



UPC_CFI_1733/2025
Local Division Mannheim

ORDER
of the President of the Court of First Instance
in the proceedings before the Local Division MANNHEIM
Pursuant to R. 323 RoP (language of the proceedings)
Issued on 17 February 2026

HEADNOTE:

- When deciding on an application to change the language of the proceedings to the language in which the patent was granted for reasons of fairness, all relevant circumstances must be considered. While having regard to the respective resources of the parties, the need for strategic coordination and technical support in a common working language for the purposes of the Defence has been identified as a decisive factor in the balancing of all interests. This takes into account the fact that the language primarily chosen is not only a financial burden on the Defendant(s), but also a disadvantage in view of strict time limits that must be met in UPC proceedings.

KEYWORDS

- Change of the language of the proceedings – Art. 49 (5) UPCA and R. 323 RoP

APPLICANTS (DEFENDANTS IN THE MAIN PROCEEDINGS):

1- Xiaomi Corporation

c/o Maples Corporate Services Limited, PO Box 309, Ugland House, KY1-1104, Grand Cayman, KY

2- Xiaomi Inc.

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- CN

3- Beijing Xiaomi Mobile Software Co., Ltd.

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4- Xiaomi Communications Co., Ltd.

No. 019, Floor 9, Building 6, Yard 33, Xierqi Middle Road, Haidian District, 100085, Beijing - CN

5- Xiaomi Technology Netherlands B.V

Prinses Beatrixlaan 582, 2595BM, Den Haag - NL

6- Xaomi Technology Germany GmbH

Niederkaeseler Lohweg 175, 40547, Düsseldorf - DE

7- Xiaomi Technology France SAS

93 Rue Nationale, 92100, Boulogne-Billancourt - FR

8- Xiaomi Technology Italy S.R.L.

Viale Edoardo Jenner 53, 20158, Milan - IT

9- Xiaomi Technology Sweden AB

Pyramidvägen 7, 169 56, Solna - SE

Represented by: David Por – Clifford Chance

RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS):

Malikie Innovations Limited

The Glasshouses GH2, 92 Lower George's Street, Dun Laoghaire, A96 VR66, Dublin - IE

Represented by: Marina Wehler - Arnold Ruess

PATENT AT ISSUE: EP2387862

SUMMARY OF FACTS

By a statement of claim filed on 25 November 2025, Malikie Innovations Limited brought an infringement action against the abovementioned Applicants (hereinafter collectively referred to as “Xiaomi”, or “the Defendants” with regard to their status in the main proceedings) based on EP2387862 titled “system and method for determining establishment causes”.

By an application dated 29 January 2026, the Defendants, referring to R. 323 RoP, requested a change of the language of the proceedings from German to English. The request was forwarded to the President of the Court of First Instance of the UPC pursuant to R. 323.1 RoP and by an order dated 30 January 2026, the Claimant in the main action was subsequently invited, in accordance with R. 323.2 RoP, to state its position on the admissibility of the Application and on the use of the language in which the patent was granted, namely English, as language of the proceedings.

Malikie Innovations Limited submitted its written comments on 9 February 2026.

The panel of the LD Mannheim has been consulted in accordance with R. 323.3 RoP.

INDICATION OF THE PARTIES’ REQUESTS AND POINTS AT ISSUE:

The Applicants request that:

- The language of the proceedings be changed to the language in which the patent was granted, i.e. English.
- The order shall not be subject to any translation or interpretation arrangements.

The Applicants state that a change of the language of the proceedings from German to the language in which the patent was granted is necessary in the present case for reasons of fairness and taking into account all relevant circumstances pursuant to Art. 49 (5) UPCA and R. 323 RoP, for the following reasons:

- English is the common language in the field of mobile communication technology which is at issue here. Evidence and exhibits cited, including ETSI standard specifications on which the alleged infringements are based, are submitted in English without translation.
- Except for Defendant 6, all Xiaomi entities are registered in non-German speaking countries. They belong to a globally active group that communicates largely in English. Consequently, these entities are considerably disadvantaged in the preparation of their defence which requires coordination and translation work.

- The requested change would not disadvantage the Claimant, which is based in an English-speaking country, as is its parent company Key Patent Innovations Limited. They are therefore able to handle proceedings in English, which was also the language in which negotiations were conducted in the past.
- The Claimant itself made the choice to assert before the UPC a further patent granted in English, which is not yet the subject of national ongoing proceedings. This entails the possibility of an application pursuant to R. 323 RoP.
- Changing the language of the proceedings at this stage would not cause delays nor would it require translating existing pleadings and documents.

