Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC-CoA-84/2026

ORDER

of the Court of Appeal of the Unified Patent Court
issued on 3 November 2026
concerning application for leave to appeal against a cost decision (R. 221 RoP)

HEADNOTES:

I. According to R. 221.2 (a) RoP the application for leave to appeal shall set out the reasons why the appeal should be heard. In other words, the application must specify why leave to appeal should be granted. The purpose of the requirement to set out the reasons why the appeal should be heard enables the standing judge to examine whether the conditions for leave to appeal have been met solely on the basis of the application and the impugned decision, taking into account the specific references to the case file contained therein. Referring to the written submissions in general is not sufficient for this purpose.

II. Leave to appeal a decision referred to in R. 157 RoP (hereinafter "cost decision" or "cost determination") shall be granted if the impugned decision of the judge-rapporteur is manifestly erroneous or the impugned decision raises a fundamental question of law and its review is necessary to ensure a consistent application of law or any other objective of granting leave to appeal (see the case-law with regard to discretionary review, for which R. 220.3 RoP stipulates that the request shall set out the matters referred to in R. 221 RoP: CoA, UPC-CoA-489/2024, 6 September 2024, *Motorola v. Ericsson*, para. 4; UPC-CoA-805/2025, 1 September 2025, *Centripetal v. Keysight*, paras. 8 and 11; 19 May 2026, UPC-CoA-67/2026, *ASC v Xiaomi* para. 10).

III. In the application for leave to appeal under R. 221.1 RoP, the Applicant must therefore specify the reasons which justify granting leave to appeal, for example whether the impugned decision of the CFI is manifestly erroneous or raises a fundamental question of law, which is relevant for the outcome, and its review is necessary to ensure a consistent application of law. In the latter case, the applicant must demonstrate that there are differing views amongst the court or explain the reasons why there is otherwise a need for clarification of the legal issue (see CoA, 6 September 2024, UPC-CoA-489/2024, *Motorola v Ericsson*, para. 4).

IV. Where the applicant asserts a manifest error, it must be apparent from the appellant's submission that the decision would probably have been different had the Court of First Instance not made a manifest error.

V. Exceeding the applicable ceiling does not automatically entitle a party to reimbursement up to the ceiling set by the Administrative Committee pursuant to R. 152.2 RoP. The ceiling on the recoverable representation costs is only one of many safeguards against undue cost recovery, and the last one to apply when the Court makes its decision on costs (Administrative Committee, Decision of 24 April 2023 on the scale of recoverable cost ceilings, hereinafter "Decision on ceilings", consideration para. 1). In particular, according to Art. 69(1) UPCA and R. 152.1 RoP, only reasonable and proportional legal costs and other expenses incurred by the successful party may be recovered from the unsuccessful party (see Decision on ceilings, consideration para. 1). Only the recoverable costs established in compliance with the principles set in Art. 69 UPCA are measured against the ceilings set forth in the Decision on the scale of recoverable cost ceilings. There is a large margin of appreciation for the Court when applying the safeguarding principles before making a cost decision, and thus, the ceilings are only to be regarded as a safety net, i.e. an absolute cap on recoverable representation costs applicable in every case (see Decision on ceilings, consideration para. 1).

VI. Whether it is admissible for the respondent to include its own costs in its defence in the cost proceedings without filing itself a formal application under R. 151 RoP can be left open. In any case, even if this were considered permissible, the time limits set out in R. 151 RoP must not be circumvented. This means that the time limit in R. 151 RoP applies to the defence.

VII. As a general rule, the applicant in the PI proceedings, may not admissibly lodge an application for cost determination before the decision on the merits is issued:

VIII. Proceedings under R. 150 RoP et seq. is not a re-examination of which party is entitled to cost reimbursement under Art. 69 UPCA. In proceedings for provisional measures, this decision (hereinafter referred to as "cost allocation"; "répartition des frais" in French; "Kostengrundentscheidung" in German) should be made in the order deciding on the application for provisional measures (see *Hanshow v Vusiongroup*, para. 37). Similarly, in the proceedings on the merits, the decision on the merits should contain a cost allocation decision (see *Hanshow v Vusiongroup* para. 38). The only issue subject to separate proceedings for a cost decision pursuant to R. 150 RoP et seq. is cost determination, i.e. the question of which costs to which amount are recoverable ("détermination des frais" in French, "Kostenfestsetzung in German, see R. 150.1 RoP).

