



UPC Court of Appeal

UPC_CoA_35/2026

Order
of the Court of Appeal of the Unified Patent Court
issued on 8 May 2026
request for a discretionary review (R. 220.3 RoP)

APPELLANTS (DEFENDANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. **ADOBE INC.**, San Jose, United States
2. **ADOBE SYSTEMS SOFTWARE IRELAND LIMITED**, Dublin, Ireland

(hereinafter 'Appellants')

represented by Thomas Cuche, attorney-at-law, Duclos, Thorne, Mollet-Viéville & Associés, Paris, France

RESPONDENT (CLAIMANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

KEEEX SAS, Marseille, France

(hereinafter 'Respondent')

represented by Thibaud Lelong, attorney-at-law, Fidal, Schiltigheim, France

DEFENDANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

1. **OPENAI OPCO LLC**, San Francisco, United States
2. **OPEN AI IRELAND LTD**, Dublin, Ireland

represented by David Por, attorney-at-law, CLIFFORD CHANCE, Paris, France

3. **TRUEPIC INC.**, San Diego, United States

represented by Benjamin May, attorney-at-law, Cabinet JEANTET, Paris, France

4. **JOINT DEVELOPMENT FOUNDATION PROJECTS LLC**, San Francisco, United States
5. **COALITION FOR CONTENT PROVENANCE AND AUTHENTICITY**, Dover, United States

represented by Philippe Cepl, Rechtsanwalt, DLA PIPER, Cologne, Allemagne

PATENT AT ISSUE

EP 2 949 070

DECIDING JUDGE

This order has been adopted by Ulrike Voß as standing judge.

LANGUAGE OF THE PROCEEDINGS

French

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Local Division Paris of 10 February 2026
- Reference number:
UPC_CFI_530/2025

SUMMARY OF FACTS

1. On 14 June 2025, the Respondent brought an infringement action before the Paris Local Division against the Appellants based on patent EP 2 949 070 (hereinafter ‘patent at issue’).
2. In the context of this infringement action, the Appellants filed a request on 17 December 2025 pursuant to R. 334(h) RoP seeking the dismissal of:

“all claims set out in the statement of claim in so far as the claims, statements and relief sought relate to the alleged infringement of the national parts of the patent asserted in States not party to the Agreement on a Unified Patent Court (UPC), and in particular in Ireland, Norway, Poland, Spain, Switzerland and the United Kingdom, by means of an order made pursuant to Rule 334(h) of the UPC Rules of Procedure (RdP);”.
3. In the alternative, the Appellants filed a request to grant leave to appeal.
4. By order of 6 January 2026, the Judge-rapporteur dismissed the request and the alternative request for leave to appeal. Following an application pursuant to R. 333 RoP, by order of 10 February 2026 (the impugned order), the Panel, on the one hand, ordered “the dismissal of the application seeking to review the order of 6 January 2026” and, on the other hand, noted that the impugned order “is subject to appeal under the conditions laid down in Rule 220.2 of the Rules of Procedure”.
5. The Appellants filed a request for discretionary review on 24 February 2026 in accordance with R. 220.3 RoP.
6. In the opinion of the Appellants, the Court of First Instance should have granted leave to appeal as the questions raised have not been decided by the Court of Appeal yet and are of general importance. The Appellants are of the opinion that the Court of Appeal should allow the appeal to provide guidance for the Court of First Instance also for other cases and for ensuring uniform application of R. 334(h) RoP. The Appellants further argue that the impugned order is erroneous and need to be set aside upon appeal and substituted by an order of the Court of Appeal granting Appellants request for dismissal of claims.
7. The Respondent requests to dismiss the request for discretionary review and appeal. In its view, the impugned order is correct and must be confirmed.

8. On 18 March 2026, the standing judge invited the Appellants to indicate whether there remained a legitimate interest in having this case heard by the Court of Appeal, following the issuance of the order in the cases concerning the patent at issue by the Court of Appeal on 13 March 2026 (UPC_CoA_922/2025, UPC_CoA_923/2025, UPC_CoA_924/2025 and UPC_CoA_925/2025).
9. In their submission, the Appellants state that, whilst the Court of Appeal upheld in the mentioned cases the defendants' preliminary objection, set aside the impugned orders and held that the UPC lacks jurisdiction to rule on the alleged infringements of the Swiss, Spanish, British, Irish, Norwegian and Polish parts of the patent in question, the Court of Appeal did not, however, formally dismiss the claims made in respect of those territories. In view of this, the Appellants consider that it is relevant for them, and litigants in general, to know what the consequences are of the total absence of any factual or legal grounds for a claim set out in the Statement of claim, irrespective of the question of the Court's lack of jurisdiction. Furthermore, Appellants state that in the present case, the Local Division remains seized of claims relating to those parts of the patent at issue for which the Court of Appeal has declared the UPC to lack jurisdiction.
10. Consequently, the Appellants request to rule on the application for summary dismissal of the claims set out in the Statement of claim, which, in their view, have no prospect of success and are doomed to fail, in accordance with R. 334(h) and 361 RoP.

