

Procedural Order

In application of R. 263.2 RoP and R. 30 RoP
In application of R. 295 (a) and (m) RoP
of the Court of First Instance of the Unified Patent Court
Issued on 17 August 2026
Concerning EP 3 732 827

HEADNOTES

1. Granting an application to change or amend the case cannot be allowed if the amendment could have been foreseen from the outset of the proceedings. Granting such an application later in the proceedings would mean allowing the applicant to change its strategy.
2. That the applicant of an application to change or amend the case (in particular, requesting to allow new auxiliary requests to align them with proceedings before the EPO) may have to initiate new UPC proceedings, taking into consideration the auxiliary requests introduced before the Opposition Division or Board of Appeal of the EPO but not allowed by the Court (UPC), might indeed be the case. The fact that the applicant itself did not abide by the principles of procedural efficiency cannot be invoked by that same applicant as a reason to allow to change or amend the case, taking into consideration the stage of the proceedings.
3. The applicant of an application to change or amend the case (in particular requesting to allow new auxiliary requests in the proceedings) must convince the Court of the “*connection*” between the changes to be made in the auxiliary requests and the specific arguments of the Defendant regarding the invalidity of the Patent.

KEYWORDS

- Leave to change claim or amend case (R. 263.1 and 2 RoP)
- Application to amend the patent (R. 30 RoP)
- Interplay between UPC-proceedings and EPO-proceedings

APPLICANT R. 263 RoP AND R. 30.2 RoP APPLICATION

RESPONDENT (CONDITIONAL) R. 295(A) RoP AND/OR R. 295(M) RoP APPLICATION

CLAIMANT INFRINGEMENT ACTION (UPC_CFI_806/2025)

DEFENDANT COUNTERCLAIM FOR REVOCATION (UPC_CFI_185/2026)

BARCO NV

Represented by:

Christian Dekoninck, Taylor Wessing N.V.,
Waterloolaan 16, 1000 Brussel, Belgium

Wim Maas, Taylor Wessing N.V., Kennedyplein
201, 5611 ZT Eindhoven, The Netherlands

Laura Coucke, Taylor Wessing N.V., Waterloolaan
16, 1000 Brussel, Belgium

Joseph Lenthall

“*Claimant*” or “*BARCO*”

Hereafter referred to as:

RESPONDENTS R. 263 RoP AND R. 30.2 RoP APPLICATION

APPLICANTS (CONDITIONAL) R. 295(a) RoP AND/OR R. 295(m) RoP APPLICATION

DEFENDANTS INFRINGEMENT ACTION (UPC CFI 806/2025)

CLAIMANTS COUNTERCLAIM FOR REVOCATION (UPC CFI 185/2026)

**(1) YEALINK (XIAMEN) NETWORK TECHNOLOGY
Co. Ltd.**

(2) YEALINK (EUROPE) NETWORK TECHNOLOGY BV

Represented by:

Ruud van der Velden, Hogan Lovells International
LLP, Strawinskylaan 4129 - 1077 ZX – Amsterdam,
The Netherlands

Stefan Dusault (Hogan Lovells International LLP)

Floris Patijn (Hogan Lovells International LLP)

Django Wagenaar (Hogan Lovells International LLP)

Dr. Martin Fährdrich Hogan Lovells International
LLP, Dreischeibenhäus 1, 40211 Düsseldorf, Germany
Together as YEALINK

Separately as YEALINK XIAMEN and YEALINK EUROPE

Co-Represented by

Hereafter referred to as:

PATENT AT ISSUE

Number	Proprietor(s)
EP 3 732 827	BARCO NV

LANGUAGE OF THE PROCEEDINGS:

English

SUBJECT MATTER:

Application R. 263 RoP and R. 30.2 RoP
(Conditional) Application R. 295(a) RoP or R. 295(m)
RoP

PANEL - LOCAL DIVISION

Presiding Judge – Judge-Rapporteur:

Samuel Granata

Legally Qualified Judge:

Petri Rinkinen

Legally Qualified Judge:

Mélanie Bessaud

Technically Qualified Judge:

Steven Richard Kitchen

DECIDING JUDGES:

Order issued by the panel

I. PROCEDURAL BACKGROUND

I.A. *Procedural Background (before the introduction of the “Application for Leave to Amend the Patent pursuant to Rules 30.2 and R. 263 RoP” (hereafter referred to as the “Application”)*

