Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Reference number
UPC-CoA-73/2026

DECISION
of the Court of Appeal of the Unified Patent Court made on 8 October 2026
concerning a request to change the language of the proceedings (Article 49(5) of the UPCA)

HEADNOTE

Rule 4.1 of the Rules of Procedure (RoP) provides, in general terms, that documents to be filed must be signed (*"shall be* signed", *"sind zu* unterzeichnen" and *"doivent être* signés") and that they must be filed in electronic form. This does not stipulate that the signature must be a qualified or advanced electronic signature. Nor does such a requirement follow from the other provisions of the RoP, the UPCA or the case law of the Court of Appeal.

(English)

Rule 4.1 of the RoP generally provides that the documents to be filed must be signed (*"shall be* signed", *"sind zu* unterzeichnen" and *"doivent être* signés") and that these must be lodged in electronic form. This does not require the signature to be in the form of a qualified or advanced electronic signature. Nor does such a requirement follow from the other provisions of the RoP, the UPCA or the case law of the Court of Appeal.

KEYWORDS

signing of the notice of appeal and grounds of appeal, qualified or advanced electronic signature, change of language of proceedings, discretionary power.

APPELLANTS (AND RESPONDENTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1) **ESKO-SOFTWARE BV**, Raymonde de Larochelaan 13, 9051 Ghent, Belgium
2) **ESKO-GRAPHICS BV**, Raymonde de Larochelaan 13, 9051 Ghent, Belgium

(hereinafter collectively referred to as: "Appellants")

represented by Margaux Dejonghe, solicitor, Crowell & Moring LLP, Brussels, Belgium

RESPONDENT (AND CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

IN(K)CONTROL BV, E3 laan 43, 9800 Deinze, Belgium

(hereinafter: "Respondent")

represented by Kristof Neefs, solicitor, Inteo, Mechelen, Belgium

PATENT IN DISPUTE

LANGUAGE OF THE PROCEEDINGS

Dutch

PANEL AND ADJUDICATING JUDGES

Panel 3:
Bart van den Broek, Chair and Judge-Rapporteur; Paolo Catallozzi, legally qualified judge; Nathalie Sabotier, legally qualified judge

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

☐ Order of the President of the Court of First Instance of the Unified Patent Court, Brussels Local Division, 27 April 2026 (UPC-CFI-0000871/2026)

ORAL HEARING

On 29 September 2026, with the consent of the parties, the oral hearing took place via videoconference.

THE COURSE OF THE PROCEEDINGS

1. On 10 March 2026, the Respondent brought an infringement action against the Appellants before the Brussels Local Division (**"LD** Brussels") on the basis of the patent at issue ("the patent"). The language of the proceedings is Dutch.

2. On 16 April 2026, the Appellants submitted a request under Rule 323 of the Rules of Procedure to change the language of the proceedings to English. In the Appellants' view, all historical, factual and procedural elements in this case confirm that English is the natural language in which these proceedings should be conducted.

3. On 20 April 2026, the Respondent responded to the Appellants' request. The Respondent objected to the change of the language of the proceedings.

4. On 23 April 2026, the Appellants submitted a supplementary statement of case in which they responded to the Respondent's objection. The Respondent lodged an objection to this.

5. By order of 27 April 2026 ('the **contested** order'), the President of the Court of First Instance ('the President') rejected the request to change the language of the proceedings. In doing so, the President took various interests and circumstances into account. Ultimately, the fact that the parties were based in the Dutch-speaking region of Belgium and the smaller size of the Respondent compared to the Appellants were the decisive factors in maintaining Dutch as the language of the proceedings. The President rejected the Appellants' supplementary submission dated 23 April 2026.

6. On 11 May 2026, the Appellants lodged a 'Notice of Appeal' ('Notice of Appeal'), by which they lodged an appeal against the contested decision. On 22 May 2026, the Respondent replied to this with a 'Statement of Defence' (**'Statement of** Defence').

7. Following consultation with the parties, the reporting judge, by order of 22 June 2026, postponed the setting of a date for the oral hearing due to settlement negotiations between the parties.

8. On 31 August 2026, the Appellants informed the Court that the parties had not reached a settlement and requested the Court to set a date for the oral hearing after all.

9. By letter dated 2 September 2026, the Respondent pointed out (for the first time) that the Petition submitted by the Appellants did not bear a qualified or advanced electronic signature within the meaning of Regulation (EU) No 910/2014 (eIDAS) and requested the Court of Appeal to determine whether the Petition had thus been lodged in the manner provided for in Rule 4.1 of the Rules of Procedure.

