

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 16 October 2026
concerning an application to amend the patent (R. 30.2 and R. 263 RoP)

APPELLANT (AND APPLICANT IN THE R. 263 RoP AND R. 30.2 RoP APPLICATION BEFORE THE COURT OF FIRST INSTANCE)

Barco N.V., Kortrijk, Belgium

(hereinafter referred to as: “**Appellant**”)

represented by Christian Dekoninck, attorney-at-law, Winston Taylor N.V., Brussels, Belgium

RESPONDENTS (AND RESPONDENTS IN THE R. 263 RoP AND R. 30.2 RoP APPLICATION BEFORE THE COURT OF FIRST INSTANCE)

- 1. Yealink (Xiamen) Network Technology Co., Ltd.**, Fujian, PR China
- 2. Yealink (Europe) Network Technology B.V.**, Amsterdam, the Netherlands

(hereinafter jointly referred to as: “**Respondents**”)

all represented by Ruud van der Velden, attorney-at-law, Hogan Lovells Cadwalader International LLP, Amsterdam, the Netherlands

PATENT AT ISSUE

EP 3 732 827

LANGUAGE OF THE PROCEEDINGS

English

PANEL AND DECIDING JUDGES

Panel 3:

Ulrike Voß, presiding judge

Bart van den Broek, legally qualified judge and judge-rapporteur

Nathalie Sabotier, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- ☐ Procedural Order of 17 August 2026 issued by the Local Division Brussels
- ☐ Reference numbers:
 - UPC_CFI_806/2025 (Infringement)
 - UPC_CFI_185/2026 (Counterclaim for revocation)

ORAL HEARING

The parties agreed to proceed without an oral hearing following the proposition of the Court of Appeal (Art. 52(3) UPCA).

SUMMARY OF FACTS

1. On 29 August 2025, Appellant lodged an infringement action against Respondents based on the patent in suit ("patent") before the Local Division Brussels ("LD Brussels"). In the Statement of claim, Appellant invoked claims 1, 6, 11, 12 and 13 of the patent.
2. Prior thereto, on 2 October 2024, Appellant had filed an Application for provisional measures based on the patent against Respondents before the LD Brussels. In these PI-proceedings, Appellant invoked claims 1, 12 and 13 of the patent. The Application was rejected by the LD Brussels for lack of urgency, which was confirmed by the Court of Appeal (UPC-CoA-317/2026 and 376/2026, 28 November 2025). The issues of infringement and validity were discussed in the PI-proceedings but were not adjudicated given the lack of urgency.
3. Also prior to lodging the infringement action, on 10 February 2025, Respondent under 1 ("Yealink") filed an opposition against the grant of the patent at the European Patent Office ("EPO"). In the opposition proceedings, Yealink requests revocation of the patent in its entirety. On 1 July 2025, Appellant filed its observations on the opposition, together with 267 auxiliary requests. On 13 November 2025 the Opposition Division ("OD") issued its preliminary opinion that the patent could not be maintained as granted due to a lack of inventive step. Further, the OD deemed the 267 auxiliary requests to be inadmissible in their present form due to the unclear order of the requests and certain missing arguments.
4. On 16 January 2026, Respondents lodged a Statement of defence in the infringement action and a Counterclaim for revocation seeking revocation of (only) the invoked claims 1, 6, 11, 12 and 13.
5. On 3 March 2026, the LD Brussels informed the parties that the oral hearing would be held on 3 November 2026. On 17 March 2026, the LD Brussels summoned the parties to appear at an interim conference on 8 September 2026.
6. On 19 March 2026, Appellant filed its Defence to the Counterclaim for revocation, including a (conditional) Application to amend the patent. Appellant defended the validity of the invoked claims 1, 6, 11, 12 and 13 and filed five auxiliary requests (AR1 – AR5). These auxiliary requests were not part of the 267 auxiliary requests previously filed in the opposition proceedings at the EPO.
7. On 7 April 2026, Appellant filed its submissions in the opposition proceedings in preparation of the oral hearing on 17 and 18 June 2026. In addition to the 267 auxiliary requests previously filed (and maintained), Appellant filed seven new auxiliary requests (AR PO1 – AR PO7). Auxiliary requests AR PO1 – AR PO5 correspond to auxiliary requests AR1 – AR5 filed in the present UPC proceedings.
8. During the oral hearing on 17 and 18 June 2026, the OD held that claim 1 as granted lacked an inventive step. Appellant then filed three new auxiliary requests, AR PO3B, AR PO3C and AR PO3D. These auxiliary requests had not been previously filed in the UPC proceedings and all contained the subject matter of claims 8 and 9, which were not invoked in the infringement action. Claim 1 of auxiliary request AR PO3D is limited to a combination of claims 1, 8 and 9 as granted. As claim 9 only depends on claim 8, claim 1 of AR PO3D basically corresponds to claim 9 of the patent. During the oral hearing, the OD declared auxiliary request AR PO3B to be inadmissible and rejected auxiliary request AR PO3C for lack of clarity. Auxiliary request AR PO3D was admitted and the OD concluded that there was no insufficiency or added matter and that the subject matter of claim 1 was novel. Following some discussion of inventive step, the OD decided to schedule a further hearing on 5 November 2026 for a final discussion on inventive step of auxiliary request AR PO3D.