KEYWORDS:

- R. 221 RoP (requirements for leave to appeal)
- Art. 76(1) UPCA specific request in an application for leave to appeal
- Cost allocation according to R. 118.5 RoP and cost determination according to R. 150 seq. RoP
- R. 151 first sentence RoP, time period for starting proceedings for cost decision
- R. 152.2 RoP, scale of ceilings for recoverable costs
- Art. 69(1) UPCA, R. 152.1 RoP, reasonable and proportionate costs
- fee for an application for leave to appeal against cost decisions under R. 221 RoP

APPLICANTS (AND APPLICANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. **YEALINK (XIAMEN) NETWORK TECHNOLOGY Co. Ltd.**, Fujian, China

2. **YEALINK (EUROPE) NETWORK TECHNOLOGY BV**, Amsterdam, the Netherlands

(hereinafter jointly Yealink)

represented by attorney-at-law Ruud van der Velden and other representatives of Hogan Lovells International LLP

DEFENDANT (AND RESPONDENT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Barco N.V., Kortrijk, Belgium
(hereinafter Barco)

represented by attorney-at-law Christian Dekoninck and other representatives of Winston Taylor N.V., Brussel, Belgium

LANGUAGE OF THE PROCEEDINGS

English

PATENT AT ISSUE

EP 3 732 827

DECIDING JUDGE

Patricia Rombach, legally qualified judge and standing judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- □ Cost decision issued by Local Division Brussels
- □ 7 May 2026, UPC-CFI-2265/2025 (related to proceedings UPC-CFI-582/2024 and the appeal UPC-CoA-317/2025 and cross-appeal UPC-CoA-376/2025)

SUMMARY OF FACTS

1. Barco brought an application for provisional measures against Yealink before the Brussels Local Division (UPC-CFI-582/2024). Yealink introduced competence challenges as a preliminary objection in first instance.

2. On 21 March 2025, the Brussels Local Division dismissed Yealink´s preliminary objection and Barco´s application. In para. 3 of the operative order, it ordered Barco to bear the legal costs and other expenses incurred by Yealink, up to an applicable ceiling of EUR 112,000. Barco appealed the order. Yealink cross-appealed it *inter alia* regarding the dismissal of the preliminary objection.

3. On 29 August 2025, Barco initiated proceedings on the merits (UPC-CFI-806/2025).

4. On 28 November 2025 (UPC-CoA-317/2025) the Court of Appeal set aside para. 3 of the operative part of the order of 21 March 2025, ordered Barco to bear reasonable and proportionate legal costs and other expenses incurred by Yealink in the CFI proceedings and to pay Yealink a total amount of EUR 66,000 as

an interim award of costs (regarding the CFI proceedings) and rejected Yealink´s further application. Barco was ordered to bear the reasonable and proportionate legal costs and other expenses incurred by Yealink in the appeal proceedings, also for the application for suspensive effect (CoA, 28 November 2025, UPC-CoA-317/2025, UPC-CoA-376/2025). Yealink was ordered to bear Barco´s reasonable and proportionate legal costs and other expenses for the cross-appeal. The Court of Appeal rejected Barco´s appeal on all other points as well as Yealink´s cross-appeal. Like the Brussels Local Division, the Court of Appeal held that the application for provisional measures had to be dismissed due to lack of urgency.

5. On 29 December 2025, Yealink applied for a cost decision (R. 150 RoP) regarding its legal costs in first instance and in appeal with the Brussels Local Division, totalling EUR [redacted]. Barco disputed this amount, arguing that the total sum payable to Yealink was EUR [redacted] calculated as a reasonable and proportionate entitlement for reimbursement of costs for Yealink of EUR [redacted] across both instances minus Barco´s own entitlement for reimbursement of costs related to the competence challenge in first instance and the cross-appeal, totalling EUR [redacted].

6. By decision issued on 7 May 2026 (ORD-56587/2024, "impugned decision") the Brussels Local Division ordered Barco to pay EUR [redacted] to Yealink deducted with any interim costs already paid by Barco and dismissed any other requests of Barco and Yealink.