GROUNDS FOR THE ORDER

11. The admissible request for discretionary review according to R. 220.3 RoP is unfounded.

Admissibility

12. The request for discretionary review is admissible. In particular, the Paris Local Division did not allow an appeal. Although the Appellants had requested that leave to appeal is granted, the operative part of the impugned order merely notes that the order is subject to appeal under the conditions laid down in R. 220.2 RoP. This is merely a general note which refers, for information purposes, in accordance with the "template order" available on the UPC website, to the applicable Rules of Procedures. However, this is not (as requested) explicitly permitting the parties to appeal the order (UPC_CoA_586/2024, Order 9 October 2024 – Suinno v. Microsoft; UPC_CoA_1/2024, Order 15 October 2024 – Photon Wave v. Seoul Viosys; UPC_CoA_328/2024, Order 12 May 2025 – Ballinno v. Kinexon; UPC_CoA_930/2025, Order 4 February 2026 – EOFlow v. Insulet; UPC_CoA_1/2026, Order of 30 April 2026 – Adobe v. KEEEX). Thus, the formal requirements are met, and the impugned order can be reviewed by way of discretionary review according to R. 220.3 RoP.

Merits

13. When deciding whether to allow a discretionary review of an impugned order, it is particularly important to consider whether the impugned order of the Court of First Instance is manifestly incorrect and whether the impugned order raises a fundamental question of law, that its review is necessary to ensure a consistent application and interpretation of the Rules of Procedure or any other objective of the discretionary review (CoA, UPC_CoA_489/2024,

Order 6 September 2024 – Motorola v. Ericsson; CoA, UPC_CoA_805/2025, Order 1 September 2025 – Centripetal v. Keysight). In view of this, appeal should not be allowed.

14. Irrespective of whether the impugned order is correct, the Appellants' request has since become moot. The fundamental legal question underlying the request has been clarified by the Court of Appeal in its order of 13 March 2026 in the proceedings UPC_CoA_922/2025, UPC_CoA_923/2025, UPC_CoA_924/2025 and UPC_CoA_925/2025. The Court of Appeal ruled that, where the UPC has jurisdiction on the basis of Article 7(2) of Regulation 1215/2012 as the court of the place where the damages occurred or threaten to occur, said article does not provide jurisdiction for infringement in non-member states of the UPC. The order of the Court of Appeal, which was handed down in proceedings between the parties and concerning the patent at issue, conclusively settles the legal issue or question. The Appellants also accept this. In any event, they do not demonstrate any further need for clarification of the legal question concerned.
15. The interests cited by the Appellants are equally insufficient grounds for granting leave to appeal.
16. It is true that the claims relating to non-member states of the UPC were not formally dismissed by the Court of Appeal in the order mentioned above. Nevertheless, the implication of the order is clear. As the UPC has no jurisdiction, the Court has to declare that it is not competent to hear the case. There is no indication whatsoever that the Paris Local Division will not apply the Court of Appeal's order. Nor have the Appellants put forward any arguments to the contrary. Reference should also be made to Article 75(2) of the UPCA, the principle of which is also applicable in a situation such as the present one. Apart from that, it would merely be a matter for the Court of First Instance to correctly apply the Court of Appeal's case law in this specific instance, rather than being a fundamental legal question of general significance.
17. As far as the Appellants refer to the necessity for a uniform application of R. 334(h) RoP, this argument also fails. Their request for a review of discretion does not suggest that various divisions of the Court of First Instance take fundamentally different approaches when exercising their respective discretion. Nor does their request contain any evidence to suggest that the Paris Local Division fundamentally misunderstood or misapplied the requirements for a decision under R. 334(h) RoP. Furthermore, it has not been argued that, following the issuance of the order by the Court of Appeal, a further application under R. 334(h) RoP was submitted to the Paris Local Division.

ORDER

The request for discretionary review is dismissed.

This order was issued on 8 May 2026

Ulrike Voß, standing judge