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Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Reference no:

UPC-COA-193/2026

ORDER

of the Court of Appeal of the Unified Patent Court,

issued on 19 November 2026

HEADING:

1. The inclusion, in the rejoinder, of evidence intended to support a defence already raised in good time and to respond to the objections raised by the opposing party in its reply does not automatically entitle the latter to file a supplementary submission. Pursuant to Rule 36 of the RoP, it is for the reporting judge to assess, in the light of the circumstances of the case and in accordance with the right to be heard, whether there are grounds to authorise a further exchange of written submissions.

2. For the purposes of a discretionary review based on the existence of a fundamental question of law, it must be established that consideration of the issue raised is necessary to ensure the consistent application and interpretation of the Rules of Procedure or to achieve another objective specific to discretionary review.

KEYWORDS:

Discretionary review, application for

APPELLANT

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RESPONDENTS

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PATENT IN DISPUTE

EP 4 144 599

DECIDING JUDGE

Paolo Catallozzi, legally qualified judge and standing judge

LANGUAGE OF THE PROCEEDINGS

French

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

□ Order of the Paris Local Division of 9 October 2026, UPC_CFI_1963/2025

SUMMARY OF THE FACTS

1. On 12 December 2025, the Appellant brought an infringement action against the Respondents before the Paris Local Division, relating to a patent entitled 'Wiper system adapter'. In their statement of defence of 13 April 2026, the Respondents sought the dismissal of the infringement action, arguing, primarily, that the products in question did not reproduce the features

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of the claims relied upon and, in the alternative, that they were entitled to rights based on prior use in the relevant States (Germany, Belgium and France). They also brought a counterclaim seeking a declaration of invalidity of the claims relied upon in the patent in question on the grounds of lack of inventive step.

2. With regard to the rights based on prior use, the Appellant contested, in its reply of 15 June 2026, the existence of the right of prior personal possession invoked by the Respondents under French law. In their rejoinder of 17 August 2026, the Respondents produced additional documents, including documents BP 12a, BP 12b, BP 13, BP 15 and BP 16, and set out arguments in response to the Appellant's challenges.

3. By application dated 24 August 2026, the Appellant requested that the newly produced documents and the corresponding arguments be excluded from the proceedings. It also contested, on the grounds that they were out of time, the arguments put forward by the Respondents in their reply brief regarding the role of intermediary attributed to certain of them, notably Robert Bosch Doo Beograd, Bosch GmbH and Bosch Automotive Products (Changsha) Co., Ltd. In the alternative, she sought, pursuant to Rule 36 of the RoP, leave to respond to them on the merits in her next statement of case, which was due to be filed on 17 September 2026.

4. In their submissions of 3 September 2026, the Respondents objected to these requests and sought to have the substantive arguments put forward by the Appellant in its appeal excluded from the proceedings.

5. By order of 7 September 2026, the reporting judge granted neither the Appellant's applications nor those of the Respondents.

6. On 17 September 2026, the Appellant applied to the Chamber, pursuant to Rule 333 of the RoP, for a review of the reporting judge's order. Primarily, she requested, inter alia, that exhibits BP 13, BP 15 and BP 16, together with the corresponding arguments, be excluded from the proceedings. In the alternative, she requested that she be granted a right of reply and that the arguments set out in section 2.2 of her application for review, together with the new documents produced in support thereof, be added to the file of the proceedings on the merits. Among these was document AD 6.7, consisting of a statement by Professor [redacted] drawn up in response to the opinion of Professor [redacted] (document BP 15).

7. In their written submissions of 30 September 2026, the Respondents requested that the application for review be dismissed. They also requested that the additional substantive arguments set out in paragraphs 32 to 71 of the application for review, as well as the new exhibits AD 6.7, AD 5.27 and AD
5.28, be excluded from the proceedings. In the alternative, should any or all of these arguments or documents be admitted, they requested leave to file a supplementary statement of defence.

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8. By order of 9 October 2026, the Paris Local Division dismissed the application for review brought by the Appellant against the order of the reporting judge of 7 September 2026. It also excluded from the proceedings the arguments put forward by the Appellant in her appeal of 17 September 2026, sections 2.2.1 to 2.2.4, paragraphs 32 to 71, pages 15 to 22, as well as the new exhibits AD 6.7, AD 5.27 and AD 5.28. Finally, it dismissed the application for leave to appeal.