7. Yealink lodged an application for leave to appeal the impugned decision pursuant to R. 221 RoP.

THE REASONING IN THE IMPUGNED DECISION

8. The Brussels Local Division reasoned essentially as follows:
    - The ceiling to be applied is in the PI proceedings first instance EUR 112,000 and in the PI proceedings on appeal EUR 66,000.
    - As Yealink´s competence challenges were dismissed in both instances, this has an influence when interpreting the term of "successful party" in the sense that Yealink cannot be considered "entirely as the successful party" in the PI proceedings.
    - As Barco initiated proceedings on the merits on 29 August 2025, the R. 151 RoP deadline is calculated from the date on which the decision on the merits is issued. As this time period has not yet begun to run, the objection to the late filing of Yealink´s request is dismissed.
    - Barco did not dispute that Yealink´s legal expenses exceeded the recoverable ceiling and accepted that the ceiling was set at EUR 112,000 at first instance.
    - The Court sets the ceiling in the PI proceedings on appeal to 50% ("i.e. EUR 66,000") of the ceiling. By decreasing the ceiling for the appeal PI proceedings to 50%, the Court balanced Guideline 5(b) (decrease of the value at 66% for the overall PI proceedings) with the "acceptance" by Barco that the ceiling in the PI first instance should be set at EUR 112,000.
    - The total number of hours accounted for by Yealink´s representatives for the PI proceedings on appeal is not considered reasonable and proportional when comparing them to the total number of hours accounted for in the proceedings in first instance.

PARTIES' REQUESTS

9. Essentially, Yealink requests that the Court of Appeal set aside the impugned decision insofar as Yealink´s claims were not fully granted and insofar as any of Barco´s claims were granted.

10. Essentially, Barco requests that the Court of Appeal dismiss the application for leave to appeal as inadmissible, alternatively "in its entirety" and in case the application for leave to appeal is granted, grant Barco a separate term to respond to the grounds of appeal, in the alternative dismiss the appeal.

PARTIES´ SUBMISSIONS

11. Essentially, Yealink submits:

- The cost decision is clearly erroneous given the significant and surprising reductions of the Brussels Local Division.
- In a surprise decision the Brussels Local Division incorrectly halved the applicable cost ceiling for the PI appeal proceedings.
- Superfluously, Yealink notes that the Brussels Local Division miscalculated that 50% of EUR 112,000 would amount to EUR 66,000.
- The Brussels Local Division incorrectly admitted Barco´s claim despite the absence of an application by Barco.
- The Brussels Local Division incorrectly awarded Barco costs relating to its competence objection in both instances of the provisional measures proceedings;
- The Brussels Local Division incorrectly deducted Barco´s full costs relating to the competence defence, while awarding Yealink as the prevailing party in the main action only a portion of its costs.
- Yealink paid a court fee of EUR 2,000 to apply for leave to appeal the cost decision. It is noted on page 7 of the Table of Court fees that this "fee does not arise if the appeal is allowed". Yealink therefore understands that this court fee will be reimbursed should the appeal be allowed. If not Yealink requests that the Court of Appeal order Barco to pay EUR 2,000.

12. Essentially, Barco submits:
    - The application for leave to appeal is procedurally defective and should be dismissed as inadmissible. No grounds exist that would justify the grant of leave to appeal.
    - Yealink does not address the request for leave to appeal. Pursuant to the principle of *no ultra petita*, the Court of Appeal may not grant relief that has not been put forward by a party in the proceedings.
    - Moreover, the application for leave to appeal does not identify any legal or factual basis upon which leave to appeal should be granted and therefore does not meet the requirements set out in R. 221.2 RoP, instead, it consists exclusively of the grounds of appeal.
    - Yealink does not identify any issue of law on which UPC judges have reached divergent interpretations, nor does it explain how an appeal of a discretionary cost determination would serve the concrete interests of the parties beyond Yealink´s own dissatisfaction with the outcome. Yealinks´s characterisation of the cost decision as "clearly erroneous" amounts to disagreement with the result and not an identification of legal issues warranting appellate review.
    - Leave to appeal must, at the very least, be refused.

REASONS

I. Admissibility of the application for leave to appeal

13. The application for leave to appeal is admissible.

Requirements of R. 221.1 RoP

14. According to R. 221.1 RoP a party adversely affected by a decision referred to in R. 157 RoP may lodge an application for leave to appeal to the Court of Appeal within 15 days of service of the decision of the Court. These requirements have been met.

