Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC-CoA-118/2026
UPC-CoA-119/2026
UPC-CoA-120/2026

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 25 November 2026
concerning an appeal against an order concerning an application according to R. 305 RoP

HEADNOTES:

1) If the defendant wishes to file a counterclaim against an intervener who has filed an application to intervene under R. 313.2 RoP (hereinafter: voluntary intervener), this is only possible after the voluntary intervener has been added as a party pursuant to R. 305 RoP.

2) As part of its decision under R. 305 RoP, the Court may decide on the admissibility of the application or action directed against the person which is requested to be added as a party but is not obliged to do so.

3) To enable the defendant to effectively defend its rights, the concept of 'related defences' in Art. 32(1)(a) UPCA should be interpreted broadly. This includes all defences, such as counterclaims concerning licences, which render the use of the patent at issue lawful and/or preclude the enforcement of an injunction on legal grounds. Therefore, under Art. 32(1)(a) UPCA, the UPC has competence to rule on a counterclaim regarding rate-setting against the claimant as long as the counterclaim is related to a licence for the patent or a portfolio of patents which includes the patent which the claimant alleges is infringed.

4) That a counterclaim conceptually presupposes that the claimant is the counter-defendant, does not mean that the competence of the UPC is limited to a counterclaim regarding FRAND rate-setting against the claimant. Rather, a counterclaim directed against both the claimant and a person, which is requested to be added as a party, falls within the competence of the Court according to Art. 32(1)(a) UPCA, as long as the counterclaim is related to a licence for the patent or a portfolio of patents which includes the patent which the claimant alleges to be infringed.

KEYWORDS:
- Counterclaim against voluntary intervener/person, which is requested to be added as a party;
- Addition of a party, R. 305.1(a) RoP;
- Competence of the UPC, Art. 32(1)(a) UPCA), FRAND rate-setting.

APPELLANTS (CLAIMANT (1) AND INTERVENER (2) BEFORE THE COURT OF FIRST INSTANCE)

1. **Dolby International AB**, Dublin, Ireland
2. **Vectis IP Ltd.**, London, United Kingdom

(hereinafter also referred to as “Dolby" and “Vectis” respectively)
both represented by attorney at law Dr. Tilman Müller and other attorneys at law and patent attorney Tobias Kaufmann and other patent attorneys of Bardehle Pagenberg Partnership mbB, Munich, Germany

RESPONDENTS (DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **CPYou B.V.,** ´s-Hertogenbosch, The Netherlands
2. **Acer Italy s.r.l.**, Arese, Italy
3. **Acer Computer GmbH**, Ahrensburg, Germany
4. **Acer Computer B.V (Benelux)**, ´s-Hertogenbosch, The Netherlands
5. **Acer Denmark A/S**, Hellerup, Denmark
6. **Acer Finland Oy,** Vantaa, Finland
7. **Acer Computer France,** Asnières-sur-Seine Cedex, France
8. **Acer Sweden AB**, Solna, Sweden

(hereinafter also jointly referred to as “Acer”)
all represented by Hsueh-Yen LIN, attorney at law, and other attorneys at law of Hoyng Rokh Monegier, Amsterdam, The Netherlands

PATENT AT ISSUE

EP 3 079 153

LANGUAGE OF THE PROCEEDINGS

English

PANEL AND DECIDING JUDGES

Panel 2,

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Order of 8 July 2026 regarding a panel review of the order of 1 May 2026 (R. 333 RoP), issued by the Local Division The Hague in the infringement proceedings (UPC-CFI-1536/2025), the counterclaim for revocation proceedings (UPC-CFI-982/2026) and the counterclaim for FRAND rate setting proceedings (UPC-CFI-1168/2026)

ORAL HEARING

3 November 2026

SUMMARY OF FACTS

1. Dolby lodged an infringement action with the Local Division The Hague (hereinafter Local Division) against Acer for alleged infringement of its European patent 3 079 153 (patent at issue).

2. The patent at issue is one of the patents in the Vectis Opus Patent Pool administered by Vectis. Vectis lodged an application to intervene.