9. On 19 June 2026, Appellant submitted its Rejoinder to the Reply to the Defence to the Counterclaim and Reply to the Defence to the Application to amend the patent ("Rejoinder"). In the Rejoinder, Appellant defended auxiliary requests AR1 – AR5 as previously submitted.
10. On 20 July 2026, Respondents submitted the Rejoinder to the Reply to the Defence to the Application to amend the patent ("Rejoinder Application") discussing auxiliary requests AR1 – AR5.
11. On 4 August 2026, Appellant filed an Application for leave to amend the patent pursuant to R. 30.2 and R. 263 RoP ("Application to amend"). In the Application to amend, Appellant requests the LD Brussels to grant leave to file a further auxiliary request (AR6). AR6 corresponds to auxiliary request AR PO3D submitted by Appellant during the oral hearing before the OD on 18 June 2026.
12. In their comments to the Application to amend dated 11 August 2026, Respondents objected against admitting new auxiliary request AR6. Respondents argued, *inter alia*, that Appellant had not shown why the amendment could not have been filed earlier. Moreover, Respondents would be unreasonably hindered in the conduct of the action if the amendment would be allowed.
13. On 17 August 2026, the LD Brussels issued an order ("impugned order") in which it dismissed the Application to amend. According to the LD Brussels, Appellant had failed to explain why the amendment was not included in the original pleading. Granting the request to admit AR6 in the proceedings would mean that Appellant would be allowed to assert the subject matter of non-invoked claims 8 and 9 without a valid reason. The LD Brussels rejected Appellant's argument that this would ensure procedural efficiency and would avoid that Appellant would have to start new proceedings based on AR6. The LD Brussels considered these possible drawbacks to be caused by Appellant's own lack of alignment between the proceedings at the EPO and the UPC. Moreover, according to the LD Brussels, Respondents would be hindered in their defense if AR6 was allowed at this late stage of the proceedings. Admitting AR6 would require Respondents to analyze a new auxiliary request and assess both validity and infringement of claims 8 and 9 which were not asserted from the outset of the proceedings. With respect to R. 30.2 RoP, the LD Brussels additionally decided that AR6 is not a defence against the Counterclaim for revocation, as claims 8 and 9 of the patent are not under attack in the Counterclaim.
14. In the impugned order, the LD Brussels granted leave to appeal pursuant to R. 220.2 RoP in view of *"the impact the order might have on the further proceedings"*.
15. Appellant filed its Statement of appeal and Statement of grounds of appeal against the impugned order on 1 September 2026 ("Grounds of Appeal"). Respondents filed their "Response to appeal against procedural decision (R. 235 RoP)" on 18 September 2026 ("Statement of response").

REQUESTS OF THE PARTIES

16. Appellant requests the Court of Appeal to set aside the impugned order, and, as requested in the Application to amend:
 - grant permission pursuant to R. 30.2 RoP for the filing of a subsequent application to amend the patent by admission of AR6;
 - admit AR6 into these proceedings as an additional auxiliary claim set to be considered in the event 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 Respondents to comment specifically on AR6.
17. Respondents request the Court of Appeal, to the extent immediately enforceable:
 - to dismiss Appellant's appeal so that AR6 does not become part of the first instance

proceedings on the merits numbered UPC_CFI_806/2025 and UPC_CFI_185/2026;

- in the alternative, should Appellant's appeal not be dismissed in its entirety and should AR6 be admitted into the first instance proceedings on the merits, to only admit it in the context of the counterclaim proceedings numbered UPC_CFI_185/2026 and not in the context of the infringement proceedings numbered UPC_CFI_806/2025;
- in the alternative, if AR6 should be admitted into the first instance proceedings on the merits numbered UPC_CFI_806/2025 and/or UPC_CFI_185/2026, to instruct the Local Division Brussels to decide on Respondents' conditional request to stay the proceedings;
- in the alternative, if AR6 should be admitted into the first instance proceedings on the merits numbered UPC_CFI_806/2025 and/or UPC_CFI_185/2026, to decide that two rounds of written submissions are to be exchanged between the parties in accordance with the normal timelines for auxiliary requests and that AR6 is also to be discussed at a subsequent oral hearing;
- to order Appellant, as the unsuccessful party, to bear the costs of these appeal proceedings