10. At the invitation of the judge-rapporteur, the Appellants responded in writing on 10 September 2026 to this new argument put forward by the Respondent.

THE PARTIES' SUBMISSIONS

11. In the Notice of Appeal, the Appellants request the Court of Appeal:

    to declare the appeal admissible and well-founded and, consequently:

    - to set aside the contested decision and, on reconsideration, to order that the language of the proceedings be changed from Dutch to English with immediate effect;
    - order the Respondent to pay the costs of the appeal and of the proceedings at first instance.

12. In its Statement of Defence, the Respondent requests the Court of Appeal to dismiss the appeal and to order the Appellants to pay the costs of the appeal in so far as an order for costs is possible.

13. In response to the Respondent's request regarding the alleged defective signing of the Application, the Appellants request the Court of Appeal:

    - primarily, to rule that the Respondent's application is inadmissible;
    - in the alternative, to rule that the Application is unfounded;
    - in the furthest order of priority, in so far as the Court of Appeal were to rule that an additional electronic procedure is required, to determine that the Appellants may remedy their petition in accordance with Rule 320 of the Rules of Procedure and to explain how they are to do so.

SUMMARY OF THE PARTIES' POSITIONS AND THOSE OF THE BRUSSELS DISTRICT COURT

14. The Appellants argue that the President wrongly rejected the request to change the language of the proceedings to English and incorrectly applied the equity test under Article 49(5) of the UPCA. In this regard, the Appellants rely on the following six circumstances:

    (1) the patent was granted in English and English was also the language of the grant proceedings before the EPO. Conducting the present proceedings in Dutch may lead to problems of interpretation and may prevent a proper understanding of the patent issues;
    (2) the *Statement of Claim* ("Memorie van Eis") is largely drafted in English, as are the exhibits submitted with it;
    (3) the correspondence between the parties prior to the proceedings was in English;
    (4) English is the working language in the technological field of the patent;
    (5) English is the working language of both parties;
    (6) the measures sought in respect of countries outside the UPC's territorial scope reinforce the need for English as the language of the proceedings, in particular due to the English-language consultations with the lawyers based there and the need to translate their English-language opinions into Dutch should Dutch be retained as the language of the proceedings;

15. According to the Appellants, the two factors cited by the President in favour of retaining Dutch as the language of the proceedings (the place of establishment and the size of the parties) do not outweigh the six circumstances they have cited.

16. The Respondent points out that the President has discretionary power in determining whether the language of the proceedings should be changed pursuant to Article 49(5) of the UPCA. This means that the scope for review on appeal is limited. According to the Respondent, the President correctly exercised her discretion and the contested decision is in accordance with Article 49(5) of the UPCA and the case law developed by this Court. The Respondent refers in particular to the decision of the Court of Appeal in the case *of Advanced Bionics v Med-EL* (UPC-CoA-207/2024, 5 September 2024). In that decision, this Court held that the President had rightly maintained German as the language of the proceedings in light of (i) the fact that the claimant and two of the three defendants were established in German-speaking regions, (ii) the claimant's smaller size relative to the defendants, and (iii) the procedural complications that would arise if the language of the proceedings were changed to English. According to the Respondent, these considerations apply directly to the present case.

17. With regard to the alleged defect in the signing of the Application, the Respondent refers to two recent judgments of this Court, namely *SharkNinja v SEB* (UPC-CoA-61/2026, 22 May 2026) and *Windhager v bellissa* (UPC-CoA-894/2025, 21 August 2026). It follows from those judgments that a document filed must bear an electronic signature in order to guarantee the document's authenticity and to rule out the risk that the document was not drawn up by an authorised person. The Respondent acknowledges that the Petition bears an electronic signature of the Appellants' counsel, but submits that this is not a qualified or advanced electronic signature within the meaning of Regulation (EU) No 910/2014. The Respondent requests the Court to determine whether such a signature is sufficient under Rule 4.1 of the Rules of Procedure in the light of the aforementioned judgments. In so far as this is not the case, the Respondent assumes that this constitutes an excusable error on the part of the Appellants, given that the judgments to which the Respondent refers were only handed down after the Petition had been lodged.

