



Appeal No.

UPC-CoA-95/2026

Order
of the Court of Appeal of the Unified Patent Court
delivered on 10 July 2026
concerning an application for discretionary review (Rule 220.3 RoP)

APPLICANTS (DEFENDANTS 1) AND 2) BEFORE THE COURT OF FIRST INSTANCE)

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

(hereinafter referred to as '**the Applicants**')

represented by Mr Thomas Cuche, Barrister at the Paris Bar, Duclos, Thorne, Mollet-Viéville & Associés, Paris, France

RESPONDENT (CLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

KEEEX SAS, Marseille, France

(hereinafter referred to as '**the Respondent**')

represented by Mr Thibaud Lelong, a member of the Strasbourg Bar, Fidal, Schiltigheim, France

DEFENDANTS 3) TO 7) BEFORE THE COURT OF FIRST INSTANCE

3. **OPENAI OPCO LLC**, San Francisco, United States
4. **OPENAI IRELAND LTD**, Dublin, Ireland

represented by Mr David Por, a member of the Paris Bar, Clifford Chance, Paris, France

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

represented by Mr Benjamin May, a member of the Paris Bar, at Jeantet, Paris, France

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

represented by Mr Philipp Cepl, Rechtsanwalt, Herbert Smith Freehills Kramer LLP, Düsseldorf, Germany

(Defendants 3) to 7) in the proceedings before the Court of First Instance, hereinafter referred to as '**Defendants 3–7**')

PATENT IN DISPUTE

EP 2 949 070

JUDGE HEARING THE CASE

This order was made by Bart van den Broek, standing judge.

LANGUAGE OF THE PROCEEDINGS

French

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- ☐ Decision of the Paris Local Division of 1 June 2026
- ☐ Case number assigned by the Court of First Instance: UPC_CFI_530/2025

SUMMARY OF THE FACTS

1. On 17 June 2025, the Respondent brought an infringement action relating to the patent at issue (**"the patent"**) against the Applicants and Defendants 3–7 before the Paris Local Division (**"LD"** or **"Paris LD"**).
2. In its statement of claim (**"Statement of Claim"**), the Respondent sought, *inter alia*, the payment of damages amounting to 5.622802 billion euros as compensation for the pecuniary loss it allegedly suffered as a result of the infringement of the patent in question, as well as 1 billion euros as compensation for the non-pecuniary loss it allegedly suffered as a result of said infringement.
3. As stated in the order of the reporting judge of the Paris Commercial Court dated 8 September 2025 (**"Procedural Order"**), at the pre-trial conference on 5 September 2025, the Respondent agreed, *"with regard to damages"*, to seek a determination of the amount of financial compensation in separate proceedings, in accordance with Rule 125 of the RoP, and to set out this request in its next set of written submissions. The Procedural Order further specifies that, in view of the foregoing, discussion of *the "exceptionally high financial stakes"* in the infringement proceedings *"is limited to any application for an advance on costs"*.
4. Subsequently, on 30 December 2025, the Applicants filed their defence and counterclaim for a declaration of invalidity (**"Defence and Counterclaim"**). In view of the Respondent's undertaking to withdraw the claim for damages from the infringement proceedings, the Applicants did not address the substance of that claim. The Applicants did, however, confirm in their Statement of Defence and Counterclaim that the Procedural Order specified *"that the discussion concerning damages is limited to the possible claim for interim payment (..)"*.
5. On 5 March 2026, the Respondent filed its reply to the defence and counterclaim for invalidity, together with its application for amendment of the patent (**"Reply"**). In the Reply, the Respondent withdrew its claim for damages and made a claim for an advance on damages pursuant to Rule 119 of the RoP, in the amount of 100 million euros as compensation for the pecuniary loss it allegedly suffered

as a result of the infringement of the patent in question, as well as €20 million as compensation for the non-pecuniary loss it allegedly suffered as a result of that infringement.

