



Unified Patent Court  
Einheitliches Patentgericht  
Juridiction unifiée du brevet

UPC Court of Appeal  
UPC\_CoA\_2/2026

**ORDER**  
**of the Court of Appeal of the Unified Patent Court**  
**issued on 6 January 2026**  
**request for a discretionary review (R. 220.3 RoP)**

APPLICANTS (AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Angelalign Technology Inc.**, Grand Cayman, Cayman Islands
2. **Angelalign France Technology SASU**, Paris, France
3. **Europe Angelalign Technology B.V.**, Amsterdam, the Netherlands
4. **Angelalign Technology (Germany) GmbH**, Köln, Germany
5. **Italy Angelalign Technology S.R.L.**, Milan, Italy
6. **Shanghai EA Medical Instruments Co., Ltd.**, Shanghai, China

(hereinafter jointly referred to as “Angelalign”)

represented by: Dr. Felix Beck, attorney at law, and other attorneys at law of the law firm Arnold Ruess Rechtsanwälte Part mbB, Düsseldorf, Germany

RESPONDENT (AND APPLICANT BEFORE THE COURT OF FIRST INSTANCE)

**Align Technology, Inc.**, Arizona, United States

(hereinafter referred to as “Align”)

represented by: Agathe Michel-de Cazotte, attorney at law, and other attorneys at law of the law firm Carpmaels & Ransford LLP, London, United Kingdom

PATENT AT ISSUE

EP 4 346 690

DECIDING JUDGE

This order has been adopted by Rian Kalden, standing judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Local Division Düsseldorf, 16 December 2025, issued in the application for provisional measures  
UPC\_CFI\_723/2025

LANGUAGE OF THE PROCEEDINGS

English

SUMMARY OF FACTS

1. The request for discretionary review (R. 220.3 RoP) relates to proceedings for provisional measures which are pending before the Local Division Düsseldorf (UPC\_CFI\_723/2025).
2. At the request of Align, on 16 December 2025, the Local Division Düsseldorf issued the impugned procedural order, in which it decided that the non-infringement arguments submitted in paras. 13-24 of the Rejoinder and Exhibit AR 7 shall be disregarded and that Angelalign's request to allow further pleadings was dismissed.
3. Angelalign lodged a request for leave to appeal the impugned order on 23 December 2025.
4. The Local Division Düsseldorf refused to grant leave to appeal by order of 29 December 2025.
5. On 5 January 2026, Angelalign uploaded a request for discretionary review (R. 220.3 RoP), which was served on the respondent after correction of the deficiencies and payment of the fee by Angelalign on 6 January 2026.
6. The oral hearing in the proceedings for provisional measures at first instance is scheduled for 14 January 2026.

PARTY'S REQUEST

Angelalign requests the following:

- I. The Procedural Order of the Court of First Instance issued on 16 December 2025 is reviewed by the Court of Appeal.
- II. The Procedural Order of the Court of First Instance issued on 16 December 2025 is set aside.
- III. The Applicant's Request for Procedural Order dated 4 December 2025 is dismissed,  
or, **alternatively**,

The parties are allowed, within time limits to be specified by the Court, to exchange further written submissions strictly limited to the question of infringement of the patent at issue.

## REASONS

1. It follows from R. 220.4 RoP that a request for discretionary review can only be allowed after the other party has been heard. If the request is allowed, this sets in motion a procedural appeal under R. 220.2 RoP. This appeal will be heard by the panel to which the appeal will be assigned by the President of the Court of Appeal. The standing judge when allowing the request, or the full panel once the appeal is assigned to it, may consider it necessary that the parties lodge further statements of grounds of appeal and response, in addition to the arguments already exchanged in the request for discretionary review and the response thereto, but this will not always be necessary (UPC\_CoA\_486/2023, 21 March 2024, par. 16, *Netgear v Huawei*). In appeal proceedings pursuant to R. 220.2 RoP the parties are entitled to an oral hearing.
2. Given the time that Angelalign has taken, first to request leave to appeal (a week) and subsequently to lodge its request for discretionary review (four working days), it would be contrary to the principles of proportionality, fairness and equity, if Align were given a shorter time period to submit its comments to the request within a shorter time period than at least also four days (cf. UPC\_CoA\_584/2024, 9 October 2024, para. 16-17, *EOFflow v Insulet*).
3. Taking into account due process and the interests of the respondents, it would mean that Align would have to lodge its comments by 10 January 2026 and since this is a Saturday effectively by Monday 12 January 2026. Given the right to an oral hearing and the need for the Court of Appeal to prepare, deliberate and issue a decision, it is apparent that a decision could not reasonably be issued prior to the oral hearing in the first-instance proceedings, scheduled for 14 January 2026.
4. In addition, allowing Angelalign's request would disrupt the schedule of the first-instance proceedings. Such disruption would only be justified if the impugned order were manifestly erroneous.
5. The exclusion of arguments and evidence by the Court at First Instance was not an error per se. The front-loaded nature of UPC proceedings – including the possibility to disregard late-filed arguments and evidence – also applies to proceedings for provisional measures (cf. UPC\_CoA\_182/2024, 25 September 2024, para. 114, *Mammut v Ortovox*), albeit that the short time periods for filing a response, reply or rejoinder may allow for a more lenient approach.
6. Angelalign should thus have substantiated why the impugned order was manifestly erroneous. The facts, evidence and arguments relied on to justify a discretionary review (R. 220.3 RoP in conjunction with R. 221.2 (applied mutatis mutandis)) must be brought forward in the request in such a way that it enables the Respondent to prepare its response and it enables the Court of Appeal to decide on the request, without further information being required. In this regard, references to pleadings and documents in the files at first instance are admissible, provided that

the text passages referred to are sufficiently specific (cf. UPC\_CoA\_549/2024, 29 October 2024, para. 62, *Belkin v Philips*).

7. Angelalign's request does not satisfy this requirement. It has only generally stated that "*The Rejoinder included non-infringement arguments comprising three pages and an exhibit (written witness statement) of two pages. These arguments were not already included in the Objection and were (at least in part) made in response to a limiting claim construction set forth by the Applicants in their Reply*" without reference to any paragraphs in the first instance pleadings and without any further explanation why (and to what extent) the impugned decision was manifestly erroneous.
8. For the reasons stated above, the request shall be dismissed.

ORDER

The request is dismissed.

Issued on 6 January 2026

Rian Kalden, standing judge