



## Paris Local Division

**UPC\_CFI\_530/2025**

**Order**

**of the Court of First Instance of the Unified Patent Court  
issued on 04/02/2026**

***Concerning a request for a decision by default (R.158.5 and R. 355.1 RoP)***

### APPLICANT

**KEEEX SAS**  
5 rue de Lissandre  
13013 MARSEILLE - FR

Represented by Thibaud Lelong

### DEFENDANTS

**ADOBE SYSTEMS SOFTWARE IRELAND LIMITED**  
4-6 Riverwalk, Citywest Business Campus, Saggart  
D24DCWO Dublin 24- IE

**ADOBE INC.**  
345 Park Avenue  
CA 95110 2704 San Jose- US

Represented by Thomas Cuche

**OPEN AI OPCO LLC**  
1455 3rd Street  
CA 94158 San Francisco - US

**OPEN AI IRELAND LTD**  
117-126 Sheriff Street Upper, The Liffey Trust Centre,  
1st Floor  
D01 YC43 Dublin 1 - IE

Represented by David Por

**TRUEPIC INC.**

402 W. Broadway, Suite 400/PMB#5021  
CA 92101 San Diego - US

Represented by Benjamin May

**JOINT DEVELOPMENT FOUNDATION PROJECTS LLC**

548 Market Street PMB 57724  
CA 94101-5401 San Francisco - US

**COALITION FOR CONTENT PROVENANCE AND  
AUTHENTICITY (C2PA)**

3500 South Dupont Highway Suite, AA101  
DE 19901 Dover - US

Represented by Philipp Cegl

**PATENT IN SUIT**

<i>Patent number</i>	<i>Owner</i>
<b>EP2949070</b>	KEEEX SAS

**RULING JUDGE**

**COMPOSITION OF THE CHAMBER - PLENARY CHAMBER**

Chairman and Judge-Rapporteur  
Legally qualified Judge  
Legally qualified Judge  
Technically qualified Judge

**Camille Lignieres**  
**Carine Gillet**  
**Peter Tochtermann**  
**Alessandro Sanchini**

**LANGUAGE OF PROCEEDINGS:** French

**ORDER**

**Facts and procedure**

In the context of an infringement action brought by KEEEX (plaintiff in the main action) against it, ADOBE (defendants 1 and 2) obtained an order from the Judge-Rapporteur dated 19 December 2025 which :

-ordered KEEEX to provide a guarantee for the legal costs of the defendants as provided for by R. 158 RoP in the form of a bank guarantee provided by an authorised bank in the EU, within 4 weeks of this order.

-states that this order may be appealed pursuant to R. 220.1 RoP.

By application of 23 January 2026, ADOBE requested that the court issue a default judgment against KEEEX and thus dismiss the infringement action (UPC\_CFI\_530/2025), that it inform the plaintiff that any new default judgment to be issued will be final and order the latter to bear the costs of the proceedings, including the costs relating to the present application.

By order of 19 December 2025, the judge-rapporteur ordered the plaintiff to provide security for the defendants' costs in the total amount of

200,000 (50,000 euros for each group of defendants) in the form of a bank guarantee, within four weeks of notification of the order, i.e. until 16 January 2026. An appeal has been lodged against this order in respect of the amount granted by way of guarantee, but this appeal has no suspensive effect.

ADOBÉ submits that as KEEEX failed to provide the bank guarantee within the time limit set out in the guarantee order, no diligence was carried out within the time limit as set by the court, which justifies a default judgment pursuant to rule 355.1(a) RoP. ADOBE points out that the letter produced by the claimant dated 16 January 2026 does not constitute a bank guarantee in that the bank expressly rejects any liability and that the bank does not confirm that the sum of 200,000 euros is actually blocked on the account, this "account certificate" cannot, according to ADOBE, constitute a bank guarantee required by the order of 19 December 2025, nor indeed a deposit within the meaning of rule 158 RoP.

KEEEX filed in the CMS on 26 January 2026, new documents entitled "First demand financial guarantee" established by the CIC on 26 January 2026.