Specific Request

15. Barco argues without success that Yealink did not address the request for leave to appeal. According to 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. Therefore, the parties' claims and procedural requests must be specific. They must be formulated in such a way that the scope of the court's jurisdiction under Art. 76(1) UPCA is clear, and that the actual issue in dispute can be decided with res judicata effect.

16. In its statement of 22 May 2026 titled "*Application for leave to appeal (R. 221), Statement of Appeal (R. 225) and Statement of Grounds of Appeal (R. 226) (…)*" (emphasis by the Court), Yealink did not expressly request that the Court of Appeal grant leave to appeal. Only the requests regarding the appeal are formulated expressly. However, the title of the statement and the content make it clear that Yealink is requesting that the Court of Appeal grant leave to appeal. Yealink submits that "*Yealink has decided to file for leave to appeal" and "in this submission, which contains the application for leave to appeal, a statement of appeal and a statement of grounds of appeal* (hereinafter together "Grounds of Appeal"), *Yealink will explain which parts of the cost decision are contested, why the appeal should be heard, why the cost decision must be set aside and indicate the facts and evidence relied on*" (emphasis by the Court). This makes it clear that, as a first step, Yealink is seeking leave to appeal. The fact that Yealink did not intend to lodge a separate Statement of appeal and Statement of grounds of appeal after leave to appeal was granted does not change the fact that the statement of 22 May 2026 was also an application for leave to appeal. R. 221 RoP does not always require a separate Statement of appeal and Statement of grounds of appeal after leave to appeal a cost decision is granted (CoA, 21 February 2025, UPC-CoA-618/2024, *Hanshow v VusionGroup*, para. 11).

II. Content of the application (R. 221.2 RoP)

17. According to R. 221.2 (a) RoP the application for leave to appeal shall set out the reasons why the appeal should be heard. In other words, the application must specify why leave to appeal should be granted. The purpose of the requirement to set out the reasons why the appeal should be heard enables the standing judge to examine whether the conditions for leave to appeal have been met solely on the basis of the application and the impugned decision, taking into account the specific references to the case file contained therein. Referring to the written submissions in general is not sufficient for this purpose.

18. Leave to appeal a decision referred to in R. 157 RoP (hereinafter "cost decision" or "cost determination"), shall be granted if the impugned decision of the judge-rapporteur is manifestly erroneous or the impugned decision raises a fundamental question of law and its review is necessary to ensure a consistent application of law or any other objective of granting leave to appeal (see the case-law with regard to discretionary review, for which R. 220.3 RoP stipulates that the request shall set out the matters referred to in R. 221 RoP: CoA, UPC-CoA-489/2024, 6 September 2024, *Motorola v. Ericsson*, para. 4; UPC-CoA-

805/2025, 1 September 2025, *Centripetal v. Keysight*, paras. 8 and 11; 19 May 2026, UPC-CoA-67/2026, *ASC v Xiaomi* para. 10).

19. In the application for leave to appeal under R. 221.1 RoP, the Applicant must therefore specify the reasons which justify granting leave to appeal, for example whether the impugned decision of the CFI is manifestly erroneous or raises a fundamental question of law, which is relevant for the outcome, and its review is necessary to ensure a consistent application of law. In the latter case, the applicant must demonstrate that there are differing views amongst the court or explain the reasons why there is otherwise a need for clarification of the legal issue (see CoA, 6 September 2024, UPC-CoA-489/2024, *Motorola v Ericsson*, para. 4).

20. Where the applicant asserts a manifest error, it must be apparent from the appellant's submission that the decision would probably have been different had the Court of First Instance not made a manifest error.

21. Yealink did not assert that the impugned decision raises a fundamental question of law so that review is necessary to ensure a consistent application of law. Yealink only argues that "*the cost decision is clearly erroneous given the significant and surprising reductions of the Brussels Local Division*". When considering whether to allow the appeal, the Court of Appeal is therefore limited to this ground.

III. Inadmissibility of Yealink´s application for a cost decision and consequences

1. Admissibility of Yealink´s application for a cost decision

22. The application for a determination of costs is currently inadmissible.

23. According to R. 150.1 RoP a cost decision may be the subject of separate proceedings following a decision on the merits and, if applicable, a decision for the determination of damages. According to R. 151.1 RoP, where the successful party wishes to seek a cost decision, it shall within one month of service of the decision lodge an application for a cost decision. As follows from R. 150.1 RoP, the one month for lodging an application for a cost decision pursuant to R. 151.1 RoP begins with the service of the decision in the proceedings on the merits, not with the service of an order on provisional measures.