Malikie Innovations Limited requests that the Court to dismiss the Application, considering the following:

- According to the UPC multinational framework and language regime, the Claimant has the right to choose the language of the proceedings among available options offered by each division pursuant to R. 14.2 (a) RoP.
- Art. 49 (5) UPCA provides for a possible change if it is necessary for reasons of fairness, which shall be assessed with regard to all relevant circumstances of each individual case.
- Adopting an overly generous standard for changing the language of the proceedings would not be aligned with the intention of the legislator.
- Fairness within the meaning of Art. 49 (5) UPCA requires a balance of all interests involved, taking into account the economy of the proceedings, rights of defence and practical implementation, which doesn't preclude that one party faces reasonable expenses.
- A fairness issue can be raised if the language initially chosen places the Defendants at a significant disadvantage, which is not the case here considering the economic and organizational capacity of Xiaomi. The latter is indeed one of the top three smartphone manufacturers worldwide, with a turnover of approximately 44.7 billion EUR according to their 2024 annual report.
- The present Application and alleged disadvantage is in contradiction with Xiaomi's previous litigation practice, as evidenced by the list of UPC proceedings involving its group in a similar context – 11 out of 22 are conducted in German – and by the number of decisions and orders published on the UPC website in this language (26 in German compared to 10 in English).
- Parallel proceedings are well advanced before the Munich Regional Court, in which FRAND arguments have already been exchanged in written submissions.

Further facts and arguments as raised by the parties will be addressed below if relevant for the outcome of this Order.

FOUNDATIONS FOR THE ORDER:

1- Admissibility of the Application

The admissibility of the Application is not disputed in the present case.

2- Merits of the Application

According to Art. 49(1) UPCA, the language of the proceedings before a local division must be an official language of its hosting Member State or alternately the other language designated pursuant to Art. 49 (2). It is further provided by R. 323 RoP that "If a party wishes to use the language in which the patent was granted as language of the proceedings, in accordance with Article 49(5) of the Agreement (...) [t]he President, having consulted [the other parties and] the panel of the division, may order that the language in which the patent was granted shall be the language of the proceedings and may make the order conditional on specific translation or interpretation arrangements".

Regarding the criteria that may be considered to decide on the Application, Art. 49 (5) UPCA specifies that "(...) the President of the Court of First Instance may, on grounds of fairness and taking into account all relevant circumstances, including the position of parties, in particular the position of the defendant, decide on the use of the language in which the patent was granted as language of proceedings (...)".

By an order dated 17 April 2024, the UPC Court of Appeal (hereinafter "CoA") ruled that when deciding on a request to change the language of the proceedings to the language of the patent for reasons of fairness, all relevant circumstances must be considered. These circumstances should primarily relate to the specific case, such as the language most commonly used in the relevant technology, and to the position of the parties, including their nationality, domicile, respective size, and how they could be affected by the requested change (UPC_CofA_101/2024, Apl_12116/2024, para. 22-25). It was furthermore stated that the internal working language of the parties, the possibility of internal coordination and of support on technical issues are relevant circumstances, while other proceedings pending before a national court, which do not relate to the dispute, are in themselves of less relevance (UPC_CoA_354/2024, Apl 38948/2024, Order dated 18 September 2024, para. 26-27).

In the event that the result of the balancing of interests is the same in the context of this overall assessment, the CoA found that the emphasis placed "in particular" on the position of the defendant under Art. 49 (5) UPCA is justified by the flexibility afforded to the claimant which frequently has the choice of where to file its action – since any local or regional division

in which an infringement is threatened or taking place is competent – and can generally choose the most convenient timeframe to draft its Statement of Claim, while the defendant is directly bound by strict deadlines. The position of the defendant(s) is consequently the decisive factor if both parties are in a comparable situation.

In the same decision, the CoA also held that “for a claimant, having had the choice of language of the patent, with the ensuing possibility that the claimant/patentee may have to conduct legal proceedings in that language, as a general rule and absent specific relevant circumstances pointing in another direction, the language of the patent as the language of the proceedings cannot be considered to be unfair in respect of the claimant” (para. 34).

Considering the abovementioned provisions and its consistent interpretation by the Court of Appeal, the Application shall be granted for the following reasons.

