



Paris Local Division

**UPC\_CFI\_530/2025**  
**Procedural Order**  
**of the Court of First Instance of the Unified Patent Court,**  
**issued on 25 June 2026**  
**Concerning Rules 9.2, 36 and 263 of the RoP**

APPLICANT

**KEEEX SAS**

(Parties to the main proceedings –  
Applicant) – 5 rue de Lissandre – 13013 –  
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Represented by Thibaud Lelong

DEFENDANTS

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Represented by Thomas Cuche

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**OPEN AI IRELAND LTD**

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Represented by David Por

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Represented by Benjamin May

**JOINT DEVELOPMENT FOUNDATION PROJECTS LLC**

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DISPUTED PATENT

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

JUDGE RULING ON THE CASE

President and judge-rapporteur

**Camille Lignieres**

LANGUAGE OF THE PROCEEDINGS: French

ORDER

In the context of the written proceedings in the infringement action brought by KEEEX against OPEN AI, ADOBE, TRUEPIC and JOINT Development Foundation Projects on the basis of its patent EP' 070, the claimant filed a statement of case dated 5 June 2026 corresponding to Rule 29.e and R. 32.3 RoP.

By application dated 11 June 2026, OPENAI requested that certain elements and exhibits in support of the statement of 5 June 2026 be excluded from the proceedings by declaring them inadmissible on the basis of Rule 336 of the RoP read in conjunction with Rule 334 of the RoP.

The other defendants filed applications seeking the same or similar relief on 12 June 2026.

At the request of OPENAI, supported by the other defendants, the judge-rapporteur organised an online pre-trial conference on 23 June 2026 to discuss matters relating to these motions to dismiss, in particular the new application for amendment of its patent based on Rule 30.2 of the RoP, filed by KEEEX in its statement of 5 June 2026.

In its application of 11 June 2026, OPENAI requests that the judge-rapporteur:

I.

To declare inadmissible and exclude from the proceedings the arguments put forward by KEEEX in its Rejoinder filed in connection with the counterclaim for invalidity, as well as in its Reply filed in the proceedings relating to the application to amend the patent in dispute, as identified in Annex 1;

II.

To declare inadmissible and exclude from the proceedings Exhibits 37 and 43.1 to 43.22 produced in support of the said Statement of Case;

III.

To declare inadmissible and exclude from the proceedings the new application for amendment of the patent based on Rule 30.2 of the RoP;

IV.

In the event that requests I. to III. are not granted, to grant the Defendants OpenAI a reasonable period of time to respond substantively to these arguments and/or requests, by means of a further exchange of pleadings pursuant to Rule 36 of the RoP.

In its response of 13 June 2026, KEEEX replies that:

-The Defendants' Pleadings of 5 May 2026 contain new material — comprising both newly produced documents and previously unraised legal arguments — to which the Claimant had not yet had the opportunity to respond within the procedural timetable,

-These elements were identified and addressed in the Statement of Case filed on 5 June 2026 to the extent possible. However, as taking full account of them might exceed the scope of the permitted exchanges, the Claimant has announced that it will, in parallel, serve this reasoned application based on Rule 36 of the RoP, for the purpose of being authorised to produce a supplementary response focusing on these new elements.

The Claimant announced this course of action in its Statement of 5 June 2026 in accordance with the duty of procedural fairness.

In particular, according to KEEEX, the Respondents have, amongst other things, included in their Pleadings:

- preliminary observations relating, in particular, to an alleged breach of the 'front-loaded' principle and to the Claimant's alleged misrepresentation of the pre-litigation and litigation periods;

- further prior art identified following new searches of the state of the art conducted after the proceedings were instituted, which could therefore not have been anticipated or addressed in the Claimant's Statement of Rejoinder;

- arguments challenging the measures sought, in particular the permanent injunction and the claim for provisional damages (raised in the Claimant's Reply in accordance with the procedural timetable set by the Court). The Defendants have, in particular, produced economic reports drawn up by third parties appointed for that purpose, which the Claimant was only able to examine upon receipt of the opposing pleadings;
- claims for provisional reimbursement of costs incurred by the Defendants (both in respect of costs relating to the counterclaims for nullity and in respect of the infringement proceedings);
- requests for the provision of security in the event of provisional enforcement and monetary awards.