In the light of these new documents, ADOBE replied with comments filed with the CMS on 2 February 2025:

-by reiterating its request for a decision by default, on the sole ground that the guarantee was not provided within the required period,

-and adding, in the light of the documents provided by KEEEX, that the latter cannot be considered as a bank guarantee within the meaning of the Order of 19 December 2025 for the following reasons:

-it has not been established that the signatories are authorised to represent the CIC,

- the document was not supplied in its original version but only as a digital copy,

- the guarantee stating in Article 3 that it "shall be valid until the date of the final decision of the Unified Patent Court or in accordance with the conditions of Article 7" is insufficient, in particular because the UPC's procedural rules provide that proceedings on costs may take place separately after a final decision on infringement.

- the statement that "This guarantee is valid until the date of the final decision of the Unified Patent Court or in accordance with the conditions of Article 7" would not sufficiently protect the defendants, particularly in the event of an appeal overturning the first part of the first decision.

KEEEX, invited by the Judge-Rapporteur to submit its comments by 3 February 2026, argued in substance as follows:

-A decision by default is an exceptional measure, which can only be pronounced in the event of a party's manifest, persistent and culpable failure to act, characterised by a total or deliberate abstention from enforcing an order. This is clearly not the case here.

-Contrary to what defendants 1) and 2) allege, the plaintiff did not remain inactive and did not ignore the order of 19 December 2025. On the contrary, it proceeded to provide the guarantee within the time limit requested and asked the Court about the practical details and the information to be provided, thereby demonstrating its clear and unequivocal desire to comply with the terms of the order.

-No bad faith or delaying tactics can be imputed to the plaintiff. Defendants' criticisms 1) and 2) relate to formal or hypothetical considerations, which cannot justify a default decision.

### **Legal framework :**

#### **-R 158.5 RoP - Guarantee for the costs of a party :**

*" 5. If a Party fails to provide adequate security within the specified time, the Court may issue a default judgment pursuant to Rule 355."*

R. 355.1(a) RoP -Decision by default

*"(1) On application, a decision may be given by default against a party where:*

*(a) the rules of procedure so provide where a party fails to exercise due diligence within the period provided by those rules or fixed by the Court; or [...]"*

It should be remembered that R. 355(2) RoP is only applicable where a default judgment is to be given against the defendant to the main claim.

#### **-Decision of the UPC Court of Appeal of 12 July 2025, Microsoft v. Suinno, (UPC-CoA\_363/2025):**

*"When exercising its discretion, the Court shall ensure that proceedings are organized on the basis of the principles of fairness and equity (RoP, preamble para. 2) in the most efficient and effective manner (RoP, preamble para. 4) and must consider the balance of interest of the parties." (In the exercise of its discretion, the Court shall ensure that the proceedings are organised on the basis of the principles of fairness and equity (RoP, preamble para. 2) in the most efficient and effective manner (RoP, preamble para. 4) and must consider the balance of interest of the parties".)*

### **Reasons:**

KEEEX, following the order of 19 December 2025 granting the guarantee, sought clarification from the Judge-Rapporteur as to the form to be taken by the bank guarantee by email of 14 January 2026 (copied to all parties in accordance with R .8.3 RoP) as follows:

**De :** Lelong Thibaud <[thibaud.lelong@fidal.com](mailto:thibaud.lelong@fidal.com)>  
**Envoyé :** mercredi 14 janvier 2026 14:27  
**À :** CONTACT\_PARIS.LOC <[contact\\_paris.loc@unifiedpatentcourt.org](mailto:contact_paris.loc@unifiedpatentcourt.org)>  
**Cc :** 'CUCHE Thomas' <[CUCHE@dtmv.com](mailto:CUCHE@dtmv.com)>; 'david.por@cliffordchance.com' <[david.por@cliffordchance.com](mailto:david.por@cliffordchance.com)>; 'bmay@jeantet.fr' <[bmay@jeantet.fr](mailto:bmay@jeantet.fr)>; 'philipp.cepl@dlapiper.com' <[philipp.cepl@dlapiper.com](mailto:philipp.cepl@dlapiper.com)>; Ungerer Charlotte <[charlotte.ungerer@fidal.com](mailto:charlotte.ungerer@fidal.com)>  
**Objet :** RE: Dossier KEEEX - No. ACT\_28303/2025 UPC\_CFI\_530/2025

Chère Madame la Présidente – juge rapporteur,

Dans le cadre de l'ordonnance que vous avez rendu le 19 décembre dernier, vous avez ordonné à la société KEEEX de produire une garantie pour les frais de justice des défendeurs prévue par l'article R.158 RdP sous la forme d'une garantie bancaire fournie par une banque agréée dans l'UE, et ce dans le délai de 4 semaines à compter de la présente ordonnance.

