



UPC_CFI_367/2023
Order
of the Court of First Instance of the Unified Patent Court, issued
on: 10/05/2024

in the case (main proceedings): UPC_CFI_367/2023, ACT_580198/2023 on
patent: EP 2 681 034 B1

between

CEAD B.V., a limited liability company under Dutch law, with registered office at
Schieweg 25, 2627 AN Delft, the Netherlands, and

CEAD USA B.V., a limited liability company under Dutch law, with registered
office at Schieweg 25, 2627 AN Delft, Netherlands

-Applicants-

Authorised representative:

Dr Wim Maas (112021/2023), Taylor Wessing N.V., Parnassusweg 807, 1082 LZ
Amsterdam, The Netherlands,

Dr Alexander Rubusch (560314/2023), Taylor Wessing Partnerschaftsgesellschaft
mbH, Benrather Straße 15, 40213 Düsseldorf, Germany,

against

BEGO Medical GmbH, a limited liability company under German law, with registered
office at Wilhelm-Herbst-Strasse 1, 28359 Bremen, Germany,

- Defendant -

Authorised representative:

Philipp Neels (546195/2023), iron guide Speiser Legal and Patentanwälte, Johannes-Brahms-Platz 1, 20335 Hamburg, Germany,

Deciding judge:

This Order was issued by Judge **Maximilian Haedicke**, acting as judge-rapporteur

Language of the proceedings: German

Subject of the proceedings:

Action for annulment concerning EP 2 681 034 B1

Here: Application for simultaneous interpretation pursuant to Art. 51(2) UPCA, Rule 109 RP

Facts of the case

1. The parties are currently involved in invalidity proceedings relating to EP 2 681 034 B1, whereby the applicants are invalidity claimants and the language of the proceedings is German (Art. 49 (6) UPCA).
2. The parties were summoned to the interim hearing on 29 May 2024 at 10:00 a.m. and to the oral hearing on 23 August 2024 at 9:30 a.m.
3. The applicants request simultaneous interpreting into Dutch, or alternatively into English, for both the interim hearing and the oral hearing.
4. The applicants argue in support of their claims:
 - The managing directors and the persons responsible for the proceedings were not fluent in German. Furthermore, both the authorised representative, Dr Wim Maas, and the patent attorney involved, ██████████ ██████████, were from the Netherlands.
 - As an expression of the right to be heard, these persons must not only be able to follow the proceedings, but must also be able to fully understand what is being said by a representative and the other party. This is not compensated for by the fact that their (legal) representative speaks the language of the proceedings. The necessity of interpreting follows from the fact that it must be possible to follow the proceedings.
 - In accordance with Art. 51 para. 2 UPCA, interpretation is only requested for the representative who is unable to attend the hearing due to a lack of

German language skills, namely Dr Maas.

- As medium-sized companies, the applicants could not be expected to provide multilingual support for a case.
- In the main hearing and the interim hearing, in addition to the authorised representative Dr Wim Maas, for whom interpretation has been requested, attorney-at-law Rubusch would also make submissions (in German). Furthermore, the participating patent attorneys [REDACTED] and [REDACTED] (in German) are expected to make submissions at the main hearing.
- The working language of the party representatives is English.
- Since Mr Rubusch would be pleading in German, a translation was also necessary to coordinate the legal representatives, who had to be able to understand each other's contributions.
- The applicants had not been able to choose the language of the proceedings, so that interpretation was appropriate. Insofar as several representatives made submissions at the hearing, this was due to the scope of the complex of disputes, which, in addition to the present proceedings, also included a parallel infringement action before the Munich local division.
- The applicants had unsuccessfully approached the defendant with the question of whether it would be prepared to propose to the court that at least the interim hearing be held in English. The respondent had rejected this.