1. On 29 August 2025, BARCO initiated infringement proceedings before the UPC (LD Brussels), specifically filing a Statement of Claim (UPC_CFI_806/2025), which invoked claims 1, 6, 11, 12 and 13 of EP 3 732 827 B1 (hereafter referred to as the "Patent").
2. On 14 October 2025, the Court set out a procedural agenda in its procedural order (R. 9 RoP), considering the service issues to be resolved. The service date for all defendants was set for 17 October 2025.
3. On 17 March 2026, after the YEALINK submitted its Counterclaim for Revocation on 16 January 2026 (R. 25 RoP) seeking revocation of the invoked claims 1, 6, 11, 12 and 13, the Court decided, by a R. 37 RoP Order, to proceed with both the infringement (UPC_CFI_806/2025) and with the counterclaim for revocation (UPC_CFI_185/2026) actions in accordance with Art. 33(3)(a) UPCA.
4. On 19 March 2026, BARCO introduced a (conditional) Application to Amend the Patent (R. 29 RoP). In this submission BARCO requested claims 1, 6, 11, 12 and 13 of the Patent to be upheld as such or conditionally in accordance with one of the five introduced auxiliary requests (AR 1-5).
5. The Parties abided to the further procedural deadlines:
 - On 19 June 2026, BARCO submitted its Rejoinder to the Reply to the Defence to the Counterclaim (R. 29 RoP).
 - On 20 July 2026, YEALINK submitted its Rejoinder to the Defence to the Application to Amend the Patent (R. 32 RoP).
6. In application of R. 28 RoP, the Parties were informed that an interim conference would be organized on 8 September 2026 and the oral hearing on 3 November 2026.
7. On 4 August 2026, BARCO introduced its Application and this in view of the outcome of the first oral hearing in the EPO opposition proceedings held on 17 and 18 June 2026 (see §10).

I.B. *EPO Opposition Proceedings*

8. On 10 February 2025, before the introduction of the infringement action (UPC_CFI_806/2025), YEALINK XIAMEN filed a notice of opposition against the Patent with the Opposition Division (OD) of the EPO (accelerated proceedings). On 12 March 2025, YEALINK XIAMEN filed additional observations in these proceedings. Three other opponents have also

filed oppositions against the Patent. On 1 July 2025, also before initiating the infringement proceedings before the UPC, BARCO filed its response to the opposition together with 267 auxiliary requests.

9. On 13 November 2025, the OD provided its preliminary opinion according to which the Patent, as granted, lacks an inventive step based on (i) EP 3 099 009 A1 in combination with US 2008/0168118 A1 and (ii) EP 3 099 009 A1 (or equivalent documents US 2015/0121466 A1 and US 2015/0169477 A1) in combination with WO 2012/128972 A1 or US 2008/0071962 A1. Further, the OD deemed the auxiliary requests to be inadmissible in their “*present form*” and this due to the unclear order of requests and missing arguments, which made it doubtful whether they were actually submitted.
10. The Parties were summoned to an oral hearing organized on 17 and 18 June 2026, and a final date was set for written submissions and amendments on 17 April 2026.
11. On 7 April 2026, BARCO filed its submissions in preparation for the OD oral hearing. BARCO filed seven new auxiliary requests (AR PO1 – AR PO7) while explicitly maintain all previously submitted auxiliary requests. AR PO1 to AR PO5 corresponded to the auxiliary requests AR1 to AR5 introduced in the present UPC proceedings (see §4). AR PO6 and AR PO7 added further features from the description of the Patent but were not introduced before the UPC.
12. On 17 June 2026, the OD found that Claim 1 as granted lacked an inventive step. BARCO then seems to have chosen to defend the Patent at the remainder of the oral hearing not on the basis of any auxiliary requests on file in the opposition proceedings (including the first five which are also on file in the present proceedings) but on the basis of new auxiliary requests not previously filed either with the OD or in the UPC-proceedings. It is unclear to the Court whether the AR PO1 to AR PO5 were actually abandoned.
13. In one of these newly introduced auxiliary requests (AR PO-3D) before the OD, the additional limitation of AR PO3 (filed as AR3 in the UPC proceedings) was removed. AR PO-3D seems to be a combination of granted Claim 1 with granted Claims 8 and 9. Since Claim 9 as granted depends solely on Claim 8, Claim 1 of AR PO-3D corresponds to Claim 9 of the Patent. The introduction in the present UPC proceedings of AR PO-3D as AR6 is the main Application’s subject.
14. The OD seems to have considered that the removal of the subject-matter of AR PO3 (AR3 in the present UPC proceedings) removed the clarity issue. The OD considered that AR PO-3D did not constitute added matter, was sufficiently disclosed and was novel for the same reasons as the claims as granted. Some discussion on inventive step has also taken place, but the OD has not come to a final decision on inventive step. This will be dealt with at the oral hearing on 5 November 2026, see next paragraph.
15. On the last day of the oral hearing (18 June 2026), the OD seems to have scheduled further oral hearings to be held on 5 November 2026, i.e. two days after the oral hearing in the present UPC proceedings on 3 November 2026 (see §6).