SUBMISSIONS OF THE PARTIES

18. According to Appellant, AR6 could not have been filed earlier as it was submitted at the EPO in direct response to the course of the oral proceedings on 18 June 2026 and the OD's reactions to the requests then under discussion. Following its admission in the opposition proceedings, Appellant acted diligently by submitting AR6 on 4 August 2026, which was over a month before the interim conference (8 September 2026) and almost three months before the oral hearing (3 November 2026). Appellant explained that it originally intended to submit this new auxiliary request following the issuance of the Minutes (which ultimately occurred on 12 August 2026), but after having seen the Rejoinder Application in which Respondents provided a correct summary of the oral hearing at the EPO, Appellant decided to file the new auxiliary request earlier. According to Appellant, this confirms its diligence.
19. Appellant further argues that Respondents would not be hindered by the admission of AR6, because they already know this auxiliary request from the opposition proceedings at the EPO and they have to prepare their validity defense against this auxiliary request anyway for the oral hearing at the EPO on 5 November 2026, i.e. two days after the oral hearing at the UPC. Equally, Respondents would not be hindered by the infringement assertions in relation to AR6 as these merely confirm and clarify the position that Appellant has advanced since the beginning of the proceedings. All these arguments could be handled well in advance of the oral hearing, as Appellant would be willing to respond to these at the oral hearing rather than beforehand in writing. In addition, procedural efficiency would require allowing AR6 into the UPC proceedings. According to Appellant, the LD Brussels insufficiently recognized the differences between proceedings at the UPC and the EPO, where much more auxiliary requests can be filed up to and even during the oral hearing. Allowing AR6 into the UPC proceedings would be justified given these differences and would ensure alignment of both proceedings.
20. Regarding the decision of the LD Brussels that AR6 is not a defence against the Counterclaim for revocation, Appellant argues that this is incorrect as AR6 amends claim 1 which is under attack in the Counterclaim. The fact that the amendment consists of adding features from non-invoked claims is of no relevance.
21. In their response, Respondents argue that Appellant has still not explained why the amendment was not included in the original pleading, as required by R. 263.1 RoP. The fact that AR6 was allegedly filed in response to statements made during the oral hearing at the EPO does not explain why claims 8 and 9 were not asserted in the Statement of claim or why AR6 was not added to AR1 – AR5 in the original Application to amend on 19 March 2026. Furthermore, after the OD concluded that claim 1

as granted could not be maintained, Appellant did not rely on any of the auxiliary requests which were filed at the UPC but filed new auxiliary requests which were not part of the UPC proceedings and incorporated the subject matter of claims 8 and 9 which were not invoked in the UPC proceedings. By doing so, Appellant did not act diligently and caused the procedural inefficiency that it now raises to justify the late filing of AR6. Moreover, the alleged procedural differences between the EPO and the UPC are irrelevant, according to Respondents. The UPC has its own rules regarding the (late) submission of documents and amendments, which cannot be set aside by the more lenient rules at the EPO alleged by Appellant. In addition, Respondents argue that even assuming that the oral hearing at the EPO is relevant for the UPC proceedings, Appellant still waited more than 7 weeks before asking permission to file AR6 in these proceedings. There is no justification for this delay, as there was no existing dispute between the parties about the course of events at the oral hearing of the OD. If such a dispute would have arisen later, Appellant could have filed the Minutes to set the record straight. Respondents conclude that Appellant should have filed the auxiliary request in any event immediately after the oral hearing at the EPO and not two weeks after Respondents submitted their last written submission in the UPC proceedings.

22. According to Respondents, the LD Brussels correctly held that allowing AR6 in the proceedings would hinder Respondents in their defense. The fact that AR6 was already submitted at the oral hearing of the EPO does not alter this, as this was the first time that Appellant relied on this auxiliary request. Moreover, allowing AR6 necessitates an analysis of infringement which does not play a role at the EPO. According to Respondents, there is no reason why they would not be given the normal extensions for filing submissions following an application to amend the patent. There is no room for such extensions before the oral hearing on 3 November 2026.
23. Finally, according to Respondents, the LD Brussels correctly held that there is insufficient connection between AR6 and the Counterclaim for revocation. Claim 1 of AR6 is the same as claim 9 of the patent, which is not part of the Counterclaim for revocation. Therefore, also without AR6, this claim will survive. According to Respondents, AR6 is just a pretext for extending the infringement action with a claim whose subject matter was not originally invoked in the Statement of claim.