9. On 26 October 2026, the Appellant lodged an application for discretionary review under Rule 220.3 of the RoP. She asks the Court to grant leave for an appeal and to set aside the contested order in so far as it excluded from the proceedings the [redacted]rofessor's certificate (Exhibit AD 6.7) and the arguments in the application for review relating to prior personal possession under French law (section 2.2.2.1). As a primary claim, it requests that these arguments and this certificate be declared admissible and considered as forming part of the file submitted to the Paris Local Division. As an alternative claim, it requests leave to file a supplementary statement of case limited to a response to Exhibit BP 15, accompanied by the professor's professor [redacted]

10. The Respondents request that the application for discretionary review and the application for leave to appeal be dismissed. In the event that leave to appeal is granted, they request that the order of the Paris Local Division be upheld in respect of all its contested provisions and that all of the Appellant's principal and alternative claims be dismissed. In the further alternative, should the expert report by Professor[redacted] and the corresponding arguments be admitted, the Respondents request leave, pursuant to Rule 36 of the RoP, to file a supplementary expert report by Professor[redacted] and a supplementary response on prior personal possession, in order to address Exhibit AD 6.7 and the Appellant's new arguments on this subject.

GROUNDS FOR THE ORDER

Legal framework.

11. Pursuant to Rule 220.3 of the RoP, where the Court of First Instance has refused leave to appeal against an order made under Rule 220.2 of the RoP, the party concerned may apply to the Court of Appeal for a discretionary review.

12. According to the case-law of the Court of Appeal, an application for discretionary review may be granted where the contested order of the Court of First Instance is manifestly erroneous or where it raises a fundamental question of law, the examination of which is necessary to ensure the consistent application and interpretation of the Rules of Procedure or to achieve any other objective specific to discretionary review (order of 26 May 2026,

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UPC_CoA_74/2026, *ASC v Motorola*, para. 8; order of 19 May 2026, UPC_CoA_67/2026, *Advanced Standard Communication v Xiaomi*, para. 10; order of 8 May 2026, UPC_CoA_35/2026, *Adobe v Keeex*, para. 13).

Exhibit BP 15: no response.

13. The Appellant contends that the order of the Reporting Judge and that of the panel are based on the erroneous premise that it had already, in its appeal of 24 August 2026, set out detailed observations on the merits, probative value and scope of Exhibit BP 15, which consists of a legal opinion by Professor [redacted]

14. She argues that, with regard to this exhibit, her application of 24 August 2026 merely challenged its late submission, relevance and admissibility, and did not address the interpretation of French law set out by the professor[redacted]

15. It is apparent from an examination of that application that the submissions specifically devoted to Exhibit BP 15 focused essentially on the reasons why, in the Appellant's view, it should have been produced with the statement of defence and should have been dismissed as out of time. It does not appear that the Appellant took a position on the substance of the arguments[redacted] in the professor's legal opinion

16. The premise that the Appellant had already taken a position on the substance of Exhibit BP 15 is therefore incorrect.

17. However, this inaccuracy is not decisive and is not sufficient to render the contested decision manifestly erroneous.

18. It is necessary, first of all, to examine the impact of this inaccuracy on the decision to exclude from the proceedings the arguments set out in section 2.2.2.1 of the application for review of 17 September 2026, as well as document AD 6.7.

19. The submission of pleadings and evidence during the written proceedings is governed by the Rules of Procedure. A party may not, on its own initiative, supplement the pleadings and documents in the case file relating to the merits of the case after the expiry of the time-limits laid down in those rules. A further exchange of pleadings or the production of additional documents must be authorised in advance by the Judge-Rapporteur, in particular pursuant to Rule 36 of the RoP, or ordered by the Tribunal in the exercise of its powers to manage the proceedings.

20. As the panel correctly noted, the purpose of the application provided for in Rule 333 of the RoP is to review an order relating to the conduct of proceedings made by the reporting judge or the President, and it must remain within the scope of the contested order. It does not permit a party to take it upon itself to introduce new arguments and new documents into the file of the proceedings on the merits, whilst seeking their retroactive admission.

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21. The fact that the Appellant had not yet responded on the merits to document BP 15 did not therefore allow the arguments set out in section 2.2.2.1 of its application for review and document AD 6.7 to be regarded as having become, by the mere effect of their production in the proceedings provided for by Rule 333 of the RoP, an integral part of the case file for the proceedings on the merits.

22. Secondly, with regard to the alternative claim based on Rule 36 of the RoP, the panel noted that the issue of prior personal possession under French law had already been raised in the proceedings. This assessment is confirmed by the parties' written submissions: the Respondents had raised this defence as early as their statement of defence and set out the grounds on which, in their view, it was based (paragraphs 149 to 152 and 230 to 243), whilst the Appellant had contested, in its reply, both its existence and the conditions for its application (paragraphs 113 to 152).

23. The inclusion, in the rejoinder, of evidence intended to support a defence already raised in due course and to respond to the objections raised by the opposing party in its reply is contrary neither to
Rule 29(c) of the RoP nor the principle of concentration of the grounds of the proceedings. The Court of Appeal thus held that a party may submit additional evidence concerning a fact or argument already raised and previously substantiated, but contested by the opposing party. It applied this principle to arguments and documents submitted in an appeal in response to the objections raised, in the reply, against a defence based on a prior right of use (judgment of 2 June 2026, UPC_CoA_312/2025 et al., *Kodak v Fujifilm*, paragraphs 238 to 240).