18. The Appellants respond that the Respondent cannot rely on this alleged defect because it could and should have raised this argument earlier. The fact that the two aforementioned judgments of this Court were delivered only upon or after the submission of the Statement of Defence, respectively, does not alter this. Furthermore, according to the Appellants, the Respondent has no specific interest in this request, as she does not dispute that the signatures were provided by the Appellants' legal advisers. Furthermore, the Respondent's position is substantively unfounded, as Rule 4.1 of the Rules of Procedure merely stipulates that the documents to be submitted must be 'signed', without imposing any further requirements on the signature.

19. By analogy with Rule 323.3 of the Rules of Procedure, the Court of Appeal consulted the panel of the Brussels Labour Court regarding the request to change the language of the proceedings. In response, the panel informed the Court of Appeal that it was neutral regarding the use of Dutch or English as the language of the proceedings.

GROUNDS FOR THE DECISION

20. The Court of Appeal finds that the Appellants' appeal is admissible, but considers the appeal to be unfounded.

Admissibility of the appeal

21. The Court disregards the Appellants' argument that the Respondent was late in submitting its observations regarding the signing of the Application and that it had no interest in the matter. The Court examines of its own motion whether the requirements of Rule 224 in conjunction with Rule 4.1 of the Rules of Procedure have been met (cf. UPC-

CoA-69/2026, 17 August 2026, *NST v Qualcomm*, para. 35; UPC-CoA-894/2025, 21 August 2026, *Windhager v bellissa*).

22. Pursuant to Rule 220.1(c) of the Rules of Procedure, an appeal may be lodged against decisions as referred to in Article 49(5) of the UPCA. The notice of appeal and the grounds of appeal must be lodged within 15 days of service of the decision (Rules 224.1(b) and 224.2(b) of the Rules of Procedure).

23. Pursuant to Rule 4.1 of the Rules of Procedure, the notice of appeal and the grounds of appeal must be signed and submitted in electronic form to the Registry. The requirement that written documents must be signed was added to Rule 4.1 in the 18th version of the draft Rules of Procedure (dated 15 March 2017). Rule 4.1, first sentence, of the Rules of Procedure now reads as follows in the English version of the Rules of Procedure:

> *"Written pleadings and other documents shall be signed and lodged at the Registry or relevant sub-registry in electronic form*." [underlining added; CoA]

24. In light of this, this Court has held that, in proceedings before the UPC, it is not sufficient for a party's representative to log in to the Case Management System (CMS) via a secure authentication process and thereby confirm their identity (UPC-CoA-61/2026, 22 May 2026, *SharkNinja v SEB*, paras. 11–12 and *Windhager v bellissa*, para. 22). It is also required that the written documents to be filed be signed by the representative themselves.

25. Pursuant to Article 48 of the UPCA and Rule 8.1 of the Rules of Procedure, an appeal must be signed by a representative of the party concerned who is authorised to act before the UPC (cf. Rule 286 of the Rules of Procedure; see also UPC-CoA-404/2023, 8 February 2024, *Ocado v Autostore*, para. 2). In the absence of such a signature, the notice of appeal filed in the CMS does not meet the requirements for valid filing. A document filed as a notice of appeal which has not been duly signed cannot therefore be regarded and accepted as a notice of appeal filed in accordance with Rule 224 of the Rules of Procedure (*Windhager v bellissa*, para. 23).

26. Rule 4.1 of the Rules of Procedure (RoP) stipulates in general terms that the documents to be submitted must be signed (*"shall be* signed", *"sind zu* unterzeichnen" and *"doivent être* signés") and that they must be submitted in electronic form. It does not stipulate that the signature must be a qualified or advanced electronic signature. Nor does such a requirement follow from any other provision of the Rules of Procedure, the UPCA, or the aforementioned case law of this Court. In those judgments, the Court merely confirmed that the documents to be submitted must themselves be signed and that submission via the CMS's secure authentication process is therefore not sufficient. Nor does Regulation (EU) No 910/2014, on which the Respondent relies, stipulate that documents to be submitted to the UPC must bear a specific type of signature. The imposition of such formal requirements is expressly left to the Member States (see recitals 21 and 49 of the preamble and Article 2(3) of Regulation (EU) No 910/2014; see also CJEU, 20 October 2022, C-362/21, ECLI:EU:C:2022:815, *Ekofrukt*, paras. 36 and 39).

27. Notwithstanding the foregoing, a qualified electronic signature may be used in a legally valid manner and may confer certain advantages, for example in relation to evidential value (see Article 25(2) of Regulation (EU) No 910/2014 and the Court of Justice of the European Union, 29 February 2024, C-466/22, ECLI:EU:C:2024:185, *V.B. Trade OOD*, para. 37). However, there is no obligation to use such a signature when submitting documents in accordance with Rule 4.1 of the Rules of Procedure.