GROUND FOR THE ORDER

24. The appeal was filed within 15 days of service of the impugned order in which the LD Brussels granted leave to appeal (R. 220.2 RoP). The appeal is therefore admissible but must be denied.

Legal framework

25. Under the front-loaded procedural system of the UPC, the parties are required to set out their full case as early as possible (RoP, preamble at 7). Nevertheless, specific new arguments may be admitted into the proceedings in consideration of specific circumstances of the case. The provisions must also be interpreted in the light of the principle of proportionality (RoP, preamble at 3) (UPC-CoA-71/2025, 29 December 2025, VMR Products v NJOY, par. 27).
26. Pursuant to R. 263 RoP, a party may at any stage of the proceedings apply to the Court for leave to change its claim or amend its case. Not every new argument constitutes an “amendment of a case” requiring a party to apply for leave. An amendment of a case occurs when the nature or scope of the dispute changes. For example, in an infringement action this occurs if the plaintiff invokes a different patent or attacks a different product (UPC-CoA-456/2024, 21 November 2024, OrthoApnea, par. 23).
27. A party’s application for leave to amend its case must explain why such amendment was not included in the original pleading. 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. Leave to limit a claim in an action unconditionally shall always be granted (UPC-CoA-317/2025 and 376/2025, 14 August 2025, Barco v Yealink, par. 12;

28. These same principles apply to R. 30.2 RoP (UPC-CoA-457/2024, 458/2024, 464/2024, 530/2024, 532/2024, 533/2024, 21/2025 and 27/2025, 25 November 2025, Meril v Edwards, par. 34). Under R. 49.2 RoP, a Defence to revocation may include an application to amend the patent. Pursuant to R. 50.2 in conjunction with R. 30.2 RoP, a subsequent request to amend the patent may only be admitted into the proceedings with the permission of the Court. When deciding whether to allow 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 action.
29. When applying R. 263 and R. 30.2 RoP, the Court of First instance has discretion. The scope for review on appeal is therefore limited. The appellant must establish that the Local Division went beyond the boundaries of its discretion and could not reasonably have reached the decisions in the impugned order (Supponor v AIM Sport, cited above, par. 12; Meril v Edwards, cited above, par. 34).
30. Finally, a claimant in a revocation action is required to indicate the extent to which revocation of the patent is requested and is required to sufficiently substantiate this request for each of the claims covered by its request (see R. 25.1(a)-(d) RoP). In accordance with Art. 76(1) UPCA, the Court shall decide in accordance with the requests submitted by the parties and shall not award more than is requested (UPC-CoA-473/2025, 474/2025, 873/2025 and 883/2025, 13 July 2026, Fujifilm v Kodak, paras. 55 and 66).

Present case

31. In the present case, Appellant did not establish that the LD Brussels went beyond the boundaries of its discretion and could not reasonably have reached the decisions in the impugned order.
32. As noted above, claim 1 of AR6 is a combination of claim 8 (to the extent it refers back to claim 1) and claim 9 of the patent. Claims 2 to 7 of AR6 correspond to claims 2 to 7 of the patent. In combination with claim 1 of AR6, these claims cover all embodiments of claim 8 (depending on "*any one of claims 1 to 7*") and claim 9 of the patent.
33. Claims 8 and 9 of the patent are not covered by the Counterclaim for revocation. These claims will therefore survive Respondents' revocation claim irrespective of whether or not AR6 is admitted in the proceedings. Therefore, the Application to amend does not appear to be aimed at providing (further) protection to the Appellant against Respondents' revocation claim, but rather at extending the infringement action to (the subject matter of) claims 8 and 9 which were not invoked in the Statement of claim. R. 30.2 RoP cannot be used for that purpose. Appellant's argument that it should be allowed to include subject matter from non-invoked claims into claim 1 as granted (which is at issue in the Counterclaim for revocation) misses the point. In the present case, claim 1 of AR6 is the same as claim 9 of the patent and this claim is not part of the revocation action. Reliance on R. 30.2 RoP is therefore unnecessary and unfounded. The LD Brussels has seen this correctly.
34. The LD Brussels also correctly exercised its discretionary powers by (alternatively) dismissing the Application to amend in view of the (other) requirements of R. 263 and R. 30.2 RoP. As noted above, these requirements are the same under both provisions.
35. First of all, as the LD Brussels correctly notes, Appellant failed to explain why the subject matter of the amendment was not included in the original pleading. At the time of filing the Statement of claim, PI-proceedings concerning the products of Respondents were already underway since October 2024. In the Statement of claim, Appellant invoked two additional dependent claims (claims 6 and 11) compared to the action for provisional measures. For some reason, which Appellant has failed to explain, claims 8 and 9 were not asserted in the Statement of claim. This is even more striking, as