6. On 27 March 2026, the Applicants and Defendants 3–7 requested the Reporting Judge to declare inadmissible, pursuant to Rules 13(k) and 263 of the RoP, the application for an advance on damages made by the Respondent, or, in the alternative, to order the Respondent to withdraw that application from the proceedings pursuant to Rule 9.1 of the RoP, or to exclude it from consideration on the merits in accordance with Rule 334(f) of the RoP, or, in the further alternative, to dismiss summarily the application for an advance on damages in accordance with Rule 334(h) of the RoP.
7. On 24 April 2026, the reporting judge issued an order in which she dismissed the claims of the Claimants and Defendants 3–7 (**“the Reporting Judge’s Order”**).
8. On 5 May 2026, the Claimants filed their rejoinder to the reply to the statement of defence, in reply to the statement of defence and in support of their counterclaim for invalidity and their defence against the application to amend the patent (**“Rejoinder”**). In the Reply, the Applicants responded to the request for a provisional award of damages set out in the Rejoinder and produced an economic report prepared by an external firm, Accuracy, to support their response (**“Accuracy Report”**).
9. Also on 5 May 2026, the Applicants filed an application for review of the Junior Registrar’s order pursuant to Rule 333 of the RoP.
10. On 20 May 2026, the Respondent filed its reply to the Applicants’ application for review by the Chamber.
11. Defendants 3–7 did not file an application for review under Rule 333 of the RoP and did not submit any observations on the application for review filed by the Applicants.
12. On 1 June 2026, the Paris DL Chamber issued an order (**“Contested Order”**)¹ by which it dismissed the Applicants’ application seeking a review of the JR Order and refused to grant leave to appeal.
13. On 5 June 2026, the Respondent filed its rejoinder to the reply to the statement of defence and counterclaim for invalidity, and a reply to the statement of defence in respect of the application for amendment of the patent (**“Reply to the Counterclaim”**). In this Rejoinder to the counterclaim, the Respondent responded to the observations made by the Applicants in their Reply concerning the application for a provisional award of damages, as well as to the Accuracy Report.
14. On 15 June 2026, the Applicants filed an application for discretionary review pursuant to Rule 220.3 of the RoP concerning the contested order.
15. On 2 July 2026, following an invitation from the standing judge, the Respondent filed a reply to the Applicants’ application for discretionary review.

¹ Although Rule 333.5 of the RoP refers to this document as a “decision”, the Court of Appeal will follow the terminology used by the DL and use the term “Contested Order”.

16. On 6 July 2026, the Applicants filed their rejoinder to the reply to the defence to the application to amend the patent (**"Rejoinder to the application to amend the patent"**). In their Duplicates to the application to amend the patent, the Applicants also responded to the Respondent's observations concerning the Accuracy Report set out in the Rejoinder to the counterclaim, which had been admitted by the reporting judge in his order of 25 June 2026 pursuant to Rule 36 of the RoP.

CLAIMS OF THE PARTIES

17. The Applicants request that:

1. the discretionary review of the contested Order be authorised, in accordance with Rules 220.3 and 220.4 of the RoP;
2. the appeal against the contested Order be authorised;
3. the appeal against the contested order be assigned to a division of the Court of Appeal for determination, in accordance with Rule 220.4 of the RoP;
4. the contested order and the order of the Justice of the Peace be reviewed;
5. the Chamber of the Court of Appeal issues a revised order granting the Applicants' following claims seeking to:
 - I. Declare inadmissible the alleged 'claims for provisional damages' raised by the Respondent for the first time in its Reply (breach of a procedural undertaking and Rules 13(k) and 263 of the RoP)
 - II. In the alternative:
 - a. Order the Respondent to withdraw from the infringement proceedings its alleged 'claims for provisional damages', raised in its Reply (Rule 9.1 of the RoP); or
 - b. Exclude from the proceedings on the merits any consideration of the Respondent's alleged 'claims for provisional damages' (Rule 334(f) of the RoP), without prejudice to any separate proceedings for damages under Rules 125 et seq. of the RoP, should such proceedings become relevant;
 - III. In the very alternative:
 - a. Dismiss summarily the alleged 'claims for provisional damages' as set out in the Reply of 5 March 2026 (Rule 334(h) RoP).
 - b. as a further alternative, refer the case back to the Paris District Court, instructing it to rule on the issues of admissibility and exclusion by applying Rules 13.1(k), 119, 125, 263, 334(f) and 334(h) of the RoP, in accordance with the guidance of the Court of Appeal;
 - IV. In any event:
 - a. Order the Respondent to bear the costs of the application for discretionary review and the subsequent appeal.

18. The Respondent requests the Court of Appeal to:

- dismiss the Applicants' application for discretionary review;
- dismiss all of the Applicants' principal, alternative and further alternative claims;
- order the Applicants to bear the costs of the application for discretionary review.

