

**UPC\_CFI\_723/2025**  
**Procedural Order**  
**of the Court of First Instance of the Unified Patent Court**  
**issued on 29 December 2025**

APPLICANT:

**Align Technology, Inc.**, 410 North Scottsdale Road, Suite 1300, Tempe, Arizona 85288, United States

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DEFENDANTS:

**1. Angelalign Technology Inc.**, Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands

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**3. Europe Angelalign Technology B.V.**, Herikerbergweg 292, 1101 CT Amsterdam, the Netherlands

**4. Angelalign Technology (Germany) GmbH**, Wankelstrasse 60, 50996 Cologne, Germany

**5. Italy Angelalign Technology S.R.L.**, Corso Vercelli 40, Milan CAP 20145, Italy

**6. Shanghai EA Medical Instruments Co., Ltd.**, Room 601-603, No. 500 Zhengli Road, Yangpu District, Shanghai, China

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EUROPEAN PATENT No. EP 4 346 690 B1

PANEL/DIVISION: Panel of the Local Division in Düsseldorf

DECIDING JUDGES

This order was issued by Presiding Judge Thomas, legally qualified Judge Dr Thom, legally qualified Judge Visser acting as judge rapporteur and technically qualified Judge Dr Papa.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: R. 206 RoP – Application for provisional measures  
R. 220.2 RoP – leave to appeal

Summary of facts and procedure

1. By document dated 15 August 2025, the Applicant has commenced an Application for provisional measures against the Defendants.
2. By order dated 15 August 2025, the Defendants were invited to lodge an Objection to the Application for provisional measures within one month of service of the Application.
3. The Defendants have stated that the Application has been served to Defendants 2, 3, 4 and 5 with an effective date of 30 August 2025. Upon request by the Defendants, by order dated 23 September 2025, the Application for provisional measures was deemed served upon Defendants 1 and 6 as of 23 September 2025 and the time limit for filing an Objection to the Application for provisional measures for all Defendants was set on 23 October 2025.
4. On 23 October 2025, the Defendants filed an Objection to the Application for provisional measures.
5. By order dated 27 October 2025, inter alia, the date for the oral hearing was set on 14 January 2026. The Applicant was given the opportunity to submit a written response to the Objection to the Application for provisional measures before or on 10 November 2025. The Defendants were given the opportunity to submit a written response to the written response of the Applicant before or on 28 November 2025.
6. By order dated 6 November 2025, the request for security for costs by the Defendants was dismissed.
7. On 10 November 2025, the Applicant submitted a Reply to Objection to Application for Provisional Measures.
8. On 28 November 2025, The Defendants submitted a Rejoinder.

9. On 4 December 2025, the Applicant submitted a Request for Procedural Order under Rules 9.1 and 9.2 RoP.
10. On 8 December 2025, the Defendants were invited to respond to the request before or on 11 December 2025.
11. On 11 December 2025 the Defendants submitted a response to the request and formulated a request pursuant to R. 36 RoP.
12. By order of 16 December 2025, the Court ordered that it will disregard the non-infringement arguments submitted in paras. 13-24 of the Rejoinder and Exhibit AR 7 and that the request of the Defendants for the exchange of further written pleadings is dismissed.

### Requests

13. On 23 December 2025, the Defendants requested that the Court of First Instance grants leave to appeal the Procedural Order of 16 December 2025.
14. The Defendants - inter alia - submit the following:
  - Pursuant to R. 220.2 RoP, orders other than those referred to in R. 220.1 RoP may only be appealed as such if the Court of First Instance grants leave to that effect. The Procedural Order of the Court of First Instance of 16 December 2025 does not contain a decision granting leave to appeal. In this case, the Defendants are required to make a separate request for leave to appeal to the Court of First Instance. Only if this request is not granted within 15 days of the Order, a request for discretionary review may be made to the Court of Appeal pursuant to R. 220.3 RoP.
  - An order holding that the Court will disregard an entire line of defence submitted by the Defendants can have a very significant impact on the final decision. If upheld, the Order would allow the Court to treat the case as if the alleged infringement was undisputed – despite this not being the case. This could have a substantial impact on how the court assesses, and ultimately decides, the case. Thus, the present Order clearly differs from normal orders that only deal with procedural questions and have no immediate impact on the final decision.
  - The Order raises fundamental legal questions that have not yet been addressed by the Court of Appeal. In particular, the Court of Appeal has not yet decided whether the "front-loaded" nature of UPC proceedings – including the possibility to disregard (allegedly) late-filed arguments and evidence – applies to proceedings for provisional measures in the same manner as it applies to proceedings on the merits.
  - It requires clarification whether R. 9.2 and/or R. 209.1(a) RoP can be interpreted as allowing to disregard any defensive arguments submitted by a Defendant later than in the Objection. In the case of *Ortovox v. Mammut*, the Court of Appeal expressly left open whether this Local Division was right not to admit a prior art document submitted one day before the oral hearing (CoA, Order of 25 September 2024, UPC\_CoA\_182/2024, para. 111 et seq.). However, as already set out in the Defendants' submission of 11 December 2025, there are substantial arguments why a more lenient approach should be applied in proceedings for provisional measures than in proceedings on the merits.