3. On 13 February 2026, Acer requested to add Vectis as a party based on R. 305.1 RoP.

4. On 18 March 2026, Acer lodged a counterclaim for revocation against Dolby, and a counterclaim for FRAND rate setting against Dolby and Vectis requesting primarily that the Court declare that the terms on which Acer is willing to take a licence under the portfolio in Vectis´ Opus Patent Pool or under Dolby´s patents in this portfolio as laid down in the March 2026 Counteroffer, or in any further offer to be made in the course of these proceedings are FRAND, alternatively that the Court determine what terms are FRAND for a licence for Acer under Vectis´ patent portfolio or Dolby´s patents in this portfolio, in any event that the Court declare that any injunction imposed by the UPC against Acer on the basis of the patent at issue or any other patent forming part of the Vectis' Opus Patent Pool should cease to have effect if Acer enters into a licence with Vectis in accordance with the March 2026 Counteroffer, or alternatively in accordance with any subsequent offer to be made by Acer to Vectis or Dolby, or alternatively on terms to be determined to be FRAND by the Court in these proceedings. For administrative reasons, Dolby and Vectis obtained access to the counterclaim on 27 March 2026.

5. With the order of 1 May 2026 (hereinafter JR order), the Local Division *inter alia* admitted the intervention of Vectis in the infringement proceedings (UPC-CFI-1536/2025) in support of Dolby and declared the counterclaim for FRAND rate setting against Vectis admissible. With regard to Acer´s request to add Vectis as a party on the basis of R. 305 RoP the judge-rapporteur stated *inter alia* the following. "The Court may leave this basis undecided, as R. 315.4 RoP makes plain that an intervener is to be treated as a party, unless otherwise ordered by the Court. This means that a counterclaim for rate setting may be directed to such party".

6. On 18 May 2026, an application for panel review of the JR order pursuant to R. 333 RoP was filed by Dolby and Vectis. Dolby and Vectis requested *inter alia* that the Court declare the counterclaim against Vectis to be inadmissible.

7. On 8 July 2026, the Local Division denied the application for panel review, added "*in as far as necessary*" Vectis as a party on the side of Dolby and granted leave to appeal (hereinafter impugned order).

8. On 23 July 2026, Dolby and Vectis appealed the impugned order.

9. On 5 August 2026 the Court of Appeal rejected Dolby´s and Vectis´ request to stay the first instance proceedings and other requests in the application for suspensive effect pursuant to R. 223 RoP.

PARTIES´ REQUESTS

10. In summary, Dolby and Vectis request that the Court of Appeal set aside the impugned order (items 1 and 2) and declare the FRAND rate-setting counterclaim against Vectis and the addition of Vectis with respect to this counterclaim as inadmissible and order Acer to bear the costs of the appeal proceedings.

11. Acer requests that the Court of Appeal reject Dolby´s appeal as inadmissible and dismiss Vectis´ appeal "in its entirety", with the costs incurred by Acer in these appeal proceedings to be borne by Dolby and Vectis and determined by the Court of First Instance in the final cost decision.

