Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Hamburg – Local Division

UPC_CFI_2231/2025
Procedural order
of the Court of First Instance of the Unified Patent Court, delivered on: 06/11/2026

HEADNOTES

1. The fact, that there is another case with another pool contributor pending against the same Defendants, who raised a FRAND defence in both cases, does not justify postponing the - already scheduled - oral hearing against the general objective of the UPC that an oral hearing shall be conducted within one year (Preamble Nr. 7 of RoP).
2. The outcome of a Rate Setting Counterclaim at another Local Division is not prejudicial for the present dispute, as the parties are not identical. The factual implications of the two cases are mutual; any decision on a FRAND defence against a pool contributor, be it by a UPC panel or by a national Court, is of factual interest for the next decision.

KEYWORDS

R. 334 RoP; request to adjourn; FRAND defence; Counterclaim for Rate Setting.

CLAIMANT

Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V.,
(Claimant) - Hansastraße 27c - 80686 - München – DE

Represented by: Dr. Volkmar Henke, Tilman Müller, Dr. Ronja Schregle, Max Weller

DEFENDANTS

1. **Acer Computer GmbH**, Kornkamp 4, 22926 Ahrensburg, Germany,

2. **CPYou B.V.**, Europalaan 89, 5232 BC 's-Hertogenbosch, The Netherlands,

3. **Acer Italy s.r.L**, Viale Delle Industrie, 1/A, 20044 Arese (MI), Italy,

4. **Acer Computer B.V (Benelux)**, Europalaan 89, 5232 BC ‘s Hertogenbosch, The Netherlands,

5. **Acer Computer France**, Immeuble Seine 2-8 rue Sarah Bernhardt, CS 90045, 92601, Asnieres-sur-Seine Cedex, France,

All represented by: Sven Krause, Dr. Andrew Lin, Roeland Grijpink, Rosalie ten Wolde, Sabine Agé, Paul Puche

PATENT IN SUIT

Patentnr.	*Inhaber*
EP2304723	Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V.

DECIDING JUDGE

Judge-rapporteur Dr. Schilling

SUBJECT OF THE APPLICATION:

Defendants' request to adjourn, R. 334 RoP

SHORT SUMMARY OF FACTS:

1. Claimant filed its Statement of Claim on 23 December 2025 suing Defendants for the infringement of patent EP2304723 related to audio coding.
2. The patent is listed in the standard specification of the Opus Audio Codec. It is undisputed that Claimant did not participate in the development or standardization of the Opus codec, was not a member of the IETF Codec Working Group and made no commitments – royalty-free or otherwise – in connection with the Opus standardization process. However, Claimant started licensing its Opus related patents via Vectis IP Ltd. in 2023.
3. Defendants claim that the patent in suit is not essential for the Opus standard.
4. Defendants are also a party to the proceedings between Dolby, another Vectis contributor, and several Acer companies before the LD The Hague (UPC-CFI-0001536/2025). On 3 April 2026 Defendants in that case lodged a Counterclaim for Rate Setting against Vectis as an intervener.
5. The judge-rapporteur at LD The Hague admitted the rate setting counterclaim against Vectis IP by order dated 1 May 2026, which was confirmed by the whole panel on 8 July 2026. Dolby lodged an appeal against this decision. The decision of the CoA is still pending.
6. On 14 August 2026 the sub-registry of the LD Hamburg managed to figure out a date for the oral hearing in the present case (9 March 2027), where the panel and both parties are available. On 14 September 2026 the judge-rapporteur issued the summons to the oral hearing. Summons in the case at LD The Hague are not issued, yet.
7. With submission 14 October 2026 Defendants requested to adjourn the oral hearing until June/July 2027.
8. They stated that the LD The Hague in the case between Acer and Dolby respectively the Opus Patent Pool administrator Vectis, has scheduled the oral hearing for 27 and 28 May 2027. They argue that both the FRAND defense in the present proceedings and the FRAND defense and rate-setting counterclaim at the LD The Hague proceedings concern the same Vectis Opus Patent Pool license. They are of the opinion that the decision on the rate-setting counterclaim at the LD The Hague proceedings therefore has a prejudicial but at least relevant effect on the

FRAND defense asserted in the present case. They claim that the present overall scheduling of the parallel cases is impractical for resolving the overarching topics in the FRAND side since the LD The Hague will hear the Acer's counterclaim for a license in a hearing fully devoted to it, but in the (unlikely) scenario in which the LD Hamburg would impose an injunction, that hearing would become moot. Postponing the oral hearing in the present proceedings would avoid that the LD Hamburg would have to decide on the matter without being able to take into account the entire FRAND debate and the decision by the LD The Hague on the rate-setting counterclaim.

9. Alternatively, should the LD Hamburg not decide to adjourn the hearing date, Defendants request to schedule a separate hearing date for the non-technical part of this case, at a date after the decision of the LD The Hague.