SUMMARY OF THE PARTIES' ARGUMENTS

19. The Applicants contend that the 'claim for provisional damages', raised for the first time by the Respondent in its Reply, is in fact a claim for damages (reduced). In this regard, the inclusion of this claim in the Reply Brief constitutes a breach of the undertaking given by the Respondent at the pre-trial conference on 5 September 2025 to withdraw its claim for damages from the infringement proceedings. In any event, according to the Applicants, the inclusion of this claim in the Reply is out of time, as it could and should have been filed earlier in the proceedings. By raising the claim for provisional damages for the first time in the Reply, the Applicants' procedural position is compromised.

20. The Applicants argue that, by rejecting the application for review, the contested Order raises a number of fundamental legal questions concerning the relationship between Rules 9.1, 13.1(k), 36, 119, 125, 263, 334(f) and (h) of the RoP, as well as being manifestly erroneous. This would justify the Applicants' application for discretionary review, as well as any subsequent appeal. In particular, according to the Applicants, the contested Order raises the following issues:

- (i) the application of Rules 119 and 125 of the RoP, and more specifically the question of whether a claimant who has undertaken to withdraw its claim for damages from the infringement proceedings may nevertheless reintroduce a claim for 120 million euros, characterising it as a claim for an advance on damages within the meaning of Rule 119 of the RoP.
- (ii) the application of Rules 13(k), 119 and 263 of the RoP, and more specifically the question of whether a claimant may, for the first time in its reply, submit a claim for an advance on damages without having to formally seek the authorisation provided for in Rule 263 of the RoP, particularly where such a claim runs counter to an undertaking between the parties recorded in the case file.
- (iii) the application of Rules 119 and 334(h) of the RoP, in particular, the extent to which a claimant seeking an advance on damages may refrain from specifically substantiating their claim, and in particular may simply request a lump sum, regardless of the amount.
- (iv) the application of Rules 9.1, 36 and 119 of the RoP, in particular as regards the time limit within which a claimant may submit a claim for an advance on damages in the amount of 120 million euros, without such a claim being deemed to be out of time.
- (v) the application of Rules 119, 334(f) and 334(h) of the RoP, in particular as regards the extent to which the filing of an application for an advance on damages obliges the parties and the Court to examine it in proceedings from which such damages have been deliberately excluded.

21. According to the Applicants, these issues are not limited to the specific facts of the case, but raise broader questions regarding the functioning of the UPC and the conduct of infringement proceedings.
22. The Respondent argues that the issues raised by the Applicants do not constitute fundamental questions of law, but are essentially factual in nature and closely linked to the specific circumstances of the present case. The issues raised would therefore have no direct and manifest impact on the uniform interpretation or harmonisation of the Rules of Procedure.
23. Furthermore, the Respondent submits that the contested Order is not manifestly erroneous. According to the Respondent, the Paris District Court correctly concluded that the undertaking given by the Respondent at the pre-trial conference on 5 September 2025 did not constitute a waiver of any form of financial compensation in these proceedings. In particular, the procedural order does not preclude the submission of a claim for provisional damages, which must be distinguished from the claim for damages that the defendant withdrew from its reply. Furthermore, according to the Respondent, the DL was correct in deciding that the inclusion of the claim for provisional damages in the Rejoinder was not out of time. The deadline was in accordance with the procedural timetable and did not prejudice the Applicants' position, as they were still able (and had in fact been able) to defend themselves fully against that claim. Finally, the Respondent submits that the DL was correct to reject the Applicants' application for the summary dismissal of the claim. According to the Respondent, the claim for provisional damages is sufficiently substantiated and must be examined on its merits by the Court.