16. Finally, the Court notes that, before the Application was submitted, YEALINK already asserted in its submissions submitted on 20 July 2026 (see §5) that BARCO's AR PO-3D is not relevant to the present UPC proceedings, as (i) BARCO did not file it, (ii) BARCO has not invoked the subject-matter of granted Claims 8 and 9 against YEALINK, and (iii) since these claims are not invoked the revocation claims have also not been directed at them.

I.C. *The Application and the Requests*

17. On 4 August 2026, BARCO introduced its Application, requesting the Court to:
- *grant permission pursuant to Rule 30.2 RoP for the filing of a subsequent application to amend the patent by admission of Auxiliary Request 6 annexed to this Application (see hereafter under §18);*
 - *admit Auxiliary Request 6 into these proceedings as an additional auxiliary claim set to be considered in the event that the patent as granted and the previously filed auxiliary requests are not upheld;*
 - *if the Court considers it necessary for reasons of procedural fairness, set a short period for the Defendant to comment specifically on Auxiliary Request 6;*
 - *take into account, in the alternative, that the Claimant may file the minutes of the EPO opposition hearing once issued, insofar as the Court considers formal documentary confirmation useful, without making such filing a precondition for deciding the present Application.*
18. Auxiliary Request 6 (hereafter referred to as "AR6"), as mentioned being the same auxiliary request introduced at the OD (EPO) as AR PO-3D, reads as follows:

Claim 1

A method for making one or more functional devices (90) in a meeting room available to a processing device (160) of a meeting participant via a first peripheral device (130), the one or more functional devices (90) being connected to a base unit (100) of a wireless communications network (127), the one or more functional devices (90) having one or more fixed or configurable Universal Serial Bus USB endpoints on the first peripheral device (130), an endpoint comprising a data source or a data sink, the processing device (160) having a memory, a display and an operating system (164), the base unit (100) comprising at least a transmitter and a digital processing engine, and wherein a first peripheral device (130) has a receiver, the method comprising:

coupling the first peripheral device (130) to the processing device (160) via a serial connection and the first peripheral device (130) communicating with the processing device (160) via a generic communications protocol over the serial connection;

exposing and making available the one or more functional devices (90) by the base unit (100) to the first peripheral device (130) by

exposing at least one of the one or more fixed or configurable endpoints of the one or more functional devices (90), by configuring one or more endpoints with descriptor fields, on the first peripheral device (130) to provide the functionality of the at least one of the one or more fixed or configurable endpoints of the one or more functional devices (90) to the processing device (160);

transmitting data from the one or more functional devices (90) to the base unit (100),

transmitting the data from the base unit (100) to the first peripheral device (130) over the wireless communications network (127), and

transmitting the data from the first peripheral device (130) to the processing device (160) via the one or more exposed fixed or configurable endpoints using the generic communications protocol for communication between the processing device (160) and the first peripheral device (130).

further comprising hosting a unified communication between two or more further processing devices on the processing device, the unified communication comprising an audio or audiovisual communication in which a protocol- or standard- defined or specific communication session or interaction is used by software that takes over audio and/or visual data from the processing device;
further comprising the first peripheral device presenting a functional device to the unified communication between the two or more processing devices.

Claim 8

~~The method according to any one of claims 1 to 7, further comprising hosting a unified communication between two or more further processing devices on the processing device, the unified communication comprising an audio or audiovisual communication in which a protocol or standard defined or specific communication session or interaction is used by software that takes over audio and/or visual data from the processing device~~

Claim 9

~~The method according to claim 8, further comprising the first peripheral device presenting a functional device to the unified communication between the two or more processing devices.~~

Claim 10-8

The method according to any of the claims 1 to **97**, wherein the functional devices are run with a vendor specific driver alone.