Furthermore, it should be emphasised that the arguments relating to the application for amendment of the patent are directly and inextricably linked to the infringement claims, such that the Claimant was necessarily required to supplement its arguments regarding its infringement claim. These adjustments stem from a necessity inherent in the coherence of the Claimant's arguments.

KEEEX requests the Court to:

- Dismiss the application by OPEN AI dated 11 June 2026 seeking the dismissal of certain arguments and exhibits submitted by KEEEX and the new subsidiary claims filed (Rules 29(e), 30(2) and 32(3) of the RoP).
- Dismiss the application by the US-based company Joint Development Foundation Projects LLC and the organisation Coalition for Content Provenance and Authenticity dated 12 June 2026 seeking the dismissal of certain arguments and exhibits submitted by KEEEX and the new subsidiary applications filed (Rules 29(e), 30(2) and 32(3) of the RoP).
- Declare admissible the arguments and documents submitted by KEEEX in its Statement of 5 June 2026;
- Declare admissible the request for amendment of the patent based on Rule 30(2) of the RoP;

Should certain submissions be declared inadmissible by the Court:

- To authorise, pursuant to Rule 36 of the RoP, the filing of a supplementary statement of case;
- Set a reasonable time limit for its filing.

In its application of 12 June 2026, TRUEPIC makes the following specific request:

DECLARE inadmissible and dismiss the new infringement claims brought by KEEEX in respect of the 'Truepic Lens' and 'Truepic Display script' products on the basis of Rule 263 of the RoP.

In its application of 12 June 2026, ADOBE joins OPENAI's requests, specifying that exhibits Nos. 34 to 36, 39 to 40 and 42 to 43, relating to inadmissible arguments in the statement of case provided for under Rule 32.3, should be excluded from the proceedings; And with regard to the rejection of the new application for amendment, the corresponding exhibits, namely Nos. 41.1 to 41.11 (on Rule 30.2), should therefore be excluded from the proceedings.

In its application of 12 June 2026, JOINT Development Foundation Projects made claims identical to those of OPENAI. These claims were presented orally by the parties' representatives during the pre-trial conference held on 23 June 2026 via videoconference. On that occasion, the parties confirmed the positions set out in their applications and answered the reporting judge's questions on the matters raised.

## **GROUNDINGS**

### **On the inadmissibility of the alleged late submissions**

According to OPENAI, whose arguments are supported by all its co-defendants, all evidence relating to infringement that has not been expressly authorised must be excluded (Section IV: Infringement), as must Section IV on the relief sought. OPENAI asserts that this evidence consists either of a repetition of the same arguments or of responses to specific arguments. The claimant cites, in particular, section IV.4.1.1.1. (pp. 64–66), which responds to a specific argument by OpenAI concerning the reproduction of the 'identification fingerprint' feature as interpreted by the claimant in the context of the amended claims, but which relates to matters that are not new.

#### KEEEX's position:

Section IV on infringement either summarises the arguments it has already set out, or addresses new arguments put forward by the defendants to which it must respond, as in:

- Section IV.4.4, which concerns infringement by the TRUEPIC\_DISPLAY script. Whilst this issue has already been raised in previous submissions, it is of particular gravity in that it relates to the free distribution of infringing content, which justifies its further elaboration on an exceptional basis.
- Section IV.6, which responds to the objections of non-infringement raised in the applications under Rule 30
  1. RoP, raised for the first time in the opposing party's pleadings of 5 May 2026.
- Sections IV.7 to IV.11 also address new objections raised by the opposing parties on various legal and procedural aspects.

The judge-rapporteur notes that the statement of 5 June 2026 filed by KEEEX complies with Rule 29(e) in fine. This rule provides that, with regard to the issue of the patent's validity, this statement of case must be limited to a response to the issues raised in the reply of 5 May 2026 filed by the defendants in the main proceedings concerning their counterclaim for the invalidity of the patent in question. The rules of procedure do not provide, at this stage of the proceedings, for the development of arguments on infringement, as it is the defendant in the main action who must have the final say in the infringement proceedings brought by the claimant against him.

### **Regarding the part of the contested statement of defence concerning validity**

The judge-rapporteur must examine whether the new arguments and supporting documents put forward by KEEEX regarding the validity of its patent constitute a response to the issues raised in the defendants' previous statement of defence.

