



Appeal No.:
UPC_COA_1/2026

ORDER
of the Court of Appeal of the Unified Patent
Court issued on 30 April 2026

APPELLANTS (DEFENDANTS AT FIRST INSTANCE)

1. **Adobe Inc.**, 345 Park Avenue, CA 95110-2704, San Jose, United States
2. **Adobe Systems Software Ireland Limited**, 4-6 Riverwalk, Citywest Business Campus, Saggart, D24DCWO, Dublin 24, Ireland

(hereinafter referred to as 'the Adobe companies')

represented by Mr Thomas Cuhe, Avocat, Duclos, Thorne, Mollet-Viéville & Associés, Paris, France, and Mr Andreas Kramer, Rechtsanwalt, Powell Gilbert LLP, Düsseldorf, Germany

RESPONDENT (PLAINTIFF BEFORE THE COURT OF FIRST INSTANCE)

KEEEX SAS, 5 rue de Lissandre, 13013 Marseille, France

(hereinafter referred to as 'Keeex')

represented by Mr Thibaud Lelong, Solicitor, Fidal, Schiltigheim, France

PATENT IN DISPUTE

EP 2 949 070

PANEL AND DECIDING JUDGES

Klaus Grabinski, President of the Court of Appeal
Nathalie Sabotier, legally qualified judge and judge-rapporteur
Bart van den Broek, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

French

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Paris Local Division of 19 December 2025
- Case number assigned by the Court of First Instance:
UPC_CFI_530/2025

STATEMENT OF FACTS AND CLAIMS OF THE PARTIES

1. On 17 June 2025, Keeex brought an infringement action based on patent EP 2 949 070 against Adobe Inc. (1), Adobe Systems Software Ireland Limited (2), OpenAI LP (3), Open AI OpCo LLC (4), Open AI Ireland LTD (5), Truepic Inc. (6), Joint Development Foundation Projects LLC (7) and Coalition for Content Provenance and Authenticity (8), before the Paris Local Division of the Unified Patent Court (the Paris Local Division).
2. On 13 November 2025, the Adobe companies requested that Keeex provide security for costs and other recoverable expenses in the amount of €5,000,000 or, failing that, €2,500,000 or, failing that, €1,500,000, in the form of a deposit or a bank guarantee.
3. By an order dated 19 December 2025 (the contested order), the Paris Local Division ordered Keeex to provide security for the legal costs incurred by the Adobe companies in the form of a bank guarantee issued by a bank authorised in the European Union in the amount of €50,000.
4. On 2 January 2026, the Adobe companies lodged an appeal against this order.
5. In their statement of grounds of appeal dated 31 December 2025, received via the CMS on 2 January 2026, the Adobe companies request that the Court of Appeal:
 - set aside the contested order in so far as it set the amount of the security at €50,000 for the Adobe companies;
 - order Keeex to provide security for the legal costs and other expenses incurred or to be incurred by the Adobe companies in the proceedings within fifteen days of notification of the decision, or alternatively within a period to be specified and, in any event, before the oral hearing;
 - set the security to be provided at the maximum authorised amount for recoverable costs and other expenses at €5,000,000, or failing that, at 50% of that maximum authorised amount, i.e. €2,500,000, or failing that, at 30% of that maximum authorised amount, i.e. €1,500,000;
 - order that this sum be provided in the form of a cash deposit, or failing that, by means of a bank guarantee.
6. In its statement of defence dated 23 January 2026, Keeex asks the Court of Appeal to:
 - uphold the contested order in so far as it set the amount of the security at €50,000 for Adobe;
 - dismiss all of Adobe's claims.
7. The hearing before the Court of Appeal was held by videoconference on 11 March 2026.
8. By a procedural order dated 31 March 2026, the Court of Appeal requested the parties' submissions on the admissibility of the appeal.
9. In written submissions dated 6 April 2026, the Adobe companies ask the Court of Appeal to:
 - to declare their appeal admissible,
 - declare that the 15-day period provided for in Rule 220.2 of the RoP has not yet commenced,

- in the alternative, should the Court of Appeal declare their appeal inadmissible, grant the Adobe companies a period within which to file an application for leave to appeal to the Court of First Instance, or a motion for discretionary review, as the case may be,
- in the further alternative, restore the Adobe companies' right to seek leave to appeal in accordance with Rule 320 RoP.