24. Such a submission does not automatically confer on the opposing party the right to file a further written submission. Pursuant to Rule 36 of the RoP, it is for the Judge-Rapporteur to assess, in the light of the circumstances of the case and in accordance with the principle of adversarial proceedings, whether there are grounds to authorise a further exchange of written submissions. Recognising an automatic right of reply would render the time limits laid down in the Rules of Procedure for the exchange of pleadings ineffective and could lead to a potentially indefinite series of written exchanges.

25. In the present case, the Appellant has not demonstrated that document BP 15 altered the subject-matter or the essential grounds of the defence based on prior personal possession, nor that it introduced any new facts. Whilst this document contained a more in-depth analysis of French law, it merely responded, on a matter already under discussion, to the interpretation set out by the Appellant in her reply.

26. In these circumstances, the refusal to authorise the requested supplementary submission does not constitute a manifestly unreasonable exercise of the discretion granted to the reporting judge under Rule 36 of the RoP. The panel therefore did not commit a manifest error in upholding that refusal.

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Points relating to the content of national law.

27. By its second ground of appeal, the Appellant challenges the Panel's position that it is not for a party to substantiate the applicable provisions of the national law of the Member States, given that such law constitutes a source of applicable law within the system of the Agreement on the Unified Patent Court.

28. The Appellant argues that, according to the case-law of the Court of Appeal, a party invoking the application of a rule of national law must provide the necessary information to enable the Court to determine its content and conditions of application, notwithstanding the fact that national law constitutes a source of applicable law under Article 24 of the Agreement.

29. The Panel set out the contested position in the context of its consideration of the Appellant's request that Exhibit BP 15 be excluded from the proceedings on the ground that it had not been filed with the statement of defence.

30. The Chamber's position regarding the application of national law is, in any event, irrelevant to the basis of the decision to exclude from the proceedings the arguments set out in section 2.2.2.1 of the application for review and Exhibit AD 6.7. As has already been explained, this decision is based on the limitations of the procedure set out in Rule 333 of the RoP and on the impossibility for a party to introduce, on its own initiative, new arguments and new documents into the file of the proceedings on the merits, whilst seeking their retroactive admission.

31. Nor is the Board's position regarding the applicable national law of the Member States decisive in relation to the alternative claim based on Rule 36 of the RoP. The Panel correctly noted that the issue of prior personal possession under French law had already been raised in the proceedings and that document BP 15, in response to the Appellant's objections, elaborated on a defence already raised in the statement of defence.

32. The principle invoked by the Appellant therefore did not prevent the Respondents from elaborating, in their rejoinder, on their arguments relating to French law. It did not require them to produce, as early as their statement of defence, every piece of evidence capable of supporting those arguments in response to the objections subsequently raised by the Appellant.

33. The question of whether the production of Exhibit BP 15 justified a further exchange of written submissions was, in accordance with Rule 36 of the RoP, a matter for the discretion of the reporting judge, subject to the panel's review.

34. In these circumstances, the position of the Chamber criticised by the Appellant does not render manifestly erroneous either the decision to set aside the evidence submitted in the application under Rule 333 of the RoP, or the decision not to authorise a further exchange of pleadings under Rule 36 of the RoP.

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Fundamental question of law.

35. The Appellant contends that the issues raised by its appeal go beyond the circumstances of the present case and concern, more generally, the conditions under which the parties must provide evidence relating to the content of the applicable national law, as well as the opposing party's opportunity to respond to it.

36. However, it is not necessary, in the present case, to rule on the general question of the procedural regime applicable to evidence relating to the content of national law. As the Panel correctly noted, prior personal possession under French law had already been raised in the Statement of Defence and discussed by the Appellant in its Statement of Rejoinder. Exhibit BP 15 elaborated on this defence in response to the objections raised by the Appellant and did not raise, for the first time, a question of national law.

37. The outcome of the present case therefore depends on the nature of Exhibit BP 15 and the sequence of submissions in these proceedings, and not on the general approach to be taken to the procedural regime under national law. The Appellant has therefore not established that consideration of the issue it raises would be necessary to ensure the consistent application and interpretation of the Rules of Procedure or to achieve any other objective specific to discretionary review.

Conclusions.

38. The Appellant has thus failed to demonstrate either that the contested order was manifestly erroneous or that it raised a fundamental question of law justifying a discretionary review.

39. The application for discretionary review must, therefore, be dismissed.

ORDER

The standing judge dismisses the application for discretionary review.

Made on
19 November 2026.

Paolo Catallozzi Digitally signed by Paolo Catallozzi
Date: 19 November 2026 18:48:19 +01'00'

Paolo Catalozzi legally qualified judge and standing judge