5. The defendant [REDACTED] applies for the application of the [REDACTED] the applicants and submits the grounds:

- All of the defendant's representatives speak the language of the proceedings, so that simultaneous interpretation into either Dutch or English is not required for the defendant.
- The applicants are represented by authorised representatives of the law firm Cohausz&Florack, who are native speakers of the language of the proceedings, and have submitted extensive documents in the language of the proceedings. It is not apparent why party representatives who are not sufficiently proficient in the language of the proceedings now have to conduct the oral proceedings and the interim hearing.
- The language skills of persons who are unable to attend the hearing do not justify an Order for simultaneous interpreting pursuant to Rule 109 of the Rules of Procedure.

Application for simultaneous interpreting pursuant to Rule 109 para. 1, para. 2 sentence 1 VerfO

6. Pursuant to Art. 51 para. 2 UPCA, all chambers of the Court of First Instance shall, where appropriate, provide for interpretation at the request of a party in order to assist the party at the oral proceedings.
7. The aim of interpreting is to enable parties who do not speak the language of the proceedings, or do not speak it sufficiently, to actively participate in the oral proceedings.
8. However, pursuant to Art. 51 para. 2 UPCA, interpretation is only provided for to the extent that this appears appropriate to support a party in the oral proceedings. Otherwise, it remains necessary to conduct the proceedings in the language of the proceedings and thus in German in the present case in accordance with Art. 49 para. 1 UPCA. Accordingly, the judge-rapporteur must make a decision on the appropriateness of simultaneous interpretation.
9. This general principle from Art. 51 para. 2 UPCA is further specified in Rule 109 RP. If the judge-rapporteur orders simultaneous interpretation pursuant to Rule 109 (2) sentence 1 RP in response to a reasoned application within the meaning of Rule 109 (1) RP, the costs of simultaneous interpretation are procedural costs pursuant to Rule 109 (5) RP in accordance with Rule 150 RP.
10. If such an application is not granted in accordance with Rule 109 (1) of the Rules of Procedure, the parties may request simultaneous interpretation at their own expense in accordance with Rule 109 (2) sentence 2 of the Rules of Procedure.
11. In the context of the judge-rapporteur's decision on the appropriateness of simultaneous interpretation in response to an application pursuant to Rule 109(1), recital 6 of the UPCA preamble must be taken into account, according to which an appropriate balance of interests between right holders and other parties must be ensured, taking into account the necessary proportionality and flexibility. This principle is also relevant in the context of procedural costs.
12. According to Art. 49 (6) UPCA, the language of the proceedings before the central division is the language in which the patent in question was granted. It follows from this that the invalidity applicant itself cannot make a language selection and cannot gain strategic advantages by selecting a language it favours.
13. It can also be taken into account in favour of the applicants that they are undisputedly small or medium-sized companies.

14. However, these circumstances do not mean that the applicants are entitled to simultaneous interpreting, the costs of which would be procedural costs. Rather, the balancing of interests leads to the conclusion that the Order for simultaneous interpretation would be disproportionate and must therefore be rejected.
15. The applicants are not challenged by the language of the proceedings in their legal defence to a greater extent than is usually the case in a multilingual international court.
16. The interests of the applicants are represented by three German-speaking legal representatives. In the course of the proceedings to date, they have made extensive submissions in German without the court becoming aware of any communication problems.
17. The applicants have stated that these German-speaking legal representatives will make submissions at the interim hearing or at the oral hearing. This is also obvious, as the documents have been signed by German-speaking litigation representatives. An orderly and efficient course of proceedings is therefore guaranteed.
18. The fact that the fourth legal representative, Dr Wim Maas, does not speak German does not change this assessment. As the Court of Appeal stated in para. 26 of its decision of 17 April 2024 UPC_CoA_101/2024 ApL_12116/2024 in connection with the balancing of interests when switching languages, it does not matter what language skills a specific legal representative from an international team has. In international disputes, a representative is typically chosen not only for the sake of his own skills, but also for the sake of the international, multidisciplinary and multilingual environment in which he works and in which a team of several representatives with different skills is usually involved. What applies to the decision on the appropriateness of a change of language also applies in this respect to the ordering of simultaneous translation: the legal representatives complement each other and the language skills of one of several legal representatives are not decisive in assessing the appropriateness of simultaneous interpretation.
19. The conclusion that the lack of German language skills of one of several legal representatives does not justify a simultaneous translation to be ordered by the court within the meaning of Rule 109 (2) sentence 1 of the Rules of Procedure is also justified by the fact that otherwise the party who chooses an international team with correspondingly diverse language skills as its legal representative would have it in its power to significantly increase the costs of the proceedings.
20. This result corresponds to the procedural order of the Court of First Instance of the Unified Patent Court, Düsseldorf local division, issued on 22 March 2024 App_14943/2024 under the main file number ACT_590953/2023, UPC number: UPC_CFI_463/2023.