Exhibit 37 (entitled 'Certificate from Mr Quisquater dated 4 June 2026') is one of the new exhibits in the statement of 5 June 2026, the inadmissibility of which is sought. This exhibit is first cited in

Section III.3.4 on the distinction between ‘fingerprint’ and ‘signature’ and forms part, in particular, of the arguments in response to paragraph 185 of OPENAI’s statement of 5 May 2026. This new Exhibit 37 and KEEEX’s arguments relating to it on page 30 of the statement of case therefore comply with the requirements of Rule 29e in fine and will be admitted to the proceedings.

KEEEX is also entitled to respond, in its statement of 5 June 2026, to the new prior art introduced into the proceedings by OPENAI and ADOBE (Exhibit DMV4.10) on 5 May 2026 to challenge the validity of KEEEX’s patent. This prior art was introduced following KEEEX’s initial request for amendment, which resulted in a limitation of the scope of protection through the deletion of claim

15. The written exchanges between the parties on this issue must therefore cease at this stage of the proceedings, since KEEEX is defending against the challenge to the validity of the patent.

#### **Regarding the part of the contested statement of case relating to infringement (including the measures)**

As regards the arguments and evidence relating to the issue of infringement put forward at this stage of the proceedings, authorisation under Rule 36 of the RoP must be obtained from the judge-rapporteur, who will grant it if compliance with the principle of adversarial proceedings and the right to a fair trial so requires. In the context of authorisation under Rule 36 of the RoP, the defendants retain the right to respond last in a subsequent set of written submissions.

The judge-rapporteur is not convinced of the need for KEEEX to respond once again to the arguments put forward by the defendants on the issue of whether infringement has taken place, as the matters discussed in the defence submissions of 5 May 2026 are not new. The situation is, however, different with regard to the arguments put forward in response to OPENAI’s submission concerning the reproduction of the ‘identification fingerprint’ features in the context of amended claims pursuant to Rule 30.1 of the RoP (sections IV.1.1.1 and IV.2.2, pages 64–66 and 69–70).

Finally, regarding the measures sought in support of the infringement claim, the defendants have produced two new exhibits: the economic reports by Accuracy (commissioned by ADOBE) and Oxera (commissioned by OPENAI). The principle of adversarial proceedings therefore justifies KEEEX being allowed to comment on them, as it did on pages 89 to 99 of its submission of 5 June. Consequently, the defendants will be granted the opportunity to respond one final time on this specific point, in a separate section entitled ‘supplementary submissions granted under Rule 36 of the RoP’, to be included in their final statement of case due on 6 July.

As for the new exhibits submitted by KEEEX in its statement of 5 June 2026, entitled ‘Tables 43.1 to 43.22’, these are summaries of the arguments regarding infringement by features of the claims in question. These tables will be taken into account in the proceedings, with the defendants being given the opportunity to comment on them in their statement of 6 July 2026 (in a section dedicated to ‘R. 36 RoP

”). Indeed, this is a summary presentation of KEEEX’s arguments on this subject, which may be useful to the court and the parties in accordance with the principle of procedural efficiency. There is no provision requiring the claimant to present its arguments regarding the features of the claims in question in the form of so-called ‘claim charts’ at the outset of the written proceedings.

Consequently, Sections IV and V of KEEEX’s statement of 5 June 2026, which deal with infringement and remedies, shall be declared inadmissible on the grounds of late submission and shall therefore be excluded from the proceedings in accordance with Rule 9.2 of the RoP, with the exception of:

- the tables in Exhibits 43.1 to 43.22, together with their presentation on page 61 of the contested statement of case (Sections IV.2 and IV.3),

- the response to an argument put forward by OPENAI regarding the reproduction of 'identification mark' features in the context of amended claims pursuant to Rule 30.1 of the RoP on pages 64–66 and 69–70 (sections IV.1.1 and IV.2.2) of the contested brief,
- as well as pages 89 to 99 of the contested submission (sections V2.2.1 and 2.2.2) concerning KEEEX's comments on the economic reports produced by ADOBE and OPENAI.