10. Claimant responded to the application with submission 28 October 2026 and requested to reject the application to adjourn. According to Claimant, Defendants' wish to have the cases heard in a different sequence is hardly a reason to postpone the hearing in front of the Panel. Claimant argues to have a legitimate interest in stopping the infringement of the asserted patent. This interest is not only recognized in the UPCA but also in the Enforcement Directive but the Preamble of the Rules of Procedure expressly states that "*proceedings shall be conducted in a way which will normally allow the final oral hearing on the issues of infringement and validity at first instance to take place within one year*".

11. Claimant points out that any decision in the Hague Proceedings will not be binding for this Panel as Fraunhofer is not a party to the Hague Proceedings and neither Dolby nor Vectis is a party to the present proceedings. Even if the LD in The Hague would, in the context of Acer's FRAND defence, comment on whether the rates of Vectis' Opus pool are FRAND or not, the results would not be binding for Fraunhofer. Neither would such findings be binding for this Panel, as it must decide the case before it independently and based on its own judgement. There is certainly no reason why any decision from the LD The Hague on Vectis' pool rates would be "better" or more reliable than a decision of the LD Hamburg.

12. Claimant further pointed to Acer's submission dated 17 August 2026 in the case in The Hague that the "*declaratory relief which Acer seeks does neither oblige nor factually force Dolby et al. to enter into a global license agreement with Acer at the terms determined by the court. Dolby et al. remain free to decline the conclusion of a license agreement at the terms determined by the UPC*". According to Claimant this shows that the Rate Setting Counterclaim is merely declaratory and the rates may be declined by Dolby and Vectis and thus the case in The Hague would not result in a license and a settlement of the Opus-related dispute.

REASONS FOR THE ORDER:

13. The request to adjourn the oral hearing is admissible, but unfounded.

14. According to R. 334 (b) RoP the judge-rapporteur, the presiding judge or the panel may adjourn or bring forward the interim conference or the oral hearing. This is a discretionary case management decision where the goals set out in the UPCA and the RoP and the interests of the parties have to be weighed.

15. The fact, that there is another case with another pool contributor pending against Defendants, who raised a FRAND defence does not justify postponing the - already scheduled - oral hearing against the general objective of the UPC that an oral hearing shall be conducted within one year (Preamble Nr. 7 of RoP). In the present case, the Statement of Claim was filed on 23 December 2025, service on the majority of defendants was effected on 26/27 January 2026. Hence, the date found with the panel and the party representatives is already a bit more than

a month off this goal, which is not unusual given this panel's attempt to accommodate the parties' availabilities.

16. Any further delay is not justified, also not in light of the Rate Setting Counterclaim at the LD The Hague, which was filed well after service of the SoC in the present case was effected. The judge-rapporteur had been aware of the proceedings at the LD The Hague between another contributor to the Vectis pool and Acer companies from the outset and was continuously informed about the stage of the proceedings. However, even though the SoC there was served two months earlier than in the present proceedings, the proceedings at LD The Hague suffered a delay and the question whether or not the counterclaim for rate setting against Vectis as intervener is still pending before the CoA. It has to be noted that this appeal is not designed to render a rate setting decision but a decision on the general admissibility of a rate-setting counterclaim against the pool as an intervener. Whether or not, if admissibility is confirmed, the counterclaim will be considered well-founded is a separate matter resting in the competence of the LD The Hague.

17. Contrary to the Defendants, the outcome of the Rate Setting Counterclaim at the LD The Hague is not prejudicial for the present dispute with Fraunhofer. While both cases concern the same pool, the parties are not identical. In fact, the factual implications of the two cases are mutual. In both cases, the respective panels have to examine the individual FRAND defences on their own, without one being more relevant than the other. That is because, any decision on a FRAND defence against a pool contributor of Vectis, be it by a UPC panel or by a national Court, is of factual interest for the next decision. FRAND cases do not take place in a vacuum. Rather, they are often characterised by parallel proceedings in different courts or even in different jurisdictions. As such it is not uncommon that requests for an injunction are paralleled by applications for a licence determination at another Court. This, however, does not mean that one predominates over the other or in the term of Defendants "overarches" the other. The judge-rapporteur does not share Defendants' optimism that a decision in the case at LD The Hague would settle the dispute once and for all pool contributors. This can at best only be expected from the CoA.

18. Nevertheless, the LD The Hague's envisaged timing (formal summons have not been issued, yet) wisely holds a distance from the date of the oral hearing at the LD Hamburg, which would allow both parties to comment on a – then likely already issued – decision in the present case. By virtue of this scheduling the parties can present their consent or criticism of the Hamburg decision to the panel in The Hague.

19. Finally, even if the panel in the present case comes to the conclusion that an injunction is to be imposed, there are still ways that either the panel could execute its discretion with respect to a time-period for enforceability under R. 352 RoP, or the losing party can lodge a request for suspensive effect with the CoA.

20. For these reasons, a separate split hearing for the FRAND defence is not indicated, either.

21. The competence of the judge-rapporteur for the present order in written proceedings follows from R. 331.1 in conjunction with 334 and 335 RoP.

ORDER

Defendants' requests to adjourn the oral hearing or to schedule a separate hearing of the non-technical issues are rejected.

ISSUED IN HAMBURG, 06 NOVEMBER 2026

STEFAN SCHILLING

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Judge-rapporteur