24. In proceedings for provisional measures, where the applicant was ordered to bear the costs of the defendant, if no proceedings on the merits are already pending R. 150 and 151 RoP apply mutatis mutandis. The one month should then apply by way of analogy, counting from the service of the first instance order on provisional measures (CoA, 6 June 2025, UPC-CoA-618/2024, *Hanshow v VusionGroup*, para. 42). Nevertheless, the applicant could still start proceedings on the merits, which triggers the normal time limit for applications for cost decisions in R. 151 RoP (one month after the decision on the merits). If proceedings on the merits are started, and an application for a cost decision has already been made by the successful defendant, these proceedings may continue. If such proceedings have not yet been lodged, it is upon the defendant to either lodge an application within the one month´s period starting with the first instance order on provisional measures or wait for the decision on the merits (*Hanshow v VusionGroup*, para. 43). The same principles apply to the appeal proceedings (*Hanshow v VusionGroup*, para. 44).

25. Regarding the costs of the Court of First Instance proceedings the application was not filed within one month after the Brussels Local Division ordered Barco to pay the costs of these proceedings.

26. Regarding the appeal costs, Yealink filed its application within one month after the final order of the Court of Appeal. However, as Barco initiated proceedings on the merits on 29 August 2025, this triggered the normal time period for applications for cost decisions in R. 151 RoP (*Hanshow v VusionGroup*, para. 43). The fact that the decision on the merits has not been issued so far, makes Yealink´s application for a cost determination currently inadmissible.

2. Consequences of the inadmissibility

27. However, the current inadmissibility of Yealink´s application for a cost determination does not mean that the application for leave to appeal is unfounded. If the impugned decision had material substantive deficiencies as advanced by Yealink that disadvantaged Yealink, Yealink would be adversely affected by the *res judicata* effect of the denial of its requests. Conversely, if the Local Division had dismissed the requests as currently inadmissible, Yealink could reapply for a cost determination after the decision in the proceedings on the merits had been made.

IV. Evident errors of the impugned decision

Reducing the recoverable costs for the appeal proceedings at 50%

Guidelines II, Number 5 b) of the Guidelines for the determination of the court fees and the ceiling of recoverable costs, as adopted by decision of the Administrative Committee on 24 April 2023 (hereinafter Guidelines).

28. The Brussels Local Division set the recoverable legal costs for the appeal proceedings at 50% of the applicable ceiling. It arrived at this figure by "*balancing*" the application of [II.] Number 5b) of the Guidelines ("*decrease of the value to 66% for the overall PI proceedings*") with the "*acceptance" by Barco that the ceiling in the PI first instance should be set at EUR 112,000*". Actually, the Brussels Local Division granted approximately 59% of this ceiling, which was EUR 66,000.

29. When exercising its discretion to determine the value in dispute, the Court "may" take the Guidelines into account (R. 370.6 RoP) but it is not obliged to do so (CoA, 10 June 2026, UPC-CoA-85/2026, para. 27, *Speed Care Mineral v Teleflex Life Sciences*). If the Court determines the value in dispute according to the Guidelines, the Guidelines must be applied correctly. The provisions in II. Number 5b) of the Guidelines cannot justify decreasing the ceiling to 66%, as the Brussels Local Division did in its first step. II Number 5b) (unchanged by the guidelines amended by decision of the Administrative Committee on 4 November 2025) states that in a case of an application for interim relief which is not followed by an infringement action on the merits the value of an application for interim relief for determining the level of the recoverable costs should be calculated at 66% of the value calculated in accordance with II.1.b) of the Guidelines.

30. As the Brussels Local Division correctly held, the Guideline 5b) is not literally applicable because, in this case, an infringement action on the merits followed the PI proceedings. However, even if applied *mutatis mutandis* it would not follow that the applicable ceiling has to be decreased to 66%. It is the value of the proceedings that has to be decreased to 66%.

31. Even if the value of the appeal proceedings, which the judge-rapporteur of the Brussels Local Division considered to be EUR 1,000,000 would be decreased to 66%, the applicable ceiling would still be up to EUR 112,000. The value of the proceedings would then be EUR 660,000 (66% of EUR 1,000,000). According to the scale of ceilings for recoverable costs, proceedings with a value in dispute of EUR 660,000 still have an applicable ceiling of up to EUR 112,000.