PARTIES´ SUBMISSIONS

12. In summary, Dolby and Vectis submit the following.

- The counterclaim against Vectis does not fall within Art. 32(1)(a) UPCA. This is made clear by the wording and the purpose of this provision.
- One of the first instance panel´s fundamental errors is treating R. 315.4 RoP as a self-sufficient basis for directing a counterclaim against an intervener, without first establishing that the counterclaim falls within the jurisdiction of the Court.
- The panel invokes R. 316.3 RoP ("the intervener is bound by the decision") to conclude that Acer would otherwise be "precluded" from suing Vectis elsewhere. R. 316.3 RoP governs interventions procured by invitation under R. 316.1-316.2 RoP, not voluntary interventions under R. 313 RoP.
- Art. 47 UPCA defines which entities possess the substantive qualification to be a proper counterparty to a licence dispute.
- R. 19 RoP does not apply to counterclaims.
- Even if R. 19 RoP applied, it could not override the primacy of Art. 26 Brussels Ia Regulation ("Brussels Ia").
- The judge-rapporteur did not treat the admissibility of the counterclaim against Vectis as settled or waived, but, to the contrary, expressly and separately declared "the counterclaim against Vectis admissible", thereby creating an appealable finding on precisely the question the panel now claims was forfeited. The Court cannot, on the one hand, issue a discrete and reviewable order on the admissibility of the counterclaim against Vectis, and on the other hand hold that the objection to that very admissibility was waived for want of an earlier, and procedurally unavailable, preliminary objection.
- The impugned order is contradictory and unclear as to whether Vectis is added as a party or not. It is entirely unclear what "in as far as necessary" means and on which reasons this order is based.
- The impugned order ignores that R. 305 RoP requires an application by a party, i.e. the Court cannot add a party on its own motion. Acer´s request under R. 305 RoP was effectively dismissed by the judge-rapporteur. By declaring that it will nonetheless decide such a non-existent request in Acer´s favour, the panel in its decision therefore completely abandons its position as an impartial court between the parties.
- The JR order, in its operative part only "declares the counterclaim against Vectis (…) admissible". It contains no corresponding ruling on the admissibility of the identical counterclaim against Dolby.
- Art. 8(3) Brussels Ia does not extend to a third-party counterclaim. For a third-party counterclaim, jurisdiction would have to rest on Art. 4(1) Brussels Ia, which requires a domicile in an EU Member State, while Vectis is domiciled in the United Kingdom.
- Art. 7(2) Brussels Ia (abuse of dominance) does not apply either, since Vectis holds no patent and no dominant market position. Art. 26 Brussels Ia (submission) is equally inapplicable. Vectis appeared as

intervener, not as “counterclaim-defendant", and has expressly and consistently contested jurisdiction.

- The Vectis Opus Patent Pool includes non-European patents, while the UPC´s jurisdiction is limited to European patents and European patents with unitary effect (Art. 2(g) UPCA). A global FRAND rate necessarily encompasses rights the Court has no competence to adjudicate – an outcome in direct tension with the European Union´s own position before the WTO (WT/DS632), where the EU has objected to exactly this kind of uniliteral global rate-setting by a court lacking jurisdiction over the foreign patents concerned.
- Acer´s requests suffer from material deficiencies, rendering the counterclaim as pleaded inadmissible.
- Acer seeks a declaratory finding, this lacks a legitimate interest because a performance claim is available. Acer´s auxiliary request, seeking “any terms the Court would find to be FRAND”, is open ended, lacks any defined rate, scope, or duration, and is accordingly too indeterminate to be enforceable.
- Acer is sufficiently protected by the FRAND defence.

13. Acer defends the impugned order and, in summary, submits the following.

- The narrow procedural application by Acer for an order to produce evidence / confidentiality / adding a party was made prior to the initiation of the counterclaim and the application for review was made later than one month after initiation of the counterclaim. The application for review was therefore not the appropriate submission for Dolby and Vectis to advance its arguments regarding jurisdiction in the substance of the case.
- Arguments regarding jurisdiction and the substance of the case are all irrelevant to the question that the Court of Appeal needs to address: whether intervener Vectis can be a defendant to a counterclaim, based on either R. 315.4 or R. 305 RoP.
- Dolby and Vectis cannot change the procedural scope of the 13 February 2026 application and the impugned order by advancing jurisdiction arguments that are irrelevant to the issue to be decided, and which arguments they moreover failed to make in a timely preliminary objection before 3 May 2026 or in the first response to the relevant claim in the main action. If there would be any ground for assessment of Dolby and Vectis´ jurisdiction arguments at all (*quod non*), the proper place is by the Local Division in the decision in the main action.
- In addition, regardless of the outcome of the present appeal, the first instance proceedings will inevitably deal with Acer´s FRAND defence, including the negotiation record between Acer and Vectis and the offers made on both sides, as well as the rate-setting counterclaim against Dolby.

GROUNDS

A. Vectis´ appeal

14. Vectis´ appeal is admissible but without merits.

I. Scope of the appeal

15. The scope of the appeal depends on the scope of the impugned order, which is influenced by the scope of the reviewed JR order.