### **On the further amendment to the patent (Rule 30.2 of the RoP)**

#### **Legal framework**

##### -Rule 30 RoP – Right to bring a counterclaim for invalidity

R. 30.2: Any subsequent application to amend the patent is admissible only if authorised by the Court.

##### -UPC case law on R. 30.2 RoP

CoA, 25 November 2025, Meril v Edwards, UPC\_CoA\_464/2024, 457/2024, 458/2024, 530/2024, 532/2024, 533/2024, 21/2025, 27/2025; Headnotes 2. "Under Rule 49.2 of the Rules of Procedure, the defence to revocation may include an application to amend the patent. Pursuant to Rule 50.2 in conjunction with Rule

30.2 of the Rules of Procedure, a subsequent request to amend the patent may only be admitted into the proceedings with the permission of the Court. When deciding on a subsequent request to amend the patent, the Court must take into account all the relevant circumstances of the case, including whether the party seeking the subsequent amendment is able to justify that (i) the amendment in question could not have been made with reasonable diligence at an earlier stage, and (ii) the amendment will not unreasonably hinder the other party in the conduct of the proceedings. The Court of First Instance has a margin of discretion in this respect. The Court of Appeal's review is therefore limited."

Mannheim LD, 27 June 2024, Panasonic v OPPO, UPC\_CFI\_210/2023]: "Rule 30.2 of the Rules of Procedure is a strict rule of preclusion which permits subsequent applications to amend the patent only with the court's permission. Such applications must be substantiated in detail. When assessing whether a new amendment is permitted, it will be important to consider whether the new amendment would have been necessary at an earlier stage in response to the invalidity claimant's arguments and whether the late request for amendment causes delays in the proceedings."

Milan LD, 17 September 2024, Oerlikon v Himson, UPC\_CFI\_240/2023: "Rule 30.2 of the Rules of Procedure is of an exceptional nature and therefore applies restrictively, as it is intended to prevent the patent proprietor, by successively filing several amendments, from depriving the opponent of the opportunity to respond in a timely manner and the Court of the possibility to appropriately examine the requests (see Panasonic Holdings Corporation v Xiaomi Technology Germany GmbH et al., CFI\_219/2023). Furthermore, it aims to prevent an unnecessary prolongation of the proceedings, which would be contrary to the objective of resolving the case swiftly and efficiently."

#### **In the present case**

In its submission of 5 March 2026 pursuant to Rule 30.1 of the RoP, KEEEX included a request to amend the patent comprising a main claim and alternative sets of claims (known as 'subsidiary claims').

In the contested statement of 5 June 2026, KEEEX sought authorisation to file a further amendment in accordance with Rule 30.2 of the RoP, comprising a new main claim and 11 subsidiary claims.

All the defendants oppose this, arguing that this subsequent request does not satisfy the conditions established by the case law on this subject.

KEEEX maintains that its new application for amendment should be authorised, putting forward essentially the following arguments:

- This new application is a direct response to the defendants' criticisms in their written submissions of 5 May 2026 regarding the initial application for amendment, in particular their contention that the latter is inadmissible due to the deletion of uncontested claim 15 in the counterclaim for invalidity and the amendment to the description of the patent in question. This new application under Rule 30.2 is justified as it arises directly from the course of the adversarial proceedings.

- There would be no 'hindrance' to the conduct of the defence by the opposing parties because:

- the first and eleventh subsidiary claims under Rule 30.2 of the RoP do not comprise a new set of claims.

- the other subsidiary claims under Rule 30.2 of the RoP, whilst introducing 'new sets of claims, are based on combinations of claims already filed under Rule 30(1) RoP, and whose validity and infringement have already been discussed.

In light of the UPC's case law on Rule 30.2 RoP, the judge-rapporteur notes that a subsequent request to amend the patent cannot be justified solely by the desire to respond to the criticisms raised by the defendants against the initial request for amendment. On the contrary, the authorisation of such a request presupposes the existence of objective circumstances explaining why the applicant was unable to submit this amendment at an earlier stage.

In the present case, the criticisms raised by the defendants could have been anticipated in light of the applicable provisions and the established case-law of the UPC on the admissibility of a request to amend a patent. There is nothing in the file to suggest that the amendments now proposed could not have been submitted as early as 5 March 2026, as part of the statement of case relating to this application in accordance with Rule 30 of the RoP.

The grounds put forward by KEEEX to justify their subsequent request made in the statement of 5 June are not relevant, and the application under Rule 30.2 will not be granted.