10. By submissions dated 10 April 2026, Keeex, for its part, requests the Court of Appeal to declare the appeal brought by the Adobe companies against the order of 19 December 2025 inadmissible, in the absence of prior leave to appeal in accordance with Rule 220.2 of the RoP, and to dismiss all of their claims (principal and subsidiary) and, in particular, not to grant Adobe leave to appeal against the contested order.

ARGUMENTS OF THE PARTIES

11. As regards the admissibility of their appeal, the Adobe companies first argue that the contested order, in so far as it refers to Rule 220.1 of the RoP, must be interpreted as directly authorising the appeal, that is to say, without prior authorisation or other conditions, and that, within the particularly short 15-day period allotted to them by the Rules of Procedure, they chose the most reasonable course of action, which was to follow the instructions in the order. They add that this interpretation is all the more reasonable given that it had also been accepted by Keeex in its initial statement of defence and that the potential inadmissibility of the appeal would constitute a decision *ultra petita* by the Court of Appeal.

12. The Adobe companies further argue that it would be inequitable and, consequently, contrary to the preamble to the Rules of Procedure, for the error of the court of first instance to prejudice them, as well as Keeex, since, if a new application for security were to be filed, additional costs would have to be borne by that company. The Adobe companies also argue that an appeal against an order granting security for costs at the same time as the final judgment or judgment on the merits would be entirely irrelevant. The Adobe companies point out that both German and French courts apply a reasonable principle whereby appeals lodged out of time are deemed admissible where there has been an erroneous reference to a judgment or order.

13. As regards the substance of their appeal, the Adobe companies emphasise that the contested order rightly recognises the need for security for costs, but that the amount set falls far short of covering the costs incurred in their defence against the highly aggressive action brought by Keeex. The Adobe companies add that the amount of the security should be set at the ceiling for recoverable costs, increased to €5,000,000 to take account of the complexity of the case, or, at the very least, set at 30% of that sum. The Adobe companies request, in any event, a significant increase in the amount that Keeex has been asked to provide as security for costs, pointing out that the Court of Appeal has already had occasion to rule that the defendant's financial position compared to that of the claimant is not a relevant criterion for the application of the provisions of Rule 158 of the RoP, contrary to the view taken here by the Paris Local Division.

14. Keeex, for its part, contends that the appeal is inadmissible, as the Adobe companies did not seek leave to appeal from the court of first instance prior to bringing the matter before the Court of Appeal, in accordance with Rule 220.2 of the RoP. It adds that there is no

doubt that, pursuant to R. 158.3 RoP and the relevant case law, the contested order falls within the scope of R. 220.2 RoP and that the order's reference to an inapplicable provision cannot in any circumstances render the present appeal admissible, nor constitute authorisation to appeal. Keeex states that the principle of procedural fairness cannot have the effect of preventing the application of known rules of procedure pursuing a legitimate objective, whereas the national case law cited by Adobe has the effect of postponing the starting point of the appeal and not of admitting the admissibility of an irregular appeal.

15. On the merits of the appeal, Keeex contends that the Adobe companies are merely seeking to impose an excessive and disproportionate security on it, which is incompatible with the principles governing proceedings before the UPC, as set out in the Preamble to the Rules of Procedure. Keeex adds that the Adobe companies have not substantiated the costs incurred in support of their claim amounting to €5,000,000, noting that, in any event, costs incurred in defending itself before the UPC are recoverable only if they are reasonable and proportionate.