Claim 11-9

The method according to any of the claims 1 to **108**, wherein the generic communications protocol comprises a Universal Serial Bus, USB, protocol.

Claim 12-10

A system comprising a network adapted to carry out the method steps of any one of claims 1 to **119**.

Claim 13-11

A computer program product comprising instructions for carrying out the method of any one of claims 1 to **119** when the instructions are executed by a processing system.

19. By the Court's communication dated 5 August 2026, YEALINK was given the opportunity to comment on this Application, with the deadline for comments being 11 August 2026.

20. On 11 August 2026, the Court received the comments from YEALINK together with a (conditional and/or alternative) application for stay of proceedings pursuant to R. 296(a) RoP and/or R. 295(m) RoP. More specifically YEALINK requests as follows in its operative part:

In the name and on behalf of the Defendants, we respectfully request that the Court, to the extent immediately enforceable:

- (i) dismiss BARCO's Application for permission to file a subsequent Application to Amend the Patent pursuant to Rules 30.2 and 263 RoP;*
- (ii) refuse to admit Auxiliary Request 6 into the proceedings (main proceedings and counterclaim proceedings);*
- (iii) or at least refuse to admit Auxiliary Request 6 in the main proceedings;*

In the alternative, should the Court nevertheless grant Barco permission to file Auxiliary Request 6 in the main proceedings and/or the counterclaim proceedings, YEALINK respectfully requests that the Court:

- (iv) refer the decision or order permitting BARCO to file Auxiliary Request 6 to the Panel for review pursuant to Rules 102.2 and 333 RoP and should the Panel uphold that decision or order, grant Yealink leave to appeal pursuant to Rule 220.2 RoP;*
- (v) stay the present proceedings pending review by the Panel and any subsequent decision of the UPC Court of Appeal;*
- (vi) stay the present proceedings until the European Patent Office has issued a final, non-appealable decision in the pending opposition proceedings;*
- (vii) upon the resumption or continuation of the proceedings, grant parties an opportunity to comment on (any of) the above decision(s) and the implications for the present proceedings before any further procedural steps are taken;*
- (viii) ensure that YEALINK will be provided with an opportunity to respond to Auxiliary Request 6 in line with the normal submissions and timelines concerning Auxiliary Requests in UPC proceedings.*

In any event, Yealink respectfully requests that the Court:

- (ix) order BARCO to bear the costs of this application procedure.*

21. Following the receipt on 11 August 2026 of the conditional and/or alternative requests mentioned above, BARCO was invited to comment, but with such comments limited to the conditional and/or alternative request introduced by YEALINK.

22. On 12 August 2026, BARCO submitted its comments and requested as follows:

- *With regard to requests (iv) and (v), BARCO reserves its right to comment on such request under Rule 102.2 RoP;*
- *With regard to requests (vi) to (viii), BARCO does not oppose a stay of the proceedings before the Local Division Brussels until the OD of the EPO has issued the written grounds of its first instance decision and agrees that, upon the resumption or continuation of the proceedings, the parties are granted an opportunity to comment on the decision of the OD in first instance, including on Auxiliary Request 6 and the implications for the present proceedings.*

II. ARGUMENTS OF THE PARTIES

II.A. BARCO

23. Reduced to its essence, BARCO argues as follows:

(i) *Regarding the timing of the Application*

- The introduction of AR6 was a direct consequence of the ongoing discussions between BARCO, the opponents, and the OD.
- The day following the oral hearing before the EPO, on 19 June 2026, BARCO had to file its Rejoinder to the Reply to the Defence to the Counterclaim and Reply to the Defence to the Application to Amend the Patent. That timetable did not leave BARCO with a reasonable opportunity to assess, formulate, and present a proper R. 30.2 RoP application in relation to AR6 before it had to file its submissions. In this sense, it is also relevant to note that in the preliminary opinion of the OD there was no indication that the subject matter of claims 8 and 9 would be decisive and that AR P0-3D (corresponding to AR6 of these proceedings) would overcome clarity issues on AR P03 (corresponding to AR3 in these proceedings). This became only apparent at the oral hearing.
- BARCO initially intended to await the minutes of the oral hearing before filing its R. 30 RoP application in order to avoid any dispute as to what had been discussed and clarified during the oral hearing. However, upon receiving YEALINK's Rejoinder to the Reply to the Defence to the Application to Amend the Patent, BARCO noted that there was no dispute between the Parties regarding the OD's views since YEALINK explicitly acknowledges that there is no longer a clarity issue regarding AR PO-3D, and that the AR PO-3D does not constitute added matter, is sufficiently disclosed and is novel (see para.1.6). In view of this, BARCO decided to file its Application. Therefore, BARCO could not, in any event, have filed its Application to Amend the Patent before filing its final submissions, nor could it have been expected of a reasonably diligent patent holder to have filed this request at any earlier point in time.