Scope of the impugned order

Admissibility of the counterclaim against Vectis

16. In the JR order, the judge-rapporteur declared the counterclaim against Vectis admissible. In the impugned order the panel denied the review of this order. This does not mean that both the judge-rapporteur and the panel decided on the question whether all the requirements for the admissibility of the counterclaim are met. If the operative part of a decision/order states that an action is admissible, this usually means that the conditions for admissibility are found to be met. However, the particular circumstances of the case lead, as an exception, to an interpretation that the order is limited to the question of whether Vectis must be added as a party under R. 305.1 (b) RoP. This is based on the following reasons.

17. As it follows from the reasoning of the JR order ("parties do differ on whether a counterclaim for rate-setting may be directed against Vectis") the judge-rapporteur only intended to decide on the question whether Vectis can be counter-defendant and must be added as a party, as requested by Acer. Despite the broader scope of the request made by Dolby and Vectis ("declare the counterclaim against Vectis to be inadmissible") the panel in the panel review proceedings consequently only *considered* whether a counterclaim can be brought against Vectis in view of the question of whether Vectis must be added as a party under R. 305.1 (b) RoP, without *deciding* the question of admissibility of such a counterclaim.

Addition of Vectis as a party (R. 305 RoP) by the impugned order

18. Dolby and Vectis argue unsuccessfully that the impugned order does not make it clear whether Vectis has been added as a party.

19. In the operative part of the impugned order, the Local Division added Vectis as a party "on the side of Dolby in as far as necessary". In principle, such an order is too vague. A court must apply the law and cannot make its decision dependent on an unresolved point of law. However, it follows from the reasons of the order that Vectis was actually added as a party, for the following reasons. The Local Division clarified in its reasons that in case the Court of Appeal would not follow the Local Division to declare the counterclaim admissible against Vectis as an intervener, the Local Division will order it be added as a party. The Local Division explicitly stated that Acer further correctly noted that the Court may rely on R. 305 RoP (para. 4.7). This makes it clear that the Local Division intended to grant Vectis all the rights and obligations of a party necessary to be counter-defendant, if the position as intervener does not provide all of them. As the latter is the case for the reasons given below, this means that the Local Division in fact added Vectis as a party according to R. 305 RoP.

Necessity to add Vectis as a party?

20. According to R. 305.1(a) RoP the Court may, on application by a party, order a person to be added as a party.

21. Contrary to the opinion of the Local Division, if the defendant wishes to file a counterclaim against an intervener who has filed an application to intervene under R. 313.2 RoP (hereinafter: voluntary intervener) as in the present case, this is only possible after the voluntary intervener has been added as a party pursuant to R. 305 RoP.

22. Although an intervener shall be treated as a party pursuant to R. 315.4 RoP unless otherwise ordered by the Court – and nothing otherwise was ordered here – (principle of equal treatment), an application to intervene under R. 313.2 RoP shall be admissible only if it is made in support, in whole or in part, of a claim, order or remedy sought by one of the parties. Accordingly, this voluntary intervener may not engage in actions or make statements that contradict those of the party it supports (CoA, 27 November 2025, UPC-CoA-70/2025, *Strabag v Swarco*, para. 16). The voluntary intervener does not therefore have a position independent of the party it supports (*Strabag v Swarco*, para. 17). It is therefore only *treated* as a party for as long as the intervener complies with these limitations.

23. If the voluntary intervener were to face a counterclaim while retaining this restricted status, its ability to defend itself would be unreasonably limited. Therefore, it is necessary to add the voluntary intervener as a party for the purposes of the counterclaim.

Scope of the addition

24. Contrary to the opinions of Dolby and Vectis, it is not unclear whether the addition was limited to the counterclaim for rate-setting.

25. In its R. 305 RoP application, Acer requested that Vectis be added as a party "on the side of the claimant". Acer argued that it was uncertain whether possible counterclaims relating to FRAND could be raised against an intervener. "To remove this uncertainty, Acer requests the Court to add Vectis as a party/claimant on the side of Dolby pursuant to R. 305.1(a) RoP". This means that the application itself was limited to the counterclaim relating to the FRAND rate-setting. The grounds set out in both the impugned order and the JR order provide no indication that the Local Division intended to award Acer more than it had actually claimed.

