



UPC\_CoA\_354/2024  
APL\_38948/2024  
App\_39101/2024

**ORDER**  
**of the Court of Appeals of the Unified Patent Court, issued on**  
**11 July 2024**  
**concerning an application for acceleration of the appeal**  
**procedure**  
**pursuant to R.225(e), R.9.3(b) of the Rules of Procedure**

**GUIDING PRINCIPLE:**

An application by the appellant to expedite the appeal proceedings and to shorten the time limit for filing the response to the appeal pursuant to R.9.3 (b) RoP is rejected. The interests asserted by the appellant in the acceleration do not outweigh the interests of the respondent in due process.

**KEYWORDS:**

Acceleration of the appeal procedure, R.225 (e), R.9.3 (b) RoP

APPLICANT / APPELLANT / DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

1. **Apple Retail Deutschland B.V. & Co KG**, Munich, Germany;
2. **Apple Distribution International Ltd.** in Cork, Ireland;
3. **Apple GmbH**, Munich, Germany;
4. **Apple Retail France EURL**, Paris, France;
5. **Apple Inc**, Cupertino, USA;

hereinafter also all referred to as "Apple" (in the singular)

1-5 represented by: Attorney Dr Tobias Wuttke (Bardehle Pagenberg), Munich, Germany

APPELLANT/PLAINTIFF IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

**Ona Patents SL**, Barcelona, Spain;

hereinafter also referred to as "Ona",

represented by: Lawyer Dr Christof Augenstein (Kather Augenstein), Düsseldorf, Germany

LANGUAGE OF THE PROCEEDINGS

German

PATENT IN SUIT

EP 2263098

### PANELS AND DECIDING JUDGES

This Order was issued by the second panel, which consists of the following members:

Rian Kalden, presiding judge and rapporteur Ingeborg Simonsson,  
legally qualified judge

Patricia Rombach, legally qualified judge

### ORDER CONTESTED BY THE COURT OF FIRST INSTANCE

- Date: 18 June 2024 (ORD\_27452/2024)
- Action number of the Court of First Instance: App\_26610/2024, UPC\_CFI\_99/2024 in infringement proceedings ACT\_11910/2024 before the Düsseldorf local division

### SUMMARY OF THE FACTS AND PROCEDURAL HISTORY

1. With the statement of claim filed on 14 March 2024, Ona brought an infringement action against Apple before the Düsseldorf local division (LKD) on the basis of the patent in dispute relating to the "positioning of mobile objects on the basis of mutually transmitted signals".
2. On 10 May 2024, Apple requested that the language of the proceedings be changed from German to the language of the patent, i.e. English, pursuant to R.323 RP.
3. At the request of the President of the Court of First Instance by Order of 14 May 2024 pursuant to R.323.2 of the Rules of Procedure, Ona submitted his written observations on 24 May 2024.
4. The President rejected the application by Order dated 18 June 2024.
5. In an application dated 14 June 2024 (App\_35890/2024, App\_35891/2024, App\_35892/2024), Apple requested permission to comment on Ona's submission (this application already contained a defence). The LKD rejected this by Order of 20 June 2024 and closed the workflow in view of the decision already made by the President.

### APPLICATIONS BY THE PARTIES

In this appeal, Apple seeks a reversal of the President's Order and an Order by the Court of Appeal that the language of the proceedings be English.

### SUBJECT MATTER OF THE PROCEEDINGS

Application for acceleration of the appeal proceedings, R.225 (e), R.9.3 (b) RoP

### REASONS FOR THE DECISION

1. The application for acceleration is admissible.
2. In view of the outcome of this application, it is not necessary to give Ona the opportunity to comment.
3. Pursuant to R.235.2 and R.224.2(b) of the Rules of Procedure, a respondent may submit a defence within 15 days of service of the statement of grounds of appeal. Pursuant to R.9.3(b) RP, the court is authorised to shorten a time limit on a reasoned application by a party.
4. In its application filed on 1 July 2024, Apple requests an acceleration of the appeal proceedings to the effect that the deadline for filing the response to the appeal should be

should end on 5 July 2024. This is not possible because the notice of appeal and statement of grounds of appeal (filed on Saturday 29 June 2024) were only served on Ona on 9 July 2024. The Court of Appeal therefore interprets Apple's application as meaning that Ona should only be granted 4 days to file its statement of defence.

5. The reasons put forward by Apple do not outweigh the interests of the appellee and due process and do not justify Apple's request to expedite the appeal.
6. Apple argues that the requested acceleration of the appeal proceedings is justified because Ona was already aware of Apple's arguments in view of Apple's defence to Ona's statement of position filed on 14 June 2024. This cannot be accepted for the following reason alone: The proceedings under R.323 RoP do not provide for a defence to a statement by the appellee under R.323.2 RoP. Apple's application for leave to file further documents was rejected by the LKD. The defence was not considered by the President, as can be seen from the Order of 18 June 2024, which makes no reference to that defence. There was therefore no reason for Ona to take note of this defence before service of the notice of appeal and grounds of appeal.
7. Apple has not shown why there is a particular interest in the appeal defence being filed before a certain date prior to the expiry of the 15-day time limit provided for in R.224.2(b) RP.
8. Having regard to Ona's interests and the principles of proportionality, fairness and equity, and taking into account the above reasons and the time Apple has taken to file its statement of grounds of appeal - which is significantly longer than the time Ona is to be given to file its statement of defence - the Court of Appeal is unable to see any reason for shortening Ona's time limit for filing its statement of defence as requested by Apple. The application must be rejected.

#### ORDER

The application to expedite the appeal proceedings is rejected.

#### INSTRUCTIONS TO THE PARTIES AND THE REGISTRY REGARDING THE NEXT STEPS IN THE PROCEEDINGS

This Order concludes App\_39101/2024. Issued on 11 July 2024

**NAMES AND SIGNATURES**

**Judge**

Rian Kalden

Date:  
2024.07.11  
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Rian Kalden, presiding judge and rapporteur

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