32. To conclude, the impugned decision contains a manifest error.

Numbers of hours reasonable on appeal?

33. The manifest error does not justify leave to appeal, because it is not shown by Yealink that the impugned decision would probably have been different had the Court of First Instance not applied Number 5b) of the Guidelines.

34. The Brussels Local Division justified the setting of the ceiling for the appeal proceedings at 50% (the result of 50% of 112,000 found by the Brussels Local Division resulting in EUR 66,000, see para. 43 impugned decision - but actually setting the ceiling at 59%, see above) stating the following further considerations (para. 43 last bullet point): "*The total number of hours accounted for by Yealink´s representatives for the appeal proceedings ([redacted] hours) is not considered reasonable and proportional when comparing them to the total number of hours accounted for in the proceedings in first instance ([redacted] hours), especially given that the arguments relating to infringement, validity, and the measures requested for by Barco in appeal were the same as in the initial first instance proceedings, where these issues were not assessed. The Court further, does not consider these costs for legal representation in appeal reasonable and proportional, given that Yealink itself held the arguments on urgency (the only ones adapted by Barco in the appeal) constituted [redacted] of its total working hours. Further, Barco´s formulation of new observations on claim construction during the first instance oral hearing are not considered of such a nature to justify the amount of hours accounted for in appeal especially as Yealink limited itself to referring to its arguments in first instance*."

35. In its application for leave to appeal, Yealink notes that these considerations are irrelevant, particularly in the context of the inappropriate lowering of the ceiling. According to Yealink, the relevant question is whether the applicable ceiling was exceeded, and this is undisputedly the case.

36. Yealink´s submissions are insufficient to establish that these considerations are erroneous, let alone manifestly erroneous.

37. Contrary to Yealink´s opinion, these considerations of the Brussels Local Division are not irrelevant. According to R. 152.1 RoP, the applicant shall be entitled to recover reasonable and proportionate costs for representation. Pursuant to R. 152.2 RoP the Administrative Committee shall adopt the scale of ceilings for recoverable costs by reference to the value of the proceedings. This was done by the

Administrative Committee in its Decision of 24 April 2023 on the scale of recoverable cost ceilings (hereinafter Decision on ceilings). Exceeding the applicable ceiling does not automatically entitle a party to reimbursement up to the ceiling set by the Administrative Committee pursuant to R. 152.2 RoP. Art. 69 UPCA provides the general rule that the unsuccessful party shall bear the successful party´s costs by a number of principles which serve as important safeguards when the Court makes its decision on costs, by allowing for exceptions from the general rule or limiting its application. The ceiling on the recoverable representation costs is only one of many safeguards against undue cost recovery, and the last one to apply when the Court makes its decision on costs (Decision on ceilings, consideration para. 1). In particular, according to Art. 69(1) UPCA and R. 152.1 RoP, only reasonable and proportional legal costs and other expenses incurred by the successful party may be recovered from the unsuccessful party (see Decision on ceilings, consideration para. 1). Only the recoverable costs established in compliance with the principles set in Art. 69 UPCA are measured against the ceilings set forth in the Decision on the scale of recoverable cost ceilings. There is a large margin of appreciation for the Court when applying the safeguarding principles before making a cost decision, and thus, the ceilings are only to be regarded as a safety net, i.e. an absolute cap on recoverable representation costs applicable in every case (see Decision on ceilings, consideration para. 1).

38. In light of this, it was correct for the Brussels Local Division to examine whether the total number of hours accounted for by Yealink in the appeal proceedings was reasonable and proportionate. In its application for leave to appeal, Yealink does not explain why the Court should consider that a near identical number of hours as those accounted for in the first instance proceedings is reasonable on appeal. Yealink refers to its application and the reply to Barco's response thereto of 21 April 2026, paras. 4.3-4.7. There it is only argued regarding the reasonability and proportionality: "*The costs are reasonable and proportionate as the case involves relatively complex technical subject-matter and extensive written proceedings. The written proceedings across two instances includes a large number of procedural filings, and numerous exhibits, some running to hundreds of pages. Moreover, the instances addressed a full range of issues typical of complex patent litigation including alleged infringement, invalidity (lack of novelty, lack of inventive step, added matter and insufficiency), as well as lack of urgency, lack of necessity, balancing of interests and lack of (internal) competences*" (reply to Barco's response of 21 April 2026, para. 4.4). "*Barco put the full case on the table in appeal. Of course, Yealink could not have anticipated that the case would ultimately be decided on urgency. It was both reasonable and necessary for Yealink to present a full defence to protect its position. Moreover, Barco made several new statements during the oral hearing in first instance, including on claim construction. This made it necessary for Yealink to address substantive issues into its defence in the appeal proceedings, the first opportunity for Yealink to respond in writing*" (reply to Barco´s response of 21 April 2026, para. 4.6).