28. In the present case, the Application was signed on behalf of the Appellants by each of their four counsel. This is unequivocally evident from the text on page 13 of the Application (*"On behalf of Esko, its* legal advisers") followed by the names of the four legal advisers and a scan of the handwritten ("legal") signature of each of them. The first page of the Petition shows that the

Appellants are indeed *"assisted and* represented" by the four counsel who signed the Petition. One of those counsel, Ms Margot Horowitz, is listed in the

CMS as the Appellants' UPC representative in this case. The Respondent acknowledges that the Petition is thus bearing an electronic signature from the Appellants' counsel.

29. By signing the Petition and submitting it electronically, the counsel, on behalf of the Appellants, confirm that the document signed and submitted by them originates from them and that it must be regarded as the Appellants' notice of appeal and grounds of appeal as referred to in Rule 224 of the Rules of Procedure. This is in line with Rule 4.1 of the Rules of Procedure and the other provisions of the Rules of Procedure and the UPCA. The fact that the Appellants' representatives did not use a qualified or advanced electronic signature does not mean that the notice of appeal and the grounds of appeal were not validly signed and submitted. Nor has the Respondent put forward any grounds from which it follows that there is any doubt as to the identity of the signatories or as to whether the Notice of Appeal actually originates from the Appellants' authorised representatives. The Court of Appeal has no such doubt either.

30. The Court of Appeal therefore concludes that the requirements of Rule 4.1 of the Rules of Procedure have been met and that the Appellants' appeal is admissible.

Substantive assessment of the appeal

31. At the request of one of the parties and after hearing the other parties and the competent panel, the President of the Court of First Instance may, on grounds of equity and taking into account all relevant circumstances, including the views of the parties and in particular that of the defendant, decide to use the language in which the patent was granted as the language of the proceedings (Art. 49(5) UPCA and Rule 323.3 RoP).

32. The President has discretionary power in determining whether the language of the patent is to be used as the language of the proceedings. On appeal, the scope of review is therefore limited (see, for example, UPC-CoA-101/2024, 17 April 2024, *Curio Biosciences v 10x Genomics*, para. 19, and UPC-CoA-207/2024, 5 September 2024, *Advanced Bionics v Med-El,* paras. 9–10). That review relates exclusively to possible errors in the exercise of discretionary power, i.e. the failure to exercise, the abuse of, or the exceeding of that power (UPC-CoA-889/2025, 18 February 2026, *Syntorr v Arthrex*, para. 21). No such errors have been identified in the present case.

33. In its decision of 17 April 2024, the Court of Appeal set out the principles governing the decision on a request to use the language of the patent as the language of the proceedings (UPC-CoA-101/2024, *Curio Bioscience v 10x Genomics*). These principles have been elaborated upon and applied in subsequent decisions of the Court of Appeal (see, for example, the aforementioned decision in *Advanced Bionics v Med-El*; UPC-CoA-354/2024, 18 September 2024, *Apple v Ona* and UPC-CoA-903/2025, 19 December 2025, *UERAN Technology v Xiaomi*). The President applied these principles in the contested decision and did not exceed her discretionary powers in doing so.

34. A first factor taken into account by the President was the place of establishment of the parties. The President rightly and correctly attached significance to this (see, for example, *Advanced Bionics v Med-El*, para. 12, and *Curio Bioscience v 10x Genomics*, para. 37). In this case, all parties are established in the Flemish Region of Belgium, where Dutch is the official language. In light of this, the President rightly considered the use of Dutch as the language of the proceedings to be in accordance with the legitimate interests of the Respondent. On the other hand, the President rightly held that, on grounds of fairness towards the Appellants, it does not follow that the language of the proceedings should be changed to English, since Dutch is also the official language of the Appellants' place of establishment. The fact that the Appellants form part of an American group does not, in the President's view, alter this. The Appellants' head office

in relation to the activities relevant here is, like that of the Respondent and the parties themselves, situated in the Dutch-speaking region of Belgium (Ghent). According to the President, this too does not render the use of Dutch as the language of the proceedings unfair to the Appellants. The President did not exceed her discretionary power on this point either.