Bien que la somme de 200.000 euros (4 x 50.000) ait été réunie et soit d'ores et déjà bloquée sur un compte, la banque de ma cliente ne sait pas comment réaliser cette garantie bancaire.

Elle me demande par conséquent qu'un modèle de la juridiction lui soit communiqué.  
De même, elle me questionne quant au bénéficiaire de la garantie, à savoir la JUB elle-même ou les parties défenderesses.

Par conséquent, pouvez-vous, s'il vous plaît, me communiquer les modalités de constitution des garanties prévues par l'article R.158 RdP ?

Je vous remercie pour votre aide et vous prie de bien vouloir agréer mes meilleures salutations.

Clarification was given by the Judge-Rapporteur by email of 16 January 2026 (also copied to all parties) sent at 4.24pm.

In the meantime, on 16 January 2026 at 4.07 p.m., i.e. within the time limit, KEEEX had provided a balance certificate from the CIC for the overall sum of 200,000 euros which had been blocked for that purpose. It is true that this document does not correspond exactly to the criteria for a bank guarantee as explained by the judge-rapporteur in his message of the same day.

However, it should be noted that R. 158.5 RoP provides that the judge-rapporteur "may" issue a decision by default, which leaves the judge discretion in accordance with the principles of procedural efficiency but also the principles of fairness and proportionality. In the present case, the circumstances cannot justify a decision by default under R. 158.5 as a sanction for failure to act diligently, in that KEEEX provided proof within the time limit set out in the order (i.e. 16 January 2026) that the sum of 200,000 euros had been blocked in its account for this purpose and, in the light of the judge-rapporteur's reply dated 16 January 2026 at the end of the day, provided the documents corresponding to the required bank guarantee on 26 January.

Indeed, the new documents produced in the CMS on 26 January 2026 indicate in particular :

- the sum: of 50,000 euros respectively for the benefit of each of the four entities ADOBE, OPEN AI, JOINT DEVT and TRUEPIC,
- the duration: valid until the UPC's final decision in this case, with precise references
- the terms and conditions: including a copy of the court decision or settlement agreement and specifying that the guarantee is irrevocable and independent of any other contract or commitment.

This information corresponds to the bank guarantee as required by R.158 RoP and the Order of 19 December 2025.

The arguments put forward by ADOBE to criticise the validity of the bank guarantee as produced by KEEEX on 26 January 2026 are purely formal and are not required on pain of validity. They are unfounded, in that there is nothing to suggest that the persons signing the guarantee were not authorised to do so, or that the original version differed from the digital version provided, in the absence of ADOBE being able to justify its allegations to the contrary in accordance with rule 271.2 RoP. The Court recalls the principles of evidence to which the representatives of the UPC are bound under art. 48.6 UPCA and rule 284 RoP.

Finally, the arguments concerning the inadequacy of the conditions of the guarantee as provided by KEEEX are not convincing either. The concept of a "final decision" will be interpreted in the light of the UPC procedural rules that apply in this case, and there is nothing to suggest that this interpretation will be to the detriment of the defendants.

The lack of diligence justifying a decision by default is therefore not established in the present case.

**For these reasons, the Court:**

- Dismisses ADOBE's application for a default judgment and subsequent applications,
- states that this order may be appealed in accordance with the conditions set out in R. 220.2 RoP.

Delivered in Paris on 4 February 2026.

C. Lignières, Judge-Rapporteur

Date :  
Camille Lignières 2026.02.04  
14:05:54 +01'00'

C. Gillet, legally qualified Judge

2026.02.04  
Carine Gillet 12:18:13  
+01'00'

P. Tochtermann, legally qualified judge

Peter Michael  
Dr. Tochtermann

Digital unterschrieben von Peter  
Michael Dr. Tochtermann  
Datum: 2026.02.04 11:07:12 +01'00'

A. Sanchini, technically qualified judge

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SANCHINI  
Data: 2026.02.04 11:45:58 +01'00'

ORDER DETAILS

UPC nº : UPC\_CFI\_530/2025

Type of action : Infringement action

Type of order : Motion for a default decision Date of issue :

04/02/2026