(ii) *Regarding the legal principles to grant the leave*

- The introduction of this request to amend is beneficial to procedural efficiency. If AR6 would not be allowed into these proceedings, there is a real risk that different claim sets will exist in the proceedings before the EPO and the UPC. Indeed, currently the OD is proceeding on the basis that AR6 does not add unallowable matter, is sufficiently disclosed and is novel. If the OD, after the 5 November 2026 hearing, were to decide that AR6 is also inventive, there is a risk that a decision by the Technical Boards of Appeal (hereafter referred to as "TBA") will follow before the UPC proceedings reach a final decision in appeal. If the TBA were also to decide that the patent is valid in the amended form (being AR6), then this would lead to a situation whereby the claim which is relied on at the UPC no longer exists, while the claim that is confirmed to be valid is not part of the UPC proceedings.
- The point is that the present proceedings should, so far as procedurally possible, enable this Court to consider the claim version that is being defended by BARCO in the parallel opposition proceedings, thereby allowing the dispute to be addressed comprehensively and efficiently in a single action.
- The Application is directly in line with the concern for synchronisation between EPO opposition proceedings and proceedings before this Court.
- Admitting the AR6 will not unreasonably hinder YEALINK in the conduct of its case. On the one hand, as to timing: the oral hearing in the present proceedings is scheduled for 3 November 2026, so there remains sufficient time between the filing of this Application

and the hearing for YEALINK to be given a full and fair opportunity to respond to the amendment on the merits, without endangering the hearing date or the overall timetable of the proceedings.

- On the other hand, as to substance: YEALINK is not confronted with an unfamiliar AR. YEALINK itself is a party in the EPO opposition and has already engaged with the AR6 in those proceedings. Moreover, YEALINK is now, in any event, in process of discussing this AR in view of the further oral hearing at the OD on 5 November 2026.

(iii) *Balance of interest in application of R. 30.2 RoP and R. 263 RoP*

For the above reasons, the balance of interests to be struck under Rule 30.2 RoP and Rule 263 RoP favours admission of BARCO's Application: the amendment could not reasonably have been filed at an earlier stage for the reasons set out above. In the current proceedings, the written proceedings are not yet closed, and the interim conference has not yet taken place. Moreover, it serves the efficient conduct of the proceedings by aligning the claim request before this Court with a version already discussed in great part before the OD, and it does not unreasonably hinder YEALINK, which retains a full and adequate opportunity, well ahead of the 3 November 2026 hearing, to respond to an amendment whose substance it already knows and has already addressed.

II.B. *YEALINK*

24. YEALINK brings the following arguments (in essence) to the attention of the Court regarding the Application:

- (a) BARCO has failed to explain why AR6 was not included in the original pleading (Rule 263.1 RoP). AR6 incorporates into claim 1 the subject-matter of claims 8 and 9 of the Patent. BARCO itself chose not to assert claims 8 and 9 in its Statement of Claim, as a result of which YEALINK did not need to seek the revocation of these claims.
- (b) BARCO could have filed AR6 with reasonable diligence at an earlier stage (Rule 263.2(a) RoP). BARCO could and should have asserted claims 8 and 9 at the outset, but even if, for the sake of argument, the proposed amendment would have been prompted by the oral proceedings in the parallel EPO proceedings, BARCO could and should have submitted an application for leave to file AR6 directly after said developments, rather than waiting seven additional weeks.
- (c) Admitting AR6 would unreasonably hinder YEALINK in the conduct of its defence (Rule 263.2(b) RoP).
- (d) AR6 is not a defence to YEALINK's Counterclaim for revocation (Rule 30.1 RoP).
- (e) BARCO has not sufficiently explained why the proposed amended claims of AR6 (and AR1 to AR5) are infringed (Rule 30.1(b) RoP). This deficiency applies not only to AR1–AR5 (as previously explained), but applies equally to AR6. BARCO has failed to provide a proper explanation of claim construction and alleged infringement.
- (f) Admission of AR6 would not be proportional, fair, or equitable, and would be contrary to the principle of parity of arms.

