for this reason.
>
> Additionally, and regarding the notion "interim award" itself, the Court notes that this notion does not require that another award should follow such "interim award" to be executable."

94. None of the parties appealed the first instance order of 8 May 2025. If there was any doubt about the characterization of the cost order, it was in any case made clear by the order of 8 May 2025 that it was an interim award.

95. Only the final outcome of the application for provisional measures is decisive for whom has to bear the costs at first instance. That applies, even though the outcome of the defence related to the Local Division's competence went against Yealink.

96. An interim award of costs may also be ordered in favour of the defendant in proceedings for provisional measures. The fact that R. 211.1(d) RoP, unlike R. 150.2 RoP, does not expressly provide for interim award of costs to the successful party does not preclude this. For reasons of equality of arms alone, the same rules apply in proceedings for interim measures as in the main proceedings.

97. In proceedings for provisional measures, there will often be reasons to allow the successful party an interim award of costs. This allows the successful party to recover, on an interim basis, at least part of the costs incurred from the unsuccessful party, pending the subsequent start and final conclusion of separate proceedings for cost decision as set out in R. 150 *et seq* RoP.

98. Barco is however correct in pointing out that an interim award of costs up to the applicable ceiling for cost compensation effectively makes the procedure for cost decision pursuant to R. 150 *et seq* RoP largely redundant. While the Scale of ceilings for recoverable costs only applies to representation costs (see R. 152.2 RoP and Article 1(2) of the Scale of ceilings), and there can be additional costs in the form of recovery of court fees, costs of witnesses, costs of experts, and other expenses (see R. 151(d) RoP), representation normally forms the bulk of the costs. Even though the Court of first instance has broad discretion in this matter, the Court of Appeal considers that an interim costs award of up to equal to half of the ceiling is generally more appropriate (see also UPC_CoA_21/2025, Decision of 25 November 2025, *Meril vs. Edwards*, para 203).

99. A different consideration may apply if parties have submitted and discussed cost specifications during the proceedings or agreed on the costs to be reimbursed. This does, however, not apply in the present proceedings.

100. While Barco acknowledged during the oral hearing before the Local Division that Yealink's legal expenses exceeded the ceiling for recoverable costs, and accepted that the ceiling was set at € 112.000, this does not mean that Barco accepted in advance an interim award of costs up to the applicable ceiling, or that such an award would follow automatically, as Yealink is implying. The impugned order shall be amended accordingly.

Yealink's conditional cross-appeal

101. Yealink's conditional cross-appeal was for the event that the Local Division determines that it did not already grant an immediately enforceable interim costs award of € 112.000 to Yealink, or in the event the Court of Appeal would interpret the impugned order in this manner. The assessment made this conditional cross-appeal unnecessary.

Costs on appeal

102. Barco is the unsuccessful party on appeal, and shall compensate Yealink's reasonable and proportionate legal costs and other expenses, also for the application for suspensive effect.

103. For the appeal costs, Yealink has requested an interim award of costs up to the ceiling of € 112.000 or another amount specified by the Court of Appeal. The Court of Appeal considers that an interim award of costs equal to half of the ceiling shall be awarded.

Cost in the cross-appeal

104. Yealink is the unsuccessful party in the cross-appeal and shall compensate Barco's reasonable and proportionate legal costs and other expenses.

ORDER

I. Para 3 of the operative part of the order of 21 March 2025 of the Court of First Instance, Brussels Local Division, UPC_CFI_582/2024 is set aside and instead it is ordered as follows:

   Orders BARCO NV to bear reasonable and proportionate legal costs and other expenses incurred by YEALINK (XIAMEN) NETWORK TECHNOLOGY CO. Ltd. and YEALINK (EUROPE) NETWORK TECHNOLOGY BV in the CFI proceedings, and orders BARCO NV to pay YEALINK (XIAMEN) NETWORK TECHNOLOGY CO. Ltd. and YEALINK (EUROPE) NETWORK TECHNOLOGY BV a total amount of € 66.000 as an interim award of costs (regarding the CFI proceedings) and rejects Yealink's further application.

II. On all other points, the appeal is rejected.

III. The cross-appeal is rejected.

IV. Barco NV is ordered to bear the reasonable and proportionate legal costs and other expenses incurred by Yealink (Xiamen) Network Technology Co. Ltd. and Yealink (Europe) Network Technology BV in the appeal proceedings, also for the application for suspensive effect.

V. Barco NV is ordered to pay Yealink (Xiamen) Network Technology Co. Ltd. and Yealink (Europe) Network Technology BV a total amount of € 66.000 as an interim award of costs for the appeal proceedings.

VI. Yealink (Xiamen) Network Technology Co. Ltd. and Yealink (Europe) Network Technology BV are ordered to jointly and severally bear the reasonable and proportionate legal costs and other expenses incurred by Barco NV for the cross-appeal.

Issued on 28 November 2025

Rian Kalden
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Rian Kalden, presiding judge and legally qualified judge

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Ingeborg Simonsson, legally qualified judge and judge-rapporteur

Patricia Ursula Rombach
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Andrea Perronace, technically qualified judge