Conclusion

26. To conclude, the scope of the appeal is the question of whether Vectis should and could be added as a party under R. 305.1(a) RoP for the purpose of the counterclaim for FRAND rate-setting.

II. Merits of Vectis´ appeal

Res judicata

27. In its order of 1 May 2026, the judge-rapporteur only admitted the intervention of Vectis and rejected the other requests by the parties. Dolby and Vectis argue without success that the judge-rapporteur had effectively dismissed Acer´s request under R. 305 RoP.

28. In the reasons the judge-rapporteur explicitly stated that the "Court may leave the basis of R. 305 RoP undecided" (JR order para. 3) because it considered the position of Vectis as an intervener, that shall be treated as a party pursuant to R. 315.4 RoP, sufficient. Contrary to Dolby´s and Vectis' opinion, the fact that the judge-rapporteur rejected "the other requests by the parties" does not indicate that the judge-rapporteur rejected the R. 305 RoP application. The R. 305 request was not the only request that could have been meant by 'the other requests', as Dolby and Vectis alleged, because it is clear from the JR order there were also other requests to be decided and some of which were partly denied. For example, Dolby requested that all deadlines for Dolby and Vectis shall be extended by two months from the date on which

the Court orders a confidentiality regime (p.2 of the JR order) and the judge-rapporteur only granted an additional week (para. 10).

29. It follows that the judge-rapporteur did not dismiss Acer´s request under R. 305 RoP. Acer did not need to apply for a panel review itself to prevent a res judicata effect.

Requirements for an addition of a party pursuant to R. 305 RoP

30. R. 305.1 RoP clarifies that even in ongoing proceedings a person may (a) be added as a party, (b) cease to be a party or (c) be substituted for a party.

31. When applying R. 305 RoP, the Court of First Instance has discretion. The scope of the review on appeal is consequently limited (CoA, 11 April 2025, UPC-CoA-169/2025, para. 11, *Supponor v AIM Sport*). The Court must balance the interests of the parties and procedural efficiency (see *Supponor v AIM Sport* para. 14 and para. 15).

32. As part of its decision under R. 305 RoP, the Court may decide on the admissibility of the application or action directed against the person which is requested to be added as a party but is not obliged to do so. It follows that the Local Division could add Vectis as a party and decide on the admissibility of the counterclaim at a later stage.

Legal interest for a declaration claim/indeterminate request

33. As far as Dolby and Vectis argue that Acer seeks a declaratory finding which lacks a legitimate interest because a performance claim is available, this is not within the scope of the appeal. For the Local Division this question was not decisive when deciding whether Vectis is to be added as a party.

34. The same applies insofar as Vectis and Dolby argue that Acer´s auxiliary request, seeking “any terms the Court would find to be FRAND”, is open ended, lacks any defined rate, scope, or duration, and is accordingly too indeterminate to be enforceable.

International jurisdiction

35. For the same reasons it is not necessary to establish whether the UPC has international jurisdiction with regard to the counterclaim against Vectis, nor whether R. 19 to 21 RoP should be applied by analogy if the added party / counter-defendant objects to the UPC's jurisdiction. The decision on these matters rests, for the time being, with the Local Division. These issues are not the subject of the impugned order and are therefore not within the scope of the appeal.

Competence under Art. 32(1)(a) UPCA for a counterclaim regarding rate-setting against Vectis

36. Although under R. 305 RoP, the Court is not obliged to decide on the admissibility of the applications or actions directed against a person which is requested to be added as a party, the Local Division in its reasoning considered the competence issue in view of Acer's R. 305 RoP Request. The Local Division stated that “Art. 32(1)(a) UPCA already makes plain that counterclaims concerning licences are to be treated as a related defence against an infringement action. Clearly, Vectis would therefore be able to co-defend Dolby against the counterclaim directed at Dolby. It becomes rather incomprehensible (…) if Vectis may

defend Dolby, whereas Acer would be required to initiate new proceedings to obtain an order for rate-setting against Vectis itself for partly the same patents" (para. 4.3).