The Düsseldorf local division stated that interpretation pursuant to Art. 51(2) UPCA is only provided for to the extent that it appears appropriate to assist a party in the oral proceedings. In all other respects, it remains necessary to conduct proceedings in the language of the proceedings. If individual party representatives speak the language of the proceedings, there is neither reason nor cause to allow them to be heard in a language other than the language of the proceedings with the use of simultaneous interpretation.

21. The interest of the managing directors of the applicants to follow the proceedings in English or Dutch also does not justify a court-ordered simultaneous translation. It is in the nature of an international court that not all representatives of the parties are able to follow the legal discussion directly during the oral proceedings. If, in such cases, a translation were ordered in consideration of the language skills of the parties, who are themselves unable to attend, this would have a considerable and unreasonable impact on the costs of the proceedings. This would contradict the principle of proportionality.
22. The parties' right to be heard is not violated. Insofar as the applicants refer to the decision of the Court of Appeal in para. 23 of its decision of 17 April 2024 UPC_CoA_101/2024 ApL_ 12116/2024, this is not convincing. It may be, and is not the subject of the present proceedings, that a change of language may be required in infringement proceedings before the UPC if the defendant itself does not speak the language of the proceedings. However, the case here is different. No language change is requested, but a simultaneous translation, whereby this application is not made by the defendant, but by the plaintiffs. Unlike the defendant in infringement proceedings, the plaintiff is not under comparable time pressure in invalidity proceedings, as it is able to consult extensively with its legal representatives and plan its litigation strategies, at least during the preparation of the action.
23. In view of the above, the application for simultaneous interpretation must be rejected pursuant to Rule 109 (1) of the Rules of Procedure.

Application for simultaneous interpreting pursuant to Rule 109 (2) sentence 2 VerfO

24. Pursuant to Rule 109 (2) sentence 2 of the Rules of Procedure, the parties may request that, as far as practically possible, arrangements be made for simultaneous interpreting at their expense. In this case, the applicants must inform the Registry of such an intention two weeks before the oral hearing.
25. The court interprets the applicants' application in the document of 29 April 2024 to the effect that, in the alternative, such an application is also made in order to

to allow a translation in favour of the lawyer Dr Wim Maas. This application is granted.


26. The court also has no objections to Mr Patentanwalt and the managing [REDACTED] directors of the applicants joining the proceedings. will also be followed by simultaneous interpreting at their own expense.

27. It is up to the applicants to decide whether simultaneous interpreting is to be provided into Dutch or English.

Order

1. The applicants' legal representative, Dr Wim Maas, is granted permission to speak at the interim hearing on 29 May 2024 and at the oral hearing on 23 August 2024 in English, optionally in Dutch, with simultaneous interpretation into German.
2. The applicants must provide the necessary simultaneous interpreter at their own expense. The applicants are authorised to use the equipment available for this purpose in the meeting room for simultaneous interpreting.

Maximilian
Wilhelm
Haedicke



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Judge-rapporteur
Maximilian Haedicke

Order details

Order No. ORD_24708/2024 in PROCEDURE NUMBER: ACT_580198/2023
UPC number: UPC_CFI_367/2023
Nature of the proceedings: Action for annulment
No. of the associated procedure Application no.: 23523/2024

Information on legal remedies

Pursuant to Rule 333, this Order may be reviewed by the panel upon reasoned application by a party. The application for review must be filed within 15 days of service of the Order.