GROUNDINGS FOR THE ORDER

16. In accordance with Rule 158.3 of the RoP, the order for security for costs states that an appeal may be lodged in accordance with Article 73 of the UPCA and Rule 220.2 of the RoP. Under these provisions, such orders may either be appealed in conjunction with the appeal against the decision, or be appealed with the leave of the Court of First Instance.
17. It follows from these provisions that the leave to appeal referred to in Rule 220.2, except in the case of an appeal lodged jointly with the appeal against the decision, must be expressly granted by the Court of First Instance and that such leave cannot be presumed.
18. Furthermore, it is for the Court of Appeal to examine of its own motion whether the time limits and rules applicable to the appeal have been complied with (see, for example, R.229 RoP).
19. In this regard, the Court of Appeal has already had occasion to clarify that where the Court of First Instance has merely stated, in general terms at the end of the operative part of the contested order, that the said order 'is subject to appeal under the conditions laid down in the provisions of Rule 220.2 of the RoP merely refers, for information purposes, in accordance with the 'model order' available on the UPC website, to the applicable provisions of the RoP, without expressly authorising the parties to appeal against its order (order of 9 October 2024, UPC_CoA_586/2024, *Suinno Mobile v. Microsoft*, para. 14; order of 15 October 2024, UPC_CoA_01/2024, *Photon Wave v. Seoul Viosys*, para. 9; Order of 12 May 2025, UPC_CoA_328/2024, *Ballinno v. Kinexon*, para. 33; Order of 4 February 2026, UPC_CoA_930/2025, *EOFlow v. Insulet*, para. 22).
20. In the absence of leave to appeal granted by the Court of First Instance, an immediate appeal, irrespective of the final decision, is inadmissible (see, for example, order of 14 March 2024, UPC_CoA_5/2024, *Abbott v Dexcom*).
21. The strict application of the rules governing the procedures for appeal, as set out in the Rules of Procedure, meets the requirement for legal certainty and the need to avoid any

discrimination or arbitrary treatment in the administration of justice (see on this point the order of 26 April 2024, UPC_CoA_500/2023, AIM v Supponor, para. 17 and the case law cited).

22. The Court of Appeal has already accepted a departure from the strict application of the rules on time limits for appeals in cases where an ambiguity arising from a combined reading of Article 62 UPCA and Rules 220.1(c) and 224.1(b) of the RoP, combined with incorrect, or at least incomplete, information provided by the Court of First Instance, had led the appellant to believe that a two-month time limit applied for appealing a decision ruling on both interim measures and permanent injunctions, when in reality he had only 15 days to appeal the interim measures (Order of 26 April 2024, UPC_CoA_500/2023, AIM v Supponor, Headnote). It is not, however, necessary to determine whether other exceptional circumstances would justify a departure from the strict application of the Rules of Procedure in the event of an excusable error, in so far as no inexcusable error has been demonstrated here.
23. Indeed, in the *present* case, the operative part of the contested order contains the following sentence: *'Holds that this decision is subject to appeal pursuant to Rule 220.1 of the RoP.'*
24. As Adobe points out, the contested order therefore contains incorrect information regarding the rules applicable to the appeal. In accordance with Rule 158.3 of the RoP and the relevant case law of this Court, orders for security for costs fall under Rule 220.2 of the RoP and not Rule 220.1, as the Paris Local Division incorrectly stated.
25. The Adobe companies were nevertheless fully aware (and should have been aware) that the contested order was vitiated by an error regarding the terms of the appeal, since they themselves stated, on page 6 of their statement of grounds of appeal, that *"The appeal against the order is admissible in accordance with Art. 73(2) UPCA and R. 220.2 RoP (R. 220.1 appearing to have been cited in error in the order)"*. Thus, even before the expiry of the time limit for appeal, the Adobe companies identified that the reference to R. 220.1 was incorrect and that R. 220.2 should have been cited. As noted above in paragraphs 17 and 19, the mere mention of this provision in a decision, without express leave to appeal, as in the present case, cannot be regarded as leave to appeal within the meaning of Rule 220.2 of the RoP. The Adobe companies nevertheless immediately lodged an appeal against the order without first seeking leave from the Paris Local Division in accordance with R. 220.2. Contrary to their contention, the Adobe companies could and should have sought leave to appeal within the time limit prescribed by the Rules of Procedure.
26. It follows from the foregoing that the Court of Appeal can only conclude that the Adobe companies, which were aware of the erroneous nature of the reference to the applicable appeal procedures, as established by this clarification added to their notice of appeal, were not, in this instance, the victims of any confusion attributable to the court. The initiation of the appeal proceedings without first complying with the provisions of R. 220.2 RoP must therefore be regarded as attributable to them and not as an excusable error.
27. Furthermore, the Court of Appeal sees no exceptional circumstances here comparable to those which led to the aforementioned order of 26 April 2024 (UPC_CoA_500/2023, AIM v Supponor).