25. In addition to the above defence, YEALINK introduces conditional (*"in the alternative"*) requests/applications:

- A review request based on R. 102.2 RoP and R. 333 RoP.
- A request for leave to appeal should the panel uphold the Application pursuant to Rule 220.2 RoP argued in essence as follows:

- (a) The patentee has not invoked the subject-matter of claim 9 (dependent on claims 1 and 8) in the Statement of Claim and revocation of this claim has not been sought in the Counterclaim for Revocation.
- (b) BARCO has filed 267 Auxiliary Requests in the opposition proceedings and five ARs in the UPC proceedings. After the OD held the claims as granted to be invalid, the patentee decided to defend the patent on the basis of new Auxiliary Requests not previously filed in either the opposition proceedings or the UPC proceedings. Allowing such strategy would provide patentees with endless opportunities to file amended claims in situations where parallel opposition and UPC proceedings are pending. It would in fact promote lack of coordination, as this would keep endless opportunities open to the patentee. This goes directly against the front-loaded nature of UPC proceedings and fairness towards the defendant.
- Should the leave to appeal be granted, YEALINK requests the Court to stay the proceedings (in application of R. 295 (m) RoP) until the CoA has decided on the issue by arguing that it would not serve the proper administration of justice for the parties and the Court to devote time and resources before the CoA has ruled on the admissibility.
- A request pursuant to R. 295(a) RoP and/or R. 295(m) RoP, requesting a stay of the proceedings until the EPO *“has issued a final, non-appealable decision in the pending opposition proceedings”* argued as follows
 - (a) The requirements of R. 295(a) RoP are met. The Patent is the subject of pending opposition proceedings before the EPO, and a decision in first instance may be expected rapidly. The UPC oral hearing is scheduled for 3 November 2026, while the oral proceedings before the OD have been agreed to take place on 5 November 2026, only two days later.
 - (b) The requirements of R. 295(m) RoP are met. It is clear that the claims as granted will not survive the proceedings before the OD. The fact that divergent ARs are on file is purely the result of BARCO’s own conduct. It would not serve procedural economy for the parties and the Court to devote time and resources to debating AR6 in these proceedings, while BARCO could have relied on the subject-matter thereof from the outset and the opposition proceedings are pending and will be decided rapidly. A stay will avoid unnecessary costs and inconsistent outcomes.

III. GROUNDS

III.A. Legal Framework

26. The rules of the RoP relevant for the assessment of the Application are cited hereafter:

R. 263.1 and 2 RoP

1. A party may at any stage of the proceedings apply to the Court for leave to change its claim or to amend its case, including adding a counterclaim. Any such application shall explain why such change or amendment was not included in the original pleading.

2. Subject to paragraph 3, leave shall not be granted if, all circumstances considered, the party seeking the amendment cannot satisfy the Court that:

- (a) the amendment in question could not have been made with reasonable diligence at an earlier stage; and*
- (b) the amendment will not unreasonably hinder the other party in the conduct of its action.”*

Rule 30.1(b) RoP and R. 30.2 RoP

1. The Defence to the Counterclaim for revocation may include an Application by the proprietor of the patent to amend the patent which shall contain: (...)

(b) an explanation as to why the amendments satisfy the requirements of Articles 84 and 123(2), (3) EPC and why the proposed amended claims are valid and, if applicable, why they are infringed; and (...)

2. Any subsequent request to amend the patent may only be admitted into the proceedings with the permission of the Court.

27. R. 30.2 RoP is a strict preclusion rule, hence subsequent amendments shall only be allowed under exceptional circumstances (CD Milan 15 January 2026, UPC_CFI_480/2025 (*Fisher & Paykel Healthcare v Flexicare*), § 7; LD Mannheim 27 June 2024, UPC_CFI_210/2023 (*Panasonic v OROPE*), Headnote 3; LD Hamburg 20 December 2024, UPC_CFI_22/2023, (*10x Genomics v Vizgen*), p. 6). The case law of the UPC has clarified the standard to apply when a subsequent amendment is requested (CoA 25 November 2025, UPC_CoA_464/2024, 457/2024, 458/2024, 530/2024, 532/2024, 533/2024, 21/2025, 27/2025 (*Meril v Edwards*) Headnotes 2.). The standard seems to be an indirect reference to conditions mentioned in R. 262.2 RoP by stating that permission in application of R. 30.2 RoP could be granted subject to two cumulative conditions: (i) the amendment could not have been made with reasonable diligence at an earlier stage, and (ii) it does not unreasonably hinder the other party in the conduct of the action.