37. It follows that the Local Division had no doubt that the requirements of Art. 32(1)(a) UPCA would also be met with regard to the counterclaim against Vectis. As the Local Division considered the competence under Art. 32(1)(a) UPCA as a factor in the Local Division's discretionary decision to add Vectis as a party, the existence of this competence must be examined by the Court of Appeal. The assessment of the Local Division stands up to scrutiny by the Court of Appeal for the following reasons.

Jurisdiction of the UPC for counterclaim regarding rate-setting against the claimant

38. When interpreting Art. 32 UPCA, it is important to emphasise that the UPCA must be interpreted independently. This means that the Rules of Procedure, in particular the provisions with regard to the intervention, cannot be taken into account in this respect.

39. According to Art. 32(1)(a) UPCA the Court shall have exclusive competence in respect of actions for actual or threatened infringements of patents and supplementary protection certificates and related defences, including counterclaims concerning licences. As the Local Division correctly held, Art. 32(1)(a) UPCA already makes it clear that "counterclaims concerning licences" are to be treated as a related defence in an infringement case. Therefore, Dolby and Vectis argue without success that a FRAND-rate setting claim is independent of the infringement assessment and seeks a separate judicial determination, therefore it is not a "related defence" within the meaning of Art. 32(1)(a) UPCA. This interpretation contradicts the clear wording of Art. 32(1)(a) UPCA.

40. That the UPC is competent not only for actions for actual or threatened infringements of patents and supplementary protection certificates but also for related defences, including counterclaims concerning licences follows from the purpose of the UPCA to eliminate the disadvantages of a fragmented market for patents and the significant variations between national court systems (recital 2 of the UPCA). This objective would not be achieved if certain defences raised in relation to the asserted claim could indirectly deprive the Court of jurisdiction, as the Court would then have jurisdiction over the claim but not the defence. It is in the interests of the sound administration of justice that the jurisdiction for counterclaims concerning licences enables the parties, in the same proceedings and before the same court, to litigate all their claims against each other that have a common origin (see for Art. 8(3) of Regulation 1215/2025: Court of Justice of the European Union (CJEU) 31 May 2018, C-306/17, para. 22, *Nothartová*). To enable the defendant to effectively defend its rights, the concept of 'related defences' in Art. 32(1)(a) UPCA should be interpreted broadly. This includes all defences, such as counterclaims concerning licences, which render the use of the patent at issue lawful and/or preclude the enforcement of an injunction on legal grounds.

41. Therefore, under Art. 32(1)(a) UPCA, the UPC has competence to rule on a counterclaim regarding rate-setting against the claimant as long as the counterclaim is related to a licence for the patent or a portfolio of patents which includes the patent which the claimant alleges to be infringed. If the patent at issue is part of a portfolio which is licensed on the basis of a single royalty for the entire portfolio, setting the rate for the patent at issue inherently involves setting the rate for the portfolio.

Jurisdiction of the UPC for a counterclaim against other parties than the claimant

42. Conceptually, a counterclaim presupposes an existing action ("claim"), whereby the counter-claimant is the defendant and the counter-defendant is the claimant. For a counterclaim for revocation, this follows from Art. 47(5) UPCA, which provides that the validity of the patent cannot be contested in an action for infringement brought by the holder of a licence where the patent proprietor does not take part in the proceedings. The party in an action for infringement wanting to contest the validity of a patent shall have to bring actions against the patent proprietor. It follows from this Article that if the patent holder joins the action ("as a party" which is made clear by the German language version) before the Court, according to Art. 47(4) UPCA a counterclaim for revocation against him is admissible.

43. That a counterclaim conceptually presupposes that the claimant is the counter-defendant, does not mean that the competence of the UPC is limited to a counterclaim regarding FRAND rate-setting against the claimant. Rather, a counterclaim directed against both the claimant and a person, which is requested to be added as a party, falls within the competence of the Court according to Art. 32(1)(a) UPCA, as long as the counterclaim is related to a licence for the patent or a portfolio of patents which includes the patent which the claimant alleges is infringed.

