



Paris Local Division

UPC_CFI_530/2025
Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 1 June 2026
Concerning the application for review of an order (Rule 333 RoP)

Claimant in the main proceedings

KEEEX SAS

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- MARSEILLE - FR

Represented by Thibaud Lelong

DEFENDANTS in the main proceedings

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PATENT AT ISSUE

<i>Patent number</i>	<i>Patent holder(s)</i>
EP2949070	KEEEX SAS

JUDGE RULING

COMPOSITION OF THE CHAMBER – CHAMBER SITTING IN PLENARY SESSION

President and Reporting
Judge Legally qualified Judge
Legally qualified Judge
Technically qualified judge

Camille Lignieres
Carine Gillet
Peter Tochtermann
Alessandro Sanchini

LANGUAGE OF THE PROCEEDINGS: French

ORDER

In the context of an infringement action brought by KEEEX, the reporting judge issued an order dated 24 April 2026 dismissing the defendants’ applications for a declaration of inadmissibility or for the summary dismissal of KEEEX’s claim for an advance on damages set out in its reply of 5 March.

By application dated 5 May 2026, the defendants ADOBE (Defendants 1 and 2) sought a review of the order of 24 April 2026 in accordance with Rule 333 of the RoP, in the following terms:

I. To declare inadmissible the alleged 'claims for provisional damages' raised by the claimant for the first time in its reply of 5 March 2026 (breach of a procedural undertaking and Rules 13(k) and 263 of the RoP)

II. In the alternative:

a. Order the claimant to withdraw from these proceedings its alleged 'claims for provisional damages', raised in its reply of 5 March 2025 (Rule 9.1 of the RoP); or

b. Exclude from the proceedings on the merits any consideration of the Claimant's alleged 'claims for provisional compensation

' from the proceedings on the merits (Rule 334(f) of the RoP);

III. In the very alternative:

Dismiss summarily the alleged 'claims for provisional damages' as set out in the reply of 5 March 2025 (Rule 334(h) RoP).

- as a further alternative to claims I, II and/or III, grant leave to appeal.

The other defendants, who were invited by the reporting judge via a Court comment posted on CMS, did not submit their views on ADOBE's application for review within the time limit granted to them by the reporting judge.

KEEEX filed its response to the application for review on 20 May 2026, in accordance with the reporting judge's instructions, and requests that all the claims made by ADOBE in its application for review be dismissed.

GROUND

On the inadmissibility of KEEEX's claim for payment of an advance

ADOBE, in arguing that KEEEX's claim for payment of an advance set out in its reply of 5 March 2026 is inadmissible, reiterates the arguments set out in its initial application before the reporting judge, contending that this claim for an advance is belated and contrary to KEEEX's waiver of any financial compensation. ADOBE adds that KEEEX is attempting to gain an unfair procedural advantage by forcing the loss of a round of submissions and requiring a reply to this request for an advance within a short timeframe. According to ADOBE, KEEEX should have mentioned the request for an advance in its first introductory statement of case.

Finally, ADOBE contends that this is not a genuine application for an advance on costs given its amount (120 million euros), and that the application is in any event unsubstantiated.

ADOBE points out, in light of the contested order, that the request for an advance on damages runs counter to the objective sought by the procedural agreement between the parties, formalised by the order of the reporting judge of 8 September 2025, which stated that KEEEX had agreed to waive any financial compensation during the first phase of the proceedings prior to the decision on the merits.

In its response, KEEEX seeks confirmation of the order of 24 April 2026 on the grounds set out by the reporting judge. KEEEX points out that the reporting judge is best placed to interpret his own procedural order and that the claimant cannot be criticised for not having made a request for interim relief in his first statement of case, given that he had sought an award of damages and subsequently waived this claim following a procedural agreement reached at a later stage.

On the inadmissibility of the application for an interim award due to a breach of the procedural agreement:

The panel notes, as the reporting judge observed in the contested order, that in the order of 8 September 2025, issued following a pre-trial conference attended by all the parties' representatives, it was acknowledged that, should the alleged infringement be established in the final decision on the merits, damages would be determined in separate proceedings in accordance with Rule 125 of the RoP, but that the possibility for the claimant in the main proceedings to make a claim for provisional damages had not been ruled out.

On the contrary, the order of 8 September 2025 expressly states that the claimant in the main proceedings is free to make a provisional claim for damages.

It follows that ADOBE cannot therefore validly argue that KEEEX's provisional claim should be declared inadmissible on the grounds that it contravenes the procedural protocol set out in the order made by the reporting judge on 8 September.

