



UPC – Court of Appeal
UPC-CoA-149/2026
UPC-CoA-150/2026

Order
of the Court of Appeal of the Unified Patent Court
of 21 October 2026
on the admissibility of the appeals

HEADNOTES

An application to change the language of the proceedings in a case before the Central Division does not constitute an assertion of a claim; rather, it is a procedural application, and it must be added that it is an exceptional application. Unlike in the *Microsoft v Suinno* decision (Order of 21 August 2024, UPC-CoA-454/2024), its rejection does not constitute a summary dismissal of a claim on the grounds that it has no prospect of success (Rule 334(h) of the RoP).

The RoP clearly do not provide for a change of the language of the proceedings before the Central Division. Article 49(6) of the UPC Agreement stipulates, without exception, that the language of the patent shall be the language of the proceedings before the Central Division.

KEYWORDS

Change of the language of the proceedings before the Central Division, Article 49(6) of the UPC Agreement

APPELLANT (AND DEFENDANT AT THE COURT OF FIRST INSTANCE)

1. **Marco Schmid**, Triesen, Liechtenstein
2. **Dieter Schmid**, Balzers, Liechtenstein

(hereinafter collectively referred to as ‘the appellants’)

represented by Tjibbe Douma, Attorney-at-law, and other representatives of the law firm Bird & Bird (Netherlands) LLP, Amsterdam, the Netherlands, and Bird & Bird LLP, London, the United Kingdom

RESPONDENTS ON APPEAL (AND CLAIMANT AT THE COURT OF FIRST INSTANCE)

SprintRay Inc., Los Angeles, United States

(hereinafter "SprintRay")

represented by Florian Oliver Gunther Schmidt-Bogatzky, Attorney-at-law, and other Attorneys-at-law of the law firm Herbert Smith Freehills Kramer LLP, Düsseldorf, Germany, and Dilg, Haeusler, Schindermann Patentanwaltsgesellschaft mbH, Munich, Germany

PATENT AT ISSUE

EP 3 762 212

DECIDING JUDGE

Ingeborg Simonsson, standing judge

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

Order of the Paris Central Division of 26 August 2026 in proceedings UPC_CFI_2020/2025 (action for revocation) and UPC-CFI-2034/2025 (action for a declaration of non-infringement).

LANGUAGE OF THE PROCEEDINGS

German

FACTS

1. The appellants are the proprietors of European patent 3 762 212 (hereinafter: the patent at issue or the patent). Sprintray has brought proceedings before the Paris Central Division seeking a declaration of non-infringement of the patent at issue and an action for its revocation against the appellants. The language of the patent and the language of the proceedings is German.
2. The appellants are natural persons resident in Liechtenstein. They request, pursuant to Rule 9 of the RoP, that the language of the proceedings be changed to English. The application was filed in English. In addition to the application to change the language of the proceedings, alternative requests were made: permission to file documents in English and for the interim hearing and the oral hearing to be conducted in English, or at least for simultaneous interpretation to be provided at the appellants' own expense.
3. Sprintray opposed all the applications.
4. After the judge-rapporteur of the Central Division had referred the matter to the panel in accordance with Rule 102.1 of the RoP, the panel, by order of 17 August 2026, dismissed the main application and the alternative applications as inadmissible on the grounds that they had been filed in English rather than in the language of the proceedings. '[I]n order for the applications to be valid, they would have to be resubmitted in German.'
5. In an *obiter dictum*, the panel essentially stated that the legislature had not provided for any procedure for the Central Division to change the language of the proceedings, as is provided for in Art.

49(5) of the UPC Agreement and in Rule 323 of the RoP for the local divisions and regional chambers. Nor could the relevant provisions be applied by analogy.

6. Leave to appeal was granted against the order of 17 August 2026, but no appeal was lodged.
7. Instead, the appellants resubmitted their application to change the language of the proceedings, this time in German.
8. On 26 August 2026, the presiding judge, who is also the judge-rapporteur, rejected the application, with the exception of the request for authorisation of simultaneous interpretation at the appellants' expense, which was granted. The presiding judge and judge-rapporteur referred to the grounds set out in the order of 17 August 2026: 'The court sees no reason to make any changes to the grounds of the present order compared with the order of 17 August 2026. An exception is the alternative application for permission to arrange simultaneous interpretation at their own expense, which is to be granted. Accordingly, the present order refers in full to the order of 17 August 2026 and fully endorses its reasoning.' The appeal was allowed.
9. The appellants lodged an appeal against this order on 10 September 2026.
10. The appellants were given the opportunity to comment on the admissibility of the appeal.