35. A second relevant factor taken into account by the Chair is the relative size of the parties. This is also correct (see, for example, *Advanced Bionics v Med-El*, para. 13; *Curio Bioscience v 10x Genomics*, paras. 24 and 38; and *UERAN Technology v Xiaomi*, para. 19). As the President rightly points out in the contested decision (p. 8), the UPC system is designed to enable smaller and medium-sized enterprises to enforce their patents effectively (cf. the second recital of the preamble to the UPCA). This is reflected, inter alia, in the applicable financial provisions (see, for example, Rule 370.8 of the Rules of Procedure and UPC-CoA-48/2026, 1 June 2026, *La Siddhi v Athena*, paras. 30 and 31). It follows from the aforementioned case law of this Court that this must also be taken into account when determining the language of the proceedings.

36. It is undisputed that the Respondent is a small enterprise. The President has rightly referred to the statement submitted by the Respondent under Rule 370.8(a) of the Rules of Procedure, in which it has demonstrated, on the basis of various documents, that it meets the criteria for a small enterprise within the meaning of European Commission Recommendation No 2003/361 (Annex A3). It is undisputed that the Appellants are much larger in size and form part of an international group with substantial financial resources, their own legal department and in-house patent attorneys. According to the Chair, the Appellants therefore have substantially greater resources at their disposal to handle and coordinate international disputes in various languages. Nor does this circumstance imply that considerations of fairness require a change in the language of the proceedings to the detriment of the Respondent, according to the Chair. The Chair also reached this conclusion without exceeding her discretionary power.

37. In addition to the aforementioned factors, the Chair has taken into account the circumstances put forward by the Appellants. Contrary to the Appellants' assertion, this also applies to the circumstance that the parties were to use English as the working language (contested decision, p. 8, penultimate paragraph) and that they had corresponded in English prior to the proceedings (contested decision, p. 7, penultimate paragraph). The President ruled that these circumstances were not sufficiently compelling to warrant a change of the language of proceedings to English. Nor does that ruling constitute any abuse of discretion.

38. The use of English during the grant proceedings before the EPO and the grant of the patent in English does not necessarily mean that the proceedings before the UPC must also be conducted in English. The Court of Appeal, in agreement with the President, fails to see why this would, in this case, lead to problems in interpreting the patent or prevent a proper understanding of the issues relating to the patent. The appellants have made this argument but have not substantiated it.

39. The President was correct in ruling that even the fact that a significant number of the exhibits submitted are in English and that the Statement of Claim quotes from them in English does not require a change of the language of the proceedings to English. The Appellants, who are based in Flanders, may be expected to be able to set out their position on this matter (also) in Dutch.

40. The fact that internal and external communication in this case largely takes place in English, as the Appellants assert, does not alter this. In so far as this is the case (the Respondent disputes that it uses English as a working language and points to various communications between the parties that were drafted in Dutch), that circumstance alone does not necessitate a change of the language of the proceedings to English. Both parties must be deemed capable of conducting proceedings in Dutch, even where the working language in this field is English. The President was correct in this assessment.

41. Finally, the Appellants have pointed out that the Respondent has also sought measures concerning countries outside the UPC territory. According to the Appellants, this requires communication with foreign lawyers in English, and their opinions would also be drafted in English. Conducting proceedings in Dutch would complicate matters. The Respondent objects to this argument, as it was only raised at first instance in the supplementary submission which the President refused to admit. According to the Respondent, there is no scope for (re)introducing this in the present appeal.

42. The Court of Appeal leaves open the question of whether this objection is well-founded, as this argument too cannot lead to a change in the language of the proceedings. It is currently unclear how the Appellants will defend themselves against the Respondent's submissions regarding countries outside the UPC territory. Even if the assistance of foreign lawyers is sought for this purpose and communication in English and/or the translation of documents from or into Dutch were to be required, this does not justify – either on its own or in combination with the other circumstances put forward – the UPC proceedings being conducted entirely in English. As part of an internationally operating group, the Appellants must be deemed capable of mounting an adequate defence on this point as well. Moreover, by centralising the infringement claims in a single, Dutch-language proceeding, that defence can be conducted for all countries in the language of the Appellants' domicile. That is not unreasonable.

Conclusion

43. In the light of the foregoing, the appeal is dismissed. In accordance with the decision in *Curio Bioscience v 10x Genomics* (para. 49), there is no basis for an order for costs as the present decision does not bring the proceedings to an end.

ORDERS

The appeal is dismissed.

Bartholomeus Johannes van den Broek

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Date: 8 October 2026 09:07:13 +02'00'

Bart van den Broek, Chair and Reporting Judge

Paolo Catallozzi

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