III.B. *Application of R. 263 RoP and R. 30.2 RoP to the specifics of the case: assessment of the Application*

III.B.1. *The conditions of R. 263 RoP have not been met*

28. BARCO does not explain why the change or amendment was not included in the original pleading (R. 263.1 RoP). As mentioned above, BARCO neither asserted the subject-matter of Claim 8 and 9 in its Statement of Claim (29 August 2025) nor included AR6 in its Application to Amend the Patent (19 March 2026). Granting the request to allow AR6 in the proceedings would mean allowing BARCO to assert the subject-matter of Claims 8 and 9 in the proceedings.
29. Even if AR6 was a “*direct response*” to the position taken by the OD during the oral hearing of 17 June 2026 (specifically regarding AR3), this does not alter this assessment. It could have been expected of BARCO (when submitting the Application) to have acted diligently to align as much as possible its ARs in the parallel proceedings before the UPC and the EPO.
30. Additionally, the Court is not convinced by BARCO’s arguments that it was not apparent to it that AR6 would overcome clarity issues relating to AR3. Granted claims are not subject to clarity objections in opposition or revocation proceedings. Since Claim 1 of AR6 corresponds to Claim 9 as granted, it should have been evident to BARCO that AR6 would not be subject to clarity objections. However, this would apply to any new request based on granted claims. BARCO has failed to explain why Claim 9 as granted is particularly relevant to overcome the potential deficiencies of AR3, especially in light of the fact that BARCO has never asserted this claim against YEALINK.

31. The fact that BARCO is now obliged to defend an AR in the opposition proceedings that is not on file in the UPC proceedings is the result of BARCO's own decision and lack of alignment between its approach at the EPO and its approach at the UPC. The introduction of AR6 is considered by the Court as a clear change of strategy which should not be accepted merely to align the EPO and UPC proceedings (cf. CD Paris, 22 January 2025, UPC_CFI_310/2023 (NJOY v. PMR) §32-33).
32. The argument that the introduction of this request to amend is beneficial to procedural efficiency may be true, but this situation seems rather to be caused by BARCO's procedural strategy which it could have avoided from the outset or at least during the EPO-proceedings. Indeed the fact that the opposition proceedings were introduced before the UPC-proceedings gave BARCO ample possibilities to align the UPC-proceedings with the EPO (OD) proceedings from the outset, which it clearly did not do, first of all, by limiting the infringement action to certain claims and, most of all, by not aligning its ARs in both proceedings either from the outset or during the EPO-proceedings. And indeed, as such, it seems that it was BARCO itself that created "*the real risk*" that different claim sets would exist in the proceedings before the EPO and the UPC. Therefore, granting the Application would mean that BARCO would be allowed to change a strategy which it could have foreseen from the outset of the UPC-proceedings or at least during the EPO-proceedings.
33. As mentioned above, BARCO opted not to assert Claims 8 and 9 in its Statement of Claim, but also waited more than seven weeks before filing the Application while in the meantime BARCO (Reply to the Defence to the Counterclaim on 19 June 2026) and, especially, YEALINK (Rejoinder to the Defence to the Application to Amend the Patent on 20 July 2026) submitted further submissions. It would seem that BARCO awaited these last submissions from YEALINK and then, more than two weeks later, introduced its Application (i.e. seven weeks after it introduced AR6 (AR PO-3D) at the first day of the oral hearing at the OD). As such, the Court holds that BARCO did not abide to its obligations under R. 263.2 (a) RoP and specifically could have introduced its Application at an earlier stage.
34. The Court finds that the reasons put forward by BARCO for such delay are not sufficiently convincing. Although BARCO indeed only introduced AR6 (AR PO-3D) on the first day of the OD oral hearing (17 June 2026) and had to submit its Reply to the Defence to the Counterclaim on 19 June 2026, a diligent patentee would have coordinated its EPO-strategy with its UPC-strategy in advance. The fact that AR6 (AR PO-3D) was only introduced on 17 June 2026, does not mean that this strategy was developed on 17 June 2026. Further, even if the AR6 (AR PO-3D) strategy was only developed during the oral hearing of 17 June 2026, BARCO had ample time to submit the Application well before 4 August 2026. BARCO's statement that it wanted to await the "*EPO's minutes*" in order to avoid factual disputes is further considered unconvincing. BARCO could indeed have stated the findings of the OD during the oral hearing of 17 and 18 June 2026 in an earlier application and await whether YEALINK would dispute them and then introduce the EPO's minutes when available. In any case, there was no reason to await these minutes as YEALINK clearly articulated the relevant facts and findings of the OD, on which BARCO wanted to rely, in its Rejoinder to the Defence to the Application to

Amend the Patent submitted on 20 July 2026. Still, BARCO waited for more than two additional weeks to introduce its Application.