ARGUMENTS OF THE PARTIES

11. The appellants argue that, according to the wording of Rule 220.2 of the RoP, an appeal may be lodged against (i) a procedural order of the Court of First Instance if (ii) the Court of First Instance has allowed the appeal. The contested order is a procedural order of the Court of First Instance for which the appeal has been allowed. The wording of Rule 220.2 of the RoP does not stipulate that only the full panel may allow an appeal. Against this background, it stands to reason that a judge-rapporteur may also allow an appeal. This applies in particular where the circumstances so warrant, for example in matters of fundamental importance.

REASONS

12. In principle, a procedural decision or order made by the judge-rapporteur or the presiding judge may only be challenged by way of appeal if that decision or order has previously been reviewed by the panel in accordance with Rule 333.1 of the RoP, unless otherwise provided. This follows from the fact that an application for a review of discretion before the Court of Appeal under Rule 220.3 of the RoP is only possible if the leave to appeal against an order of a panel is refused. Therefore, in the case of a decision or order by the judge-rapporteur or the presiding judge, an application must first be made under Rule 333.1 of the RoP must first be made in order to secure a decision from the panel which – where applicable – may, in the event of the appeal being allowed by the panel, form the subject of an appeal under Rule 220.2 of the RoP, or, in the event that the appeal is not allowed, form the subject of an application for a review of discretion

under Rule 220.3 of the RoP (UPC – Court of Appeal, Order of 21 March 2024, UPC_CoA_486/2023, *Netgear v Huawei*, para. 21).

13. The decision of the Presiding Judge (who was also the judge-rapporteur) to reject the request to change the language of the proceedings and to dismiss two of the alternative claims constitutes a procedural order.
14. The application to change the language of the proceedings before the Central Division does not assert a claim; rather, it is a procedural application, and it must be added that it is an exceptional application. Unlike in the *Microsoft v Suinno* decision (order of 21 August 2024, UPC_CoA_454/2024), its rejection does not constitute a summary dismissal of a claim on the grounds that it has no prospect of success (Rule 334(h) of the RoP). The RoP clearly do not provide for a change of the language of the proceedings before the Central Division. Article 49(6) of the UPC Agreement stipulates, without exception, that the language of the patent shall be the language of the proceedings before the Central Division.
15. According to established case law, the term ‘decision or order relating to the conduct of the proceedings’ is a broad concept that requires a broad interpretation. Article 49(6) of the UPC Agreement and the absence of any specific provisions on this matter suggest that the decision on such an application forms part of the conduct of the proceedings.
16. As regards the two alternative claims (permission to file pleadings in English and the conduct of the interim hearing and the oral hearing in English), Rule 7.1 of the RoP provides that pleadings and other documents, including written evidence, are to be filed in the language of the proceedings, unless the Court or the RoP provide otherwise. Rule 105.3 of the RoP provides that the judge-rapporteur may conduct the interim hearing in any language agreed upon by the parties’ representatives. Furthermore, according to judicial practice, oral hearings may be held in a language other than the language of the proceedings or in a hybrid form, provided the parties agree. These decisions constitute procedural orders, regardless of whether an application is granted or not.
17. The appellants take the view that the phrase ‘unless otherwise provided’ in *Netgear v Huawei* should be interpreted as conferring on the judge-rapporteur the power to decide on the admissibility of the appeal. They base their argument on the judge-rapporteur’s power to decide on the admissibility of the appeal where a preliminary objection is dismissed.
18. This is based on a misinterpretation of *Netgear v Huawei*. With the qualification ‘unless otherwise provided’, this case-law refers to statutory provisions with different content, not to provisions in individual orders or decisions. Furthermore, *Netgear/Huawei* clearly states that the judge-rapporteur’s power to grant leave to appeal where a preliminary objection is dismissed constitutes an exception to the general principle that no direct appeal may be lodged against a procedural decision or a procedural order issued by the judge-rapporteur or the presiding judge.

19. The fact that the contested order of the judge-rapporteur confirmed the grounds of the panel's previous order of 17 August 2026 does not alter this. The panel's order indicated that the application for a change of language, which had been submitted in English, had to be resubmitted in German in order to be admissible. However, this cannot be construed as a prior delegation of authority to the judge-rapporteur to decide alone whether a new application was subsequently filed in German. Nor is this a case in which Rule 345.4(a) of the RoP applies, under which any panel may delegate the function of a single judge to one or more judges of the panel. In proceedings of this kind, a delegation to a single judge requires the parties' consent (see Rule 44(c) and Rule 63(c) of the RoP in conjunction with Article 8(7) of the UPC Agreement and Rule 345.6 of the RoP), which is not the case here.

20. Consequently, the appeals are inadmissible.

ORDER

The application is dismissed as inadmissible.

Issued on 21 October 2026



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21 October 2026
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Ingeborg Simonsson, standing judge