



Milan Local Division

UPC CFI no. 727/2024, no. 493/2025
order
issued on 28.1.2026

CLAIMANT

Agathon AG

DEFENDANTS

- 1) Intercom s.r.l.
- 2) KNARR Vertriebs GmbH

DECIDING JUDGE

presiding judge and judge-rapporteur Pierluigi Perrotti

LANGUAGE OF PROCEEDINGS

English

ORDER

Pursuant to R. 105.5 RoP, following the interim conference, the judge-rapporteur shall issue an order setting out the decisions taken.

In the present case, an online interim conference was held via Webex on 27.1.2026 at 11 a.m. and was audio-recorded, according to R. 106 RoP.

The parties agreed on the main topics to be discussed at the interim conference as previously identified by the judge-rapporteur in an order dated 13.1.2026.

Defendant 2 suggested discussing an additional point, which has been inserted below as point *4bis*.

These are the judge-rapporteur's decision on the issues discussed at the interim conference.

1. Possibility for the Parties to reach a settlement

The possibility of a settlement has been explored with the parties, without success to date. Should a concrete prospect for a settlement emerge in the future, the judge-rapporteur requested the parties to inform the Court promptly.

2. Clarification from the Claimant regarding the order and conditional nature of the auxiliary requests filed on 8.8.2025 pursuant to R. 30.1 RoP

Following the Court's request, the claimant clarified that the four auxiliary requests were:

- submitted in accordance with R. 30.1 RoP;
- to be understood as conditional and
- to be assessed following the order in which they were numbered.

The Defendants had no objections to this clarification.

In light of the above, the Court specifies that, where necessary, the auxiliary requests will therefore be dealt with and decided upon only if the counterclaim for revocation is upheld and in the order in which they have been numbered, i.e. first Auxiliary Request 1, then, if needed, Auxiliary Request 2, and so on.

3. Admissibility of Annexes 27/28 - 33/34 submitted by the Claimant

The parties reiterated the positions already set out in their respective defence briefs.

Agathon emphasised that the technical drawings identified as Annexes 27/28 (and their translation) were filed as soon as possible with the reply to the statement of defence, in order to clarify its infringement-related arguments, given the defendants' objections regarding the photographs of the attacked embodiments as initially filed.

Intercom reiterated that these documents could and should have been filed immediately, as they were certainly available and, in any case, there was no valid reason to support a delayed filing. It also noted there were still several references in German in the English translation, which supported the inadmissibility of the documents.

KNARR also disputed the relevance of these documents, as it was unclear how the measurements shown in the technical drawings had been taken.

The Court considers the filing of these documents to be timely, as it was done in support of the claimant's defence arguments in response to the defendants' objections.

There is a correlation between the inferences that can be derived from the drawings and the possible overcoming of the defendants' infringement objections.

Therefore, the documents are deemed admissible and the parties are authorised to refer to them during the oral hearing.

However, any assessment of the possible relevance of Annexes 27/28 is reserved until the final decision.

4. a) Agreement by the parties on the use of the criterion for determining (potential) patent infringement by equivalence as defined in UPC CFI decision no. 239/2023, LD The Hague, 22 November 2024 (cited by both parties) and reiterated in the subsequent UPC CFI order no. 479/2025, LD The Hague, 11.9.2025

b) a possible request of the parties pursuant to R. 36 RoP to allow the exchange of further written pleadings - limited to this specific issue - in which they may consider alternative criteria indicated by other UPC decisions, in full compliance with the adversarial principle (see, in particular, UPC CFI no. 376/2023, LD Brussels, 17.1.2025; UPC CFI no. 471/2023, LD Mannheim, 6.6.2025; UPC CFI no. 363/2024, LD Paris, 1.8.2025)

The Court clarifies that the inclusion of this topic in the interim conference does not imply any preliminary opinion on the issue of infringement. The sole purpose is to offer the parties the opportunity to discuss this legal issue extensively.

The claimant considers it useful to submit further comments to the Court on the issue of infringement by equivalence only, and therefore requests a deadline for this purpose, while maintaining the main request for a finding of literal infringement.

Intercom and KNARR consider it sufficient to address the issue using the criteria defined by the Local Division of The Hague. In any case, they do not oppose the granting of the time limit requested by the other party, provided that a subsequent time limit for a reply is assigned.

Agathon agrees to grant the defendants a deadline subsequent to the one that will be assigned in its favour.

In light of the foregoing, having regard to R. 36 RoP, the Court assigns the following terms:

- until 7.2.2026 for the claimant and

- until 17.2.2026 for the defendants

for filing supplementary defence notes concerning infringement by equivalence exclusively.