28. The appeal must therefore be declared inadmissible on the grounds that the appellants failed to apply, within the prescribed time limit, for leave to appeal against the contested order.
29. Given that the appeal is inadmissible and in the absence of any excusable error on the part of the Adobe companies, the Court of Appeal is unable, and sees no reason, to extend the time limit for filing an application to allow the appeal or to carry out a 'discretionary review' as requested by the Adobe companies.
30. As previously held in paragraph 27 of this order, the Adobe companies have not demonstrated the existence of any exceptional circumstances that would justify a referral of the case back to the Court of First Instance to seek leave to appeal (order of 29 July 2024, UPC_CoA_1/2024, Hanshow Technology v VusionGroup; see also order of 30 March 2026, UPC_CoA_302/2025, Rematec v Europe Forestry).
31. Nor is there any reason to grant Adobe's application for *restitutio in integrum* pursuant to Rule 320 of the RoP. It cannot be accepted that the failure to meet the 15-day time limit could be regarded as being due to a cause which, "despite all due diligence", was "beyond the control" of Adobe. As noted above, the Adobe companies identified the error made by the Paris Local Division regarding the appeal procedure and have not provided a convincing explanation for their decision not to apply the Rules of Procedure at that time. Moreover, the Adobe companies may still appeal against the contested order under Rule 220(2), and the fact that an immediate appeal is preferable, as they maintain, and is no longer possible is, in this instance, the result of their procedural conduct.
32. Finally, the request by the Adobe companies to reopen the oral proceedings must be rejected. Having sought their written comments, it does not appear necessary to hear the parties on the question of the admissibility of the appeal during an oral hearing. It is recalled that the admissibility of the appeal is, in principle, a matter for the formal examination of the notice of appeal (see, for example, Rule 229 of the RoP). For this very reason, when ruling on the admissibility of the appeal, an order does not rule *ultra petita*.
33. For the sake of completeness, the Court of Appeal considers it useful to point out that the relative financial situation of the claimant compared to that of the defendant does not constitute a criterion within the meaning of Rule 158 of the RoP. This is all the more so where the low level of funding for the action results from a deliberate decision by the claimant (order of 17 September 2024, UPC_CoA_219/2024, Audi v NST). It is also noted that, should they succeed in the main action, the Adobe companies would then be entitled to recover reasonable and proportionate legal costs (R.152.1 and R.152.2 RoP), the ceiling for which is set by the "Schedule of Recoverable Costs" of 24 April 2023. According to the Schedule, where the value of the claim exceeds €50,000,000, the cap on recoverable costs is €2,000,000. If the conditions are met, a security should be set in accordance with this scale and the ceiling for recoverable costs, weighted in light of the relevant circumstances of the present case (such as, on the one hand, the fact, alleged by Keeex, that it is an SME, and, on the other hand, the potential synergy between the four defence teams in this case).

FOR THESE REASONS,

The appeal is dismissed as being wholly inadmissible.

Delivered in Luxembourg, 30 April 2026

**KLAUS
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Grabinski** Digitally signed
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Klaus Grabinski, President of the Court of Appeal

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Nathalie Sabotier, Legally Qualified Judge and Reporting Judge

**Bartholomeus
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