44. The purposes of Art. 32(1)(a) UPCA do not give rise to any further restrictions. As stated above (para. 40), one of these purposes is to enable the defendant to effectively defend its rights. For this reason, the concept of 'related defences' in Art. 32(1)(a) UPCA should be interpreted broadly. This includes all defences, such as counterclaims concerning licences, which render the use of the patent at issue lawful and/or preclude the enforcement of an injunction on legal grounds. If this requirement is met, it cannot matter whether the counterclaim is also directed against someone other than the patent holder.

Defence related to the action for actual or threatened infringement

45. At least the main request of Acer´s counterclaim is a related defence, because it concerns the question of whether the use of the patent at issue is lawful and whether the enforcement of an injunction on legal grounds is precluded (see above para. 39).

46. Acer raises a FRAND defence referring to the decision of the CJEU in *Huawei v ZTE* (16 July 2015, C-170/13), which states that the SEP holder must make a FRAND offer to an alleged infringer who has expressed its willingness to conclude a licence agreement (para. 63) and that, should the alleged infringer not accept the (licence) offer made to it (by the patent holder), it may rely on the abusive nature of an action for a prohibitory injunction or the recall of products only if it has submitted to the proprietor of the SEP in question, promptly and in writing, a specific counter-offer that corresponds to FRAND terms (*Huawei v ZTE*, para. 66). Acer takes the position that the alleged FRAND obligations imposed on Dolby should also apply to Vectis. Acer argues *inter alia* that Acer has made a FRAND counteroffer to Vectis (Statement of defence para. 309) and that its willingness is also shown by its counterclaim which seeks a declaration establishing that its March 2026 counteroffer, or any subsequent offer it makes, is (F)RAND, or that, alternatively, the Local Division determine the (F)RAND terms for a licence on either Vectis´ Opus Patent Pool or Dolby´s patents in this portfolio, with Acer committing to accept the (F)RAND terms determined by the Court (Statement of defence para. 310).

47. If Acer´s defence were successful, this would make the use of the patent at issue lawful and preclude the enforcement of an injunction on legal grounds. Whether the FRAND obligations allegedly imposed on Dolby should also apply to Vectis has to be established in the proceedings on the merits. For reasons of legal certainty, the Court must be able to decide on the basis of the provisions of the UPCA whether it has competence without having to enter into a substantive review (see CoA, 17 August 2026, UPC-CoA-365/2025, para. 254, *Knaus Tabbert v Yellowsphere*). As Vectis is the only one with whom Acer can discuss the pool licence it is not obvious that this defence is without merits.

48. As far as Acer is seeking a declaration from the Court that the terms on which Acer is willing to take a licence under the Vectis´ Opus Patent Pool or under Dolby´s patents in this portfolio as laid down in the March 2026 counteroffer, are FRAND, this constitutes a counterclaim which relates to an action for actual or threatened infringement in the meaning of Art. 32(1)(a) UPCA. Vectis´s Opus Patent Pool and Dolby´s patents in this portfolio contain the patent at issue.

49. As far as Acer is seeking a declaration that any further offer to be made in the course of these proceedings is FRAND, the request must be interpreted as relating to the portfolios containing the patent at issue. Therefore, the counterclaim relates also to the patent at issue in this regard.

Discretion

50. As stated above (para. 31), when applying R. 305 RoP, the Court of First Instance has discretion. The scope of the review on appeal is consequently limited (CoA, 11 April 2025, UPC-CoA-169/2025, para. 11, *Supponor v AIM Sport*). The Court must balance the interests of the parties and procedural efficiency (see *Supponor v AIM Sport* para. 14 and para. 15).

51. The Local Division balanced the interests of the parties and procedural efficiency. In the impugned order, the panel stated: “It becomes incomprehensible if Vectis may defend Dolby, whereas Acer would be required to initiate new proceedings to obtain an order for rate setting against Vectis itself for partly the same patents” (para. 4.3). The panel further considered that “Acer further correctly notes that the Court may rely on R. 305 RoP. It makes further sense to include Vectis as a proper party (on the side of Dolby), since it already intervened voluntarily and unopposed and at an early stage of the proceedings, rendering it possible to file a (counter)claim against it. For all the reasons set out above, this is efficient and appropriate” (para. 4.7).