- *General principles provided for by Art. 49 (5) UPCA and R. 321 to 324 RoP governing the language regime before the UPC:*

As foreseen by Art. 49 (1) and (2) UPCA, the Claimant is given the choice to file its action in the official “local” language of the selected division or in the language designated as an alternative by its hosting Contracting Member State, namely English. This right conferred to the party initiating the action, as a general starting point, is not absolute. It can be limited for considerations of fairness which must be substantiated by the Applicant(s) (UPC_CFI_1506/2025 – order dated 20/01/2026).

Decisive factors in assessing whether such a fairness issue is validly raised must be determined on a case-by-case basis, according to all criteria listed above. As rightly stated by Malikie Innovations, the primary right conferred to the Claimant would not be effective in practice, if the selected language were changed without indication that the adverse party is significantly disadvantaged. In this respect, it is to be noted that the mere fact that the language in which the patent has been granted is “not unfair to the Claimant” does not suffice.

- *Circumstances related to the present case and position of the parties:*

The language commonly used in the field of technology concerned and the respective positions of the parties – both operate worldwide and have evidently adopted English as their working language – are not disputed here. The main question in the present case is whether Xiaomi is in a situation to invoke grounds of fairness, that is to say if the preparation of their defence is seriously affected by the current language of the proceedings.

Malikie contends that such significant drawbacks are not substantiated in the present case for two evident reasons, namely:

- All human and financial resources that the Defendants can mobilise in the context of the dispute, considering their annual turnover, status as a multinational group and leading position in the relevant market (smartphone manufacturing).
- Xiaomi's previous and ongoing litigation practice, as reflected by the number of UPC proceedings conducted in German and proportion of decisions and orders issued in this language (exhibits 28 and 29).

For the latter point, a party may decide to review its strategies if it has identified reasons to do so. It should moreover be noted that a significant number of the listed actions were filed in 2023 or during the first half of 2024, where the case law summarised above was still being developed. At this stage, the absence of an Application pursuant to R. 323 RoP on the part of the Defendant cannot consequently be interpreted as a willingness to conduct disputes in the language in which the case was filed.

Regarding the case law cited by the Claimant, the specific situation at issue differed from the present case as the respective size of the parties had to be considered alongside the fact that 3 out of 4 entities involved were registered in Germany (order dated 16 January 2025, UPC_CFI 627/2024, APP_64878/2024).

In addition to considerations relating to the procedural advantage given to Malikie, which initiated the proceedings, and relevance of the language of the patent in determining its validity and scope of protection, it is mainly argued that Xiaomi's proper defence requires coordination and translation work resulting in considerable costs and delays due to language skills of the parties themselves, irrespective of their representatives' ability to communicate in German.

While having regard to the respective resources of the parties, this need for strategic coordination and technical support in a common working language has been identified as a decisive factor in the balancing of all interests (UPC_CoA_349/2024 – order dated 18/09/2024 – para. 26-29) even though the Claimant considered itself to be an SME and was not registered in an English-speaking country. As highlighted by the CoA, this takes into account the fact that the language primarily chosen is not only a financial burden, but also a disadvantage in view of the strict time limits that must be met in UPC proceedings (UPC_CoA_349/2024 – order dated 18/09/2024 – para. 31). This reasoning is equally applicable in the present case where nine entities need to communicate in view of their defence.

By contrast, ongoing national proceedings based on other patents are of less relevance in this overall assessment (UPC_CoA_349/2024 – order dated 18/09/2024 – para. 30, UPC_CoA_838/2025 – order dated 01/12/2025 parag. 12).

Finally, as stated by the Defendants without contradiction, the requested change implemented at an early stage will not affect the course of the proceedings (CoA_101/2024 – APL_12116 – order dated 17 April 2024 – para. 25). Furthermore, an English version of the Statement of Claim has been provided for the purposes of service, and it is agreed by the Defendants that existing documents currently submitted in German shall not be translated.

Against this background, the Application shall be granted without further translation or interpretation arrangements.

ON THESE GROUNDS

- 1- The language of the proceedings shall be changed to the language in which the patent was granted, namely English.
- 2- The present order shall not be conditional on specific translation or interpretation arrangements.
- 3- An appeal may be brought against the present order within 15 calendar days of its notification pursuant to Art. 73. 2 (a) UPCA and R.220 (c) RoP.

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY

The next step requires the Applicants to file the Statement of Defence within the time period prescribed by the Rules of Procedure.

ORDER

Issued on 17 February 2026

NAME AND SIGNATURE

Florence Butin
President of the UPC Court of First Instance

FLORENCE
ANNE BUTIN Signé numériquement par
FLORENCE ANNE BUTIN
Date : 2026.02.17
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