35. In connection with this, it is clear that granting the Application would unreasonably hinder YEALINK in the conduct of its actions taking into consideration the already set dates for the interim conference and the oral hearing. As such the condition of R. 263.2(b) RoP has not been met. Admitting AR6 at this stage of the proceedings would require YEALINK to analyse a new AR and assess both validity and non-infringement, which is not dealt with in the EPO proceedings, of Claims 8 and 9 which were not asserted from the outset of these proceedings.
36. That BARCO may have to initiate new UPC-proceedings in the future based on a possible granted Patent taking into consideration the ARs introduced before the EPO, might indeed be the case. However, the fact that BARCO itself did not abide by the principles of procedural efficiency cannot be invoked by BARCO as a reason to allow AR6 at this stage of the proceedings. As already mentioned above, BARCO had ample opportunities to align the proceedings either by aligning immediately the UPC and EPO proceedings relating to AR6, or by requesting the Court to take any procedural steps it deemed necessary to align these proceedings at a reasonable earlier time.
37. Concluding, the Court holds that the Application introduced by BARCO does not meet the conditions of R. 263 RoP and should be dismissed.

III.B.2. The conditions of R. 30 RoP have not been met

38. Additionally, the Court considers (the request for the introduction of) AR6 not to be a defence against YEALINK's Counterclaim for Revocation.
39. BARCO does not sufficiently prove the "*connection*" between the changes made in the ARs and specific arguments of YEALINK regarding the invalidity of the Patent (cf. LD Hamburg, 27 April 2026, UPC_CFI_157/2025, *Teleflex v. Speed*, §58).
40. YEALINK, by introducing its Counterclaim for Revocation on 16 January 2026 determined the scope of the revocation proceedings (CoA 13 July 2026, UPC_COA_881/2026, *Fujifilm v. Kodak*, §55 and 63). YEALINK, in its Counterclaim for Revocation, only requests and argues the invalidity of claims alleged to be infringed (i.e. infringement invoked Claims 1, 6, 11, 12 and 13) and not the patent as a whole. As such, Claims 8 and 9 are not under attack. Consequently, the Application is not considered a response to the counterclaim for revocation (cf. LD Munich 31 March 2025, UPC_CFI_425/2024, *JingAO v. Chint* – page 8, Section I, fourth paragraph).
41. As the above conditions are not met to allow the Application, the Court does not find it opportune to address the additional argument developed by YEALINK that BARCO did not explain sufficiently why the proposed claims of AR6 are infringed. YEALINK has developed similar arguments regarding AR1 through 5 in its earlier submissions. YEALINK is informed that the assessment of this line of argument together (leading possibly to the inadmissibility of AR1 through 5) will be dealt with together with the main proceedings (as a whole).

III.C. *Implications of above assessment on the remaining requests (introduced by YEALINK)*

42. As the requests made in the Application are not granted (thereby granting request (i) of YEALINK), the remainder of YEALINK's request should not be assessed as they were introduced "in the alternative".

III.D. *Leave to Appeal*

43. As the Court is aware of the impact this order might have on the further proceedings and as YEALINK has requested a leave to appeal, leave to appeal is granted.

III.E. *Costs of the Application*

44. Assessment on the costs of these proceedings will be dealt with by the Court together with the final cost decision.

IV. **ORDER**

The Court

- Dismisses BARCO's "Application for Leave to Amend the Patent pursuant to Rules 30.2 and R. 263 RoP" submitted on 4 August 2026.
- Grants leave to appeal in application of R. 220.2 RoP.

Issued by the panel of the LD Brussels on 17 August 2026

Samuel GRANATA Judge-Rapporteur Presiding Judge LD Brussels Legally Qualified Judge	
Petri Rinkinen Legally Qualified Judge	
Mélanie Bessaud Legally Qualified Judge	
Steven Richard Kitchen Technically Qualified Judge	

Note on Appeal

An appeal may be lodged in accordance with R. 220.2 RoP.