REASONS FOR THE ORDER

24. The application for discretionary review is admissible but is dismissed.
25. When deciding whether to grant a discretionary review of a contested order, it is particularly important to consider whether the contested order of the Court of First Instance is manifestly erroneous and whether the contested order raises a fundamental point of law, such that its review is necessary to ensure the consistent application and interpretation of the RoP or to achieve any other objective of discretionary review (CA, UPC_CoA_489/2024, 6 September 2024, *Motorola v Ericsson*, para. 4; CA, UPC_CoA_805/2025, 1 September 2025, *Centripetal v Keysight*, paras. 8 and 11).
26. The Court of Appeal agrees with the Respondent that the contested Order does not raise any fundamental questions of law. The points raised by the Applicants all relate to the facts of the case and have no bearing on the application or consistent interpretation of the RoP. Nor is the contested Order manifestly erroneous.
27. Firstly, the District Court held that the undertaking given by the Respondent at the pre-trial conference on 5 September 2025 did not constitute a waiver of any form of financial compensation in the present proceedings. This decision is not manifestly wrong. In view of the wording of the procedural order, the Respondent's statement that it would seek '*the determination of the amount of financial compensation*' in separate proceedings was clearly made with reference to the 'damages' claimed in the Statement of Claim. This wording did not preclude the possibility of applying for an advance

for damages in accordance with Rule 119 of the RoP, a possibility which was even explicitly mentioned in the Order on Procedure (*'the discussion is limited to the possible application for an advance on damages'*), as confirmed by the Applicants in their Statement of Defence and Counterclaim.

28. In the contested Order, the DL further rejected the Applicants' argument that the application made to obtain an advance on damages was in fact identical to the claim for damages which the Respondent had undertaken to withdraw. Nor is this decision manifestly erroneous. As the Respondent set out in its Reply, the claim brought related only to a provisional amount of damages, the final amount of which would be determined in separate proceedings. The fact that the amount claimed of 120 million euros is high in absolute terms does not alter its provisional nature or the fact that only a portion of the final damages is being claimed. The same applies to the fact that the Respondent supported its application for an advance on damages by referring (also) to the facts set out in the Statement of Claim in support of its claim for (final) damages. The Respondent rightly points out that, in both cases, the same set of facts is at issue. However, this does not transform the application for an interim award of damages into a claim for final damages.
29. The DL's decision that the application for an interim award of damages had not been filed too late is equally understandable. As stated in the Procedural Order, the Respondent had agreed to formally withdraw its claim for damages "*in its next submission*", thereby leaving open, in that same order, the possibility for it to file a claim for provisional damages at a later stage. In light of these statements, it was not unreasonable for the Respondent to do both at the same time in the Reply, which was, in fact, its first submission following the pre-trial conference. The Court of Appeal agrees with the DL that this did not unreasonably prejudice the Applicants' position. The Applicants were aware of the Respondent's allegations concerning the damages allegedly suffered, as set out in the Statement of Claim, and had known, since the pre-trial conference, that the Respondent might still apply for an advance on damages. Furthermore, after the Respondent had in fact filed that application, the Applicants had ample opportunity to defend themselves against the Respondent's allegations, first in their Reply, and then, following authorisation by the reporting judge under Rule 36 of the RoP, in their Reply to the application for amendment of the patent.
30. In this regard, the Court of Appeal does not share the Appellants' view that the reporting judge disregarded the formalities laid down in Rule 263 of the RoP. The Division confirmed the reporting judge's decision that authorisation to file the application for a security for damages was already provided for in the procedural order. Furthermore, in its Reply, the Respondent explained that the application for an advance on damages had been filed at this stage of the proceedings in view of the withdrawal of its claim for (final) damages, as agreed at the pre-trial conference. In these circumstances, having regard in particular to the content of the Procedural Order and the information already available to the Applicants in the Statement of Claim, it was not manifestly wrong of the DL to accept the inclusion of the claim for provisional damages in the Reply and to reject the arguments raised by the Applicants in this regard. On several occasions following the submission of this claim, the Applicants argued, first before the

and then before the Chamber, that they nevertheless considered the Respondent's claim to have been filed too late, and explained why. The fact that the Reporting Judge and the Chamber did not share the Applicants' view on this point does not render the contested Order manifestly erroneous.

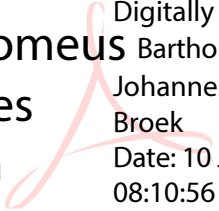
31. Finally, the DL dismissed the Applicants' application for the summary dismissal of the application for an interim order. Nor is this decision manifestly erroneous. Both parties have set out, in their written submissions, the reasons why their position is the correct one. It is now for the court to rule on the merits of this issue.

ON THESE GROUNDS

The application for discretionary review is dismissed.

This order was made on 10 July 2026.

Bartholomeus
Johannes
van den
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Bart van den Broek, standing judge