52. The Local Division rightly considered Vectis´ voluntary intervention at an early stage of the proceedings to be a relevant circumstance. Both Dolby and Vectis unsuccessfully argued that the intervention was only to facilitate the exchange of confidential information. In the request to admit the intervention, Vectis argued as follows: “Vectis has a legal interest in the success of Dolby´s claims in the pending proceedings, since the decision will – at least indirectly – impact the rights of Vectis. (…) Vectis has a legal interest in the confirmation that the patent-in-suit is infringed and valid. Otherwise, the patent-in-suit should not have been included in the pool” (para. 2). “In addition, Vectis has a legal interest in intervening in this matter to ensure that all relevant facts are introduced into the proceedings” (para. 3, emphasis by the Court). “Such FRAND defence will necessarily also concern Vectis” (para. 4). “The fact that Defendants announced to rely on the FRAND defence creates a legal interest for Vectis to join the proceedings as an intervener. Vectis has a legitimate interest that the substance of its discussions with Defendants will be brought to the attention of the Court and that, in case the Court accepts that Defendants can, in principle, rely on the

FRAND defence, Vectis negotiated in good faith and fulfilled all obligations of a SEP owner in FRAND negotiation" (para. 5). This demonstrates that Vectis intervened in proceedings before the UPC to discuss the FRAND defence. Against this background, it is efficient and appropriate to decide on the claim against Vectis in the same venue.

53. Considering the above, the Court of Appeal is of the opinion that the Local Division properly balanced the interests of all parties and procedural efficiency. Dolby and Vectis failed to convincingly substantiate that by allowing the addition of Vectis, the Local Division went beyond the boundaries of its discretion.

Conclusion

54. It follows that the Local Division was right to add Vectis as a party in relation to the counterclaim concerning FRAND rate setting.

55. As far as Vectis is seeking a decision of the Court of Appeal that the counterclaim against Vectis is inadmissible, this does not fall under the scope of the impugned order as the Local Division only decided on Acer´s request to add Vectis as a party. The fact that the Local Division considered the admissibility of a counterclaim against Vectis as an intervener as one of the relevant circumstances in view of the request pursuant to R. 305 RoP does not alter that. Insofar the appeal must be rejected as currently inadmissible.

B. Dolby´s appeal

56. Pursuant to R. 220.1 RoP, only a party adversely affected by a decision may lodge an appeal. This also applies to appeals pursuant to R. 220.2 RoP (see CoA, 30 May 2025, UPC-CoA-845-2024, *Belkin v Philips*, para. 27). As follows from Art. 73(2) UPCA, this requires that the party has been unsuccessful, in whole or in part, in its submissions.

57. The Local Division did not decide on the admissibility of the counterclaim against Dolby. It follows that the JR order and the impugned order do not adversely affect Dolby, because there has been no decision by the Local Division affecting Dolby that is currently open to appeal.

58. Dolby submits, unsuccessfully, that procedural economy and legal certainty require the admissibility of the counterclaim against Dolby to be resolved alongside the closely related question of the admissibility of the counterclaim against Vectis. That argument must be dismissed simply because the Local Division did not decide on the admissibility of the counterclaim against Vectis either. In addition, it was within the Local Division's discretion to decide on the issue of admissibility of the counterclaim against Dolby at a later stage of the proceedings.

59. To conclude, Dolby´s appeal must be rejected.

C. Costs

60. This order does not conclude the action. The Local Division shall decide which party shall bear the costs of the proceedings, including these appeal proceedings.

ORDER

The Court of Appeal

I. rejects Vectis´ appeal as far as the Local Division The Hague added Vectis as a party;

II. rejects Vectis´ further requests as currently inadmissible;

III. rejects Dolby´s appeal as inadmissible.

Issued on 25 November 2026

Rian Kalden Date: 2026.11.25 08:38:07 +01'00'

Rian Kalden, presiding judge and legally qualified judge

Patricia Ursula Rombach Digitally signed by Patricia Ursula Rombach Date: 2026.11.25 10:09:15 +01'00'

Patricia Rombach, legally qualified judge and judge-rapporteur

Digitally signed by Åsa Ingeborg Simonsson Date: 2026.11.25 09:18:11 +01'00'

Ingeborg Simonsson, legally qualified judge