39. In principle, it was reasonable for Yealink during the appeal proceedings to reiterate and expand upon the arguments and facts raised in the proceedings before the Brussels Local Division that were not considered in the final order. However, Yealink did not sufficiently explain why the number of hours spent on the appeal is nearly similar to the number spent in the first instance proceedings for the same arguments. In particular, Yealink does not address the assessment of the Brussels Local Division that Barco´s formulation of new observations on claim construction during the first instance oral hearing are not of such a nature to justify the nearly identical numbers of hours spent on the first instance and on appeal.

40. For this reason, it cannot be seen that it was incorrect let alone manifestly incorrect that the Brussels Local Division reimbursed only around 59% of the applicable ceiling with regard to Barco´s appeal. Regarding cost determination at first instance the legal review on appeal is limited to a marginal review of whether the judge-rapporteur´s assessment deviates from the principles inherent in Art. 69 UPCA, as specified in R. 150 et seq. RoP (CoA, 3 July 2025, UPC-CoA-153/2025, *Tiroler Rohre v SSAB*, para. 22) considering its wide discretion.

Permission of Barco´s claims

41. The Brussels Local Division deducted the costs Barco incurred in challenging the competence issues raised by Yealink from Yealink´s cost award.

42. The Brussels Local Division held that where Yealink has opted to initiate cost proceedings before the case on the merits is assessed and a decision is issued, it would be inconsistent and procedurally inefficient to address only one side of the cost equation in these cost proceedings while leaving the other to a separate future procedure. Therefore, Barco has the right to claim its own costs as a defence solely as a matter of procedural efficiency and no separate application for a cost award is necessary, in order to avoid the burden of parallel proceedings.

43. Yealink argues successfully that the reasoning of the Brussels Local Division is manifestly erroneous. Whether it is admissible for the respondent to include its own costs in its defence in the cost proceedings without filing itself a formal application under R. 151 RoP can be left open. In any case, even if this were considered permissible, the time limits set out in R. 151 RoP must not be circumvented. This means that the time limit in R. 151 RoP applies to the defence.

44. As a general rule, the applicant in the PI proceedings, may not admissibly lodge an application for cost determination before the decision on the merits is issued. It follows that the Brussels Local Division should not have deducted any costs incurred by Barco.

Barco´s costs with regard to the competence objection in first instance

45. Furthermore, the decision to deduct Barco´s legal costs relating to Yealink´s unsuccessful competence objection in the first instance provisional measure proceedings, totalling [redacted] from Yealink´s recoverable costs was manifestly incorrect for the following additional reasons:

46. Firstly, in the proceedings for provisional measures, the Court of Appeal upheld the order of the Brussels Local Division insofar as it ordered Barco to bear reasonable and proportionate legal costs and other expenses incurred by Yealink in the CFI proceedings. The Court of Appeal ordered Barco to pay Yealink a total amount of EUR 66,000 as an interim award of costs (regarding the CFI proceedings) and rejected Yealink´s further application. Barco was ordered to bear the reasonable and proportionate legal costs and other expenses incurred by Yealink in the appeal proceedings, also for the application for suspensive effect (CoA, 28 November 2025, UPC-CoA-317/2025, UPC-CoA-376/2025). Yealink was ordered to bear Barco´s reasonable and proportionate legal costs and other expenses for the cross-appeal. The Court of Appeal rejected Barco´s appeal on all other points as well as Yealink´s cross-appeal. This order was final and complete, leaving no room for the allocation of further costs incurred by Barco (*res judicata*).