Appellant substantiates the alleged infringement of claim 1 of AR6 (= claim 9 of the patent) with evidence that was already filed with its Statement of claim and defends its belated reliance on this claim by stating that its allegations merely confirm and clarify the position that Appellant has advanced since the beginning of the proceedings. Why Appellant did not invoke these claims in the Statement of claim remains unclear.

36. Equally, Appellant failed to explain why it did not file AR6 with its original Application to amend the patent of 19 March 2026 (leaving aside the question whether such amendment would have been allowable given that claims 8 and 9 were not part of the Counterclaim for revocation). By the time Appellant filed its auxiliary requests, Yealink had already started EPO opposition proceedings and, in response, Appellant filed no less than 267 auxiliary requests, thus showing being well aware of Respondents' invalidity arguments. It remains unclear why AR6 could not have been filed together with AR1 – AR5, to which Respondents could then have responded in accordance with the provisions of the RoP. Appellant's argument that it could not have done so as AR PO3D (AR6) was filed in direct response to the course of the oral proceedings at the EPO on 18 June 2026 is unconvincing. Nothing prevented Appellant from filing this auxiliary request earlier in the UPC proceedings.
37. In addition, Appellant has not explained why it chose to file and defend *new* auxiliary requests following the OD's decision at the oral hearing that claim 1 as granted could not be maintained, rather than relying on any of the auxiliary requests that were already filed in the UPC proceedings. As noted above, none of the newly filed auxiliary requests was part of the pending UPC proceedings, and all these auxiliary requests included subject matter of claims 8 and 9 which were not invoked in the infringement action. The Court of Appeal agrees with the LD Brussels that this cannot be regarded as diligent. There may be good reasons for a patentee to start an infringement action while opposition proceedings are ongoing, but in such case, it is of particular importance for a patentee to coordinate and carefully align its position in both proceedings. The fact that the proceedings at the EPO and the UPC have different procedural rules regarding the filing of auxiliary requests, as asserted by Appellant, is even more reason to coordinate and align both proceedings carefully.
38. Even accepting the relevance of the occurrences at the EPO oral hearing in this case, there is also no justification for filing the Application to amend on 4 August 2026, i.e. more than seven weeks after the oral hearing at the EPO. The LD Brussels correctly noted that following the hearing on 18 June 2026, Appellant had ample opportunity to submit the Application to amend well before 4 August 2026. It also correctly considered Appellant's argument that it wished to await the Minutes, unconvincing. Appellant could and should have filed AR6 in any event shortly after the oral hearing and should have resolved any potential dispute about what occurred during the EPO hearing later. Instead, Appellant delayed the filing of the Application to amend until after all written submissions had been lodged in the UPC proceedings. The LD Brussels did not exceed its discretionary powers by considering this to be too late.
39. Finally, the LD Brussels did not exceed its discretionary powers by noting that the allowance of the Application to amend would unreasonably hinder Respondents in the conduct of their UPC action given the proximity of the already scheduled dates for the interim conference and the oral hearing. The Court of Appeal agrees with the LD Brussels that admitting AR6 would require Respondents to analyze a new auxiliary request and assess both validity and infringement of (the subject matter of) claims 8 and 9 which were not asserted from the outset of the proceedings. That is not justified at this late stage of the proceedings. The procedural economy relied upon by Appellant cannot alter this. As claims 8 and 9 are not part of the Counterclaim for revocation, admitting AR6 in the proceedings is not necessary to align the proceedings at the EPO and the UPC concerning the validity of the patent (which is the only issue at stake at the EPO). Whether a new *infringement* action based on any of the non-invoked claims is needed, as Appellant argues, remains to be seen and is in any event caused by Appellant's own strategic decisions in both proceedings. This cannot justify hindering Respondents in the conduct of this action, as the LD Brussels correctly noted.

Costs

40. The Court will not decide on costs, because this order does not conclude the action.

ORDER

The appeal is dismissed.

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Ulrike Voß, presiding judge

**Bartholomeus
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Bart van den Broek, legally qualified judge and judge-rapporteur

**Nathalie,
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