- Some of these arguments were left entirely unaddressed by the Panel in its Order, including that the non-infringement arguments set forth in the Rejoinder were concise and only comprised three pages. Hence, there is also a need to clarify whether the judicial discretion awarded by R. 9.2 RoP justifies a purely formalistic approach under which any new arguments filed later than in the Objection are generally deemed precluded, without taking account of the particularities of the case as well as the volume and relevance of the newly-submitted arguments.
- There is a need to clarify whether the Court may use an order pursuant to R. 9.1 RoP to decide that certain arguments or evidence are precluded. Orders are generally not appealable because they are meant to govern the conduct of the proceedings but not to imply any prejudice on the final decision. However, an order that the Court will disregard certain arguments may indeed have a decisive impact on the outcome of the case. So far, most if not all decisions dismissing submissions for being late filed under R. 9.2 RoP were not made by way of an order but in the final decision itself, assessing the case as a whole (CD Paris, Decision of 29 July 2024, UPC\_CFI\_263/2023, para. 23 et seq.; LD Düsseldorf, Decision of 31 October 2024, UPC\_CFI\_373/2023 – SodaStream v. Aarke, p. 22; CD Paris, Decision of 5 November 2024, UPC\_CFI\_315/2023 – NJOY v. Juul Labs, p. 8 et seq.). Against this background, the Court of Appeal should be given the opportunity to clarify whether procedural orders are an adequate instrument to dismiss submissions for being (allegedly) late filed.
- The present case raises issues of general importance for the application of preclusion rules in proceedings for provisional measures. At the same time, procedural fairness commands allowing a timely clarification of these issues by the Court of Appeal in order ensure that the Court does not enter provisional measures based on arguments that may have been wrongly disregarded.

### Grounds for the order

#### 15. R. 220.1-3 RoP reads:

1. An appeal by a party adversely affected may be brought against:
  - (a) final decisions of the Court of First Instance;
  - (b) decisions terminating proceedings as regards one of the parties;
  - (c) orders referred to in Articles 49(5), 59, 60, 61, 62 or 67 of the Agreement.
2. Orders other than those referred to in paragraph 1 and Rule 97.5, may be either the subject of an appeal together with the appeal against the decision or may be appealed with the leave of the Court of First Instance within 15 days of service of the Court's decision to that effect.
3. In the event of a refusal of the Court of First Instance to grant leave within 15 days of the order of one of its panels a request for a discretionary review to the Court of Appeal may be made within 15 calendar days from the end of that period. Rule 333.3 shall apply mutatis mutandis. The request shall set out the matters referred to in Rule 221.2.

16. In the procedural orders of 15 August and 27 October 2025, the Court used its discretion under R. 209.1(a) RoP to set out the procedural schedule for the proceedings regarding provisional measures, thereby taking into account the interests of the parties and a balanced way to conduct the proceedings. In the order of 16 December 2025, the Court used its discretion pursuant to R. 9 RoP to disregard arguments and evidence not submitted in accordance within the time limit set by the Court and the RoP, and its discretion under R. 36 RoP not to allow further written pleadings, thereby also taking into account the nature of the proceedings, the interests of the parties and a balanced way to conduct the proceedings. Given the discretion of the Court of First Instance on procedural matters and because the order is closely connected to the specific circumstances of this case - so consistent application and interpretation of the RoP does not urge for leave to appeal - the Court sees no reason to grant leave to appeal.

#### ORDER

17. Leave to appeal the order of 16 December 2025 is not granted.

Thomas, Presiding judge	
Dr Thom, Legally qualified judge	
Visser, Legally qualified judge	
Dr Papa, Technically qualified judge	