47. Secondly, proceedings under R. 150 RoP et seq. is not a re-examination of which party is entitled to cost reimbursement under Art. 69 UPCA. In proceedings for provisional measures, this decision (hereinafter referred to as "cost allocation"; "répartition des frais" in French; "Kostengrundentscheidung" in German) should be made in the order deciding on the application for provisional measures (see *Hanshow v Vusiongroup*, para. 37). Similarly, in the proceedings on the merits, the decision on the merits should contain a cost allocation decision (see *Hanshow v Vusiongroup* para. 38). The only issue subject to separate proceedings for a cost decision pursuant to R. 150 RoP et seq. is cost determination, i.e. the question of which costs to which amount are recoverable ("détermination des frais" in French, "Kostenfestsetzung in German, see R. 150.1 RoP; see Hanshow v Vusiongroup, para. 39). This follows from the following.

48. In accordance with R. 118.5 RoP, in the decision on the merits the Court shall decide in principle on the obligation to bear legal costs in accordance with Art. 69 UPCA. Therefore, the decision on the merits must determine who is to bear which costs under Art. 69 UPCA. This cannot be left to the procedure set out in R. 150 et seq. RoP. This makes sense given that the decision on the merits of the case determines which party is successful and given that R. 150 et seq. RoP only provide for a cost determination. According to R. 150.1, second sentence RoP the cost decision shall cover *costs incurred* in the proceedings by the Court (emphasis by the Court). Pursuant to R. 151(d) RoP the application for a cost decision shall contain an *indication of the costs* for which compensation is requested (emphasis by the court). There is no provision that the application should contain an indication why the applicant is the successful party. Pursuant to R. 156.1 RoP the judge-rapporteur may request the applicant to provide written evidence of all costs requested in R. 151(d) RoP. According to R. 156.1 RoP, the judge-rapporteur shall allow the unsuccessful party an opportunity to comment in writing on the costs requested including any item of costs that should be apportioned or borne by each party in accordance with Art. 69(1) to (3) UPCA. According to R. 156.2 RoP, the judge-rapporteur shall decide in writing on the costs requested including any item of costs that should be apportioned or borne by each party in accordance with Art. 69(1) to (3) UPCA.

49. This systematic approach, which differentiates between cost allocation in the final decision and cost determination in subsequent proceedings under R. 150 et seq. RoP, must also apply to proceedings for provisional measures.

Conclusion

50. Leave to appeal shall be granted insofar as the Brussels Local Division deducted costs incurred by Barco from Yealink´s recoverable costs.

Court fees in the appeal proceedings

51. According to the Table of Court Fees, the fee for an application for leave to appeal against cost decisions under R. 221 RoP does not arise if the appeal is allowed. This also applies if leave to appeal is granted in part (see for the request for discretionary review: CoA, 27 November 2024, UPC-CoA-651/2024, *Total Semiconductor v Texas Instruments).*

52. Yealink understands that the Court will reimburse this court fee if the appeal will be allowed. Should the Court of Appeal not reimburse this court fee, Yealink requests that the Court of Appeal order Barco, as the unsuccessful party, to pay Yealink´s court fee for the application for leave to appeal.

53. Yealink shall be reimbursed as requested. Yealink paid in total EUR 6,000. Yealink must pay an EUR 4,000 fee for the appeal. The fee for the leave to appeal proceedings should be deducted from this amount (see CoA, 27 November 2024, UPC-CoA-651/2024, *Total Semiconductor v Texas Instruments*).

Next steps

54. Barco shall be given the opportunity to lodge a Statement of response limited to the appeal for which leave to appeal was granted.

55. Both parties shall be given the opportunity to inform the Court, whether they prefer an oral hearing or whether they dispense with an oral hearing.

ORDER

1. Leave to appeal is granted insofar as the Brussels Local Division deducted costs incurred by Barco from Yealink´s recoverable costs.

2. Barco shall lodge its Statement of response no later than **18 November 2026**.

3. The parties are ordered to inform the Court, no later than **10 November 2026**, whether they prefer that an oral hearing is held or if they agree to dispense with an oral hearing. At the same time, the parties shall indicate their availabilities to attend an oral hearing on 15 December 2026, 9:30 am and inform the Court whether they agree that the oral hearing is held by videoconference.

4. It is ordered that EUR 2,000 of the court fees be reimbursed to Yealink.

Issued on 3 November 2026

Patricia Ursula Rombach

Digitally signed by Patricia Ursula Rombach
Date: 2026.11.03 16:22:13 +01'00'

Patricia Rombach, legally qualified judge and standing judge