### **Regarding the infringement claim relating to the new TRUEPIC products ('Truepic Lens' and 'Script Truepic Display')**

#### **TRUEPIC's arguments:**

TRUEPIC requests that the addition of the products 'TRUEPIC LENS' and 'Script TRUEPIC DISPLAY' to the infringement claim be declared inadmissible, given that only the 'TRUEPIC software' was included in the initial claim. This would constitute an amendment to the claim within the meaning of Rule 263 of the RoP, the authorisation of which would not be justified at this late stage of the proceedings.

KEEEX's position:

Section IV.4.3 stems from the admission made by TRUEPIC for the first time in its most recent response, namely that TRUEPIC LENS is software that generates infringing files. KEEEX therefore considers that this new claim is not out of time.

The judge-rapporteur notes, as TRUEPIC pointed out, that these products were already listed in the reports of findings produced by the claimant in support of its statement of claim (KEEEX exhibits 7.4 and 7.6).

Having regard to TRUEPIC's statement of 5 May 2026 (page 138), the judge-rapporteur does not interpret this as an admission that the said products infringe the patent in question, but rather as a statement that these products were not among those covered by the initial infringement claim.

In view of these factors, the addition, at this stage of the proceedings, of these allegedly infringing products is not justified, is late and must therefore be declared inadmissible.

For the same reasons, there is no justification for granting a further round of written submissions on this point under Rule 36 of the RoP. Indeed, the inclusion of these new products constitutes an amendment to the claim within the meaning of Rule 263 of the RoP. However, the judge-rapporteur considers that this amendment is too late to be permitted at the stage of the claimant's final statement of case. It would place a disproportionate burden on TRUEPIC to adapt its defence.

**On these grounds, the judge-rapporteur:**

- Rejects KEEEX's application for a further amendment to the patent in question under Rule 30.2 of the RoP,
- Holds that the addition of the products 'Truepic Lens' and 'Script Truepic Display', referred to in KEEEX's infringement claim, constitutes an amendment to the claim within the meaning of Rule 263 of the RoP, which is not admissible,
- Declares inadmissible as out of time, and excludes from the proceedings in accordance with Rule 9.2 of the RoP, all elements and new documents contained in Sections V 'Infringement' and VI 'Measures' of the statement of 5 June 2026, with the exception of the following elements, which are admissible on the basis of Rule 36 of the RoP:
  - the tables in Exhibits 43.1 to 43.22, together with their presentation on page 61 of the contested statement of case (sections IV.2 and IV.3),
  - the response to an argument put forward by OPENAI regarding the reproduction of the 'identification fingerprint' features in the context of amended claims pursuant to Rule 30.1 of the RoP on pages 64–66 and 69–70 (sections IV.1.1 and IV.2.2) of the contested statement of case,
  - pages 89 to 99 of the contested submission (sections V2.2.1 and 2.2.2) concerning KEEEX's comments on the economic reports produced by ADOBE and OPENAI.
- Rejects the other applications for inadmissibility, in particular the one concerning KEEEX's new Exhibit 37 and relating to material contained in sections other than IV and V of the submission dated 5 June 2026,
- Orders that, pursuant to Rule 36 of the RoP, the defendants may respond, in a specific section of their next and final statement of case to be filed on 6 July 2026 (as provided for in Rule 32.3 in fine of the RoP), to the following specific points:

- the tables in Exhibits 43.1 to 43.22, together with their presentation on page 61 of the contested statement of case (sections IV.2 and IV.3),
- the response to an argument put forward by OPENAI regarding the reproduction of 'identification fingerprint' characteristics in the context of amended claims pursuant to Rule 30.1 of the RoP on pages 64–66 and 69–70 (sections IV.1.1 and IV.2.2) of the brief under review,
- the arguments on pages 89 to 99 of the contested submission (sections V2.2.1 and 2.2.2) concerning KEEEX's comments on the economic reports produced by ADOBE and OPENAI.
- KEEEX's new Exhibit 37 on the distinction between 'footprint' and 'signature' and its commentary on page 30 of the contested submission.

Delivered in Paris, 25 June 2026.

C. Lignières, judge-rapporteur.

 Date: 25 June 2026  
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**Information on the appeal: *this order is subject to review in accordance with the procedures laid down in Rule 333 of the RoP.***

DETAILS OF THE ORDER

UPC No.: UPC\_CFI\_530/2025

Type of proceedings: Infringement proceedings

Type of application: procedural motions (R.9.2, R.36, R. 263 RoP) Date of the order: 25/06/2026