The panel will not accept ADOBE's argument that, given the size of the sum claimed (120 million euros), the claim cannot be classified as provisional and that it in fact constitutes a misuse of the protocol's intended purpose. Indeed, on the one hand, it is not the amount sought that determines the provisional nature of a claim for payment and, on the other hand, the sum claimed on a provisional basis corresponds to a small percentage of the amount initially claimed by KEEEX for the purposes of determining damages in its statement of claim (namely more than 7 billion euros).

The panel therefore rejects ADOBE's arguments seeking to have KEEEX's provisional claim declared inadmissible on the grounds that it contravenes the procedural protocol agreed between the parties.

On the late submission of the provisional claim:

Nor can KEEEX legitimately be criticised for not having sought this provisional award at the time of filing its statement of claim, in accordance with the 'front-loaded' procedural principle. Indeed, it was precisely following Adobe's waiver of its claim for a definitive award of damages, and after it had agreed that such an award should only be made following the decision on the merits through separate proceedings, as provided for in the rules of procedure (Rule 125 and seq. of the RoP) that KEEEX made its application for an advance payment in accordance with Rule 119 of the RoP in its subsequent pleading, namely in its response to the intervener's statement of defence, as provided for in the procedural timetable dated 5 March 2026.

Furthermore, there is no evidence of an unfair procedural imbalance in favour of KEEEX, since the defendants, as the reporting judge rightly noted in the contested order, were informed as early as the order of 8 September 2025 of the possibility for KEEEX to apply for an interim payment. Furthermore, the defendants were able to respond to this application for an advance on costs in their latest statement of 5 May 2026 (see ADOBE's Rejoinder, section 6.2, pages 169 to 186). Finally,

the panel notes that the applicant will have the opportunity, in accordance with Rule 36 of the RoP, to request a further round of submissions on the issue of the interim payment, and the reporting judge will then assess the need to grant it before closing the written proceedings.

For these reasons, the panel rejects the argument that the application for interim relief is inadmissible on the grounds of being out of time (Rule 9.2 of the RoP).

On the summary rejection of the application for interim relief (Rule 334(f) and (h) of the RoP: complete lack of justification and no prospect of success

In view of the above, the panel considers that there is no justification for the reporting judge to exclude the application for interim relief on the basis of Rule 334(f) of the RoP at this stage of the proceedings.

The panel is of the view that a summary dismissal under Rule 334(h) of the application for an interim order provided for by

Rule 119 of the RoP is not appropriate at this stage of the proceedings, as it is not clear that this application would be entirely doomed to failure. Indeed, KEEEX sets out arguments and evidence in support of its application, devoting several pages to this in its submission of 5 March 2026 (see reply of 5 March 2026: pages 262–271). It will be for the panel to assess whether this evidence and these arguments are sufficiently substantiated to consider awarding, at least in part, a provisional sum should the infringement be established in the forthcoming decision on the merits.

For these reasons, the panel dismisses the application for review of the contested order in its entirety.

On leave to appeal

ADOBE requests that, in any event, leave to appeal be granted in accordance with Rule 220.2 of the RoP be granted in this order, in order to ensure the consistent application and interpretation of the rules of procedure by all divisions of the UPC.

However, as KEEEX rightly points out, the main issue addressed in this order concerns the interpretation of a procedural protocol by the reporting judge, which is a factual matter specific to the present dispute. The panel does not consider that this issue has a direct and obvious impact on the harmonisation of the application of procedural rules within the UPC.

Therefore, granting leave to file an appeal against this order at this stage does not appear appropriate in the present case and will not be granted.

ON THESE GROUNDS, having heard the parties, the panel orders:

- **that the application seeking to review the order of 24 April 2026 be dismissed,**
- **that the application seeking leave to file an appeal against this order for review at this stage be dismissed.**

Delivered in Paris, on 1 June 2026.

Camille Lignieres, Chair and Reporting Judge

Date:
Camille Lignieres 1 June 2026
22:52:26 +02'00'

Carine Gillet, legally qualified judge

1 June 2026
Carine Gillet 11:26:52
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Peter Tochtermann, legally qualified judge

Peter Michael Dr.
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Alessandro Sanchini, technically qualified judge

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INFORMATION ON APPEALS: this order is subject to appeal in accordance with the conditions set out in Rule 220.2 of the RoP.

DETAILS OF THE ORDER

UPC No.: UPC_CFI_530/2025

Type of proceedings: Infringement proceedings

Type of application: application for review (Rule 333 of the
RoP) Date of the order: 1 June 2026