4bis. Possibility of Defendant 2 to plead, at the oral hearing, on matters of invalidity as occasioned by the Counterclaim for Revocation

The parties agree that KNARR may intervene in the oral hearing on the issue of validity, even though it has not filed a counterclaim for revocation.

The Court grants this faculty in accordance with the agreement between the parties, specifying that its exercise does not change KNARR's procedural role, as it is only present in this case as defendant in the action for infringement. No new arguments will be allowed.

5. Value of the actions

6. Legal costs

The parties disagree on the value of the actions.

The claimant states that value should be set at 500,000 EUR for each action.

The unsuccessful party should reimburse an amount equal to the top amount of the current scale of ceilings for the corresponding value of 500,000 EUR for each action.

Intercom and KNARR estimate the total value of the claim to be 500,000 EUR, to be divided into two equal parts of 250,000 EUR each for the patent infringement action and the counterclaim for revocation.

The Court notes that the defendants contested the value of the actions as initially defined for the first time at this hearing.

Taking into account the current unavailability of precise economic data, and applying the general principles of proportionality, flexibility, fairness and equity, the judge-rapporteur considers it appropriate not to depart from the value indication expressed by the claimant.

Therefore, the value of the dispute is set at 500.000 EUR for the infringement action and 500.000 EUR for the revocation action. This determination may be reconsidered by the Panel at the conclusion of the oral hearing when deciding the merits of the case.

In light of the foregoing, the value of the infringement action and of the counterclaim for revocation is set at 500.000 EUR each.

7. Preparation of the oral hearing.

- examination of samples of the allegedly infringing products, particularly to verify the possible implementation of feature 1.9;

- examination of samples of prior art products corresponding to Defendants' annexes D5, D6, D7, D8, to verify the possible implementation of the same technical solutions in the allegedly infringing products;

The claimant clarifies that samples of the attacked embodiments have been made available to the Court since the beginning of the proceedings and can therefore be physically filed according to the timing and manner to be specified by the Court.

However, it objects to the examination of examples of prior art products during the oral hearing. The defendants never offered to make these available to the Court. The defendants did not prove when and if the products photographed in documents D5, D6, D7 and D8 were actually manufactured and marketed. Furthermore, the origin of the samples and their complete correspondence with the products shown in the photos would be uncertain.

Intercom and KNARR do not object samples of the allegedly infringing products being admitted for examination in the oral hearing.

They request authorisation to submit samples of prior art products corresponding to those visible in annexes D5, D6, D7, D8. They clarify that these are products dating back several years and that, based on the information in their possession, they are still on the market and therefore can be exhibited in court, in a time and in a manner to be established by the Court. Written statements already filed support the actual existence of these products. In any case, the rules of procedure do not require a prior offer for the admissibility of these physical exhibits. The products bear a unique numerical code that allows for their identification.

In light of the foregoing, the Court authorises the filing of samples of the allegedly infringing products and of samples of prior art products corresponding to Defendants' annexes D5, D6, D7, D8. The samples must be submitted as physical exhibits at the local Sub-Registry by each party no later than 17 March 2026.

- exchange of slides for the final discussion no later than the week prior to the oral hearing:
- submission of final briefs (max 15 pages) by 4.3.2026, along with a complete and updated list of all documents already filed.

It is confirmed that the oral hearing will be held at the premises of the Milan Local Division in presence on 24.3.2026 at 10 a.m..

As previously clarified, at the oral hearing there will be a joint discussion of validity and infringement.

The parties may prepare slides in order to best illustrate the case during the oral hearing, using only arguments already presented in their written submissions. Introduction of new elements is prohibited.

The slides shall be sent and exchanged by e-mail, including the Milan Local Division e-mail address contact_milan.loc@unifiedpatentcourt.org, no later than 17.3.2026, to allow all parties to view them in advance.

The parties are also authorised to file a final brief summarizing their positions (not to exceed 15 pages) by 4.3.2026. A complete list of all documents filed by each party shall be attached. Again, no new arguments are permitted. Parties may only refer to arguments contained in their previous written pleadings (including the additional briefs authorized under point 4 of this order).

The estimated duration of the oral hearing is 6 / 7 hours.

More details on time slots for discussion of the various topics will be provided at a later date.

For any practical needs relating to the conduct of the oral hearing, the parties are invited to contact the local clerks in a timely manner.

Milan, 28 January 2026.

Pierluigi Perrotti
presiding judge and judge rapporteur