

UPC Court of Appeal, 18 December 2023, OPPO v Panasonic

Re: EP 270



PATENT LAW – PROCEDURAL LAW

Procedural order requests where no technical issues are at hand, can be adjudicated by three legally qualified judges of the Court of Appeal ([Article 9 UPCA](#))

- Consistent with the logic underlying the composition of panels of the Court of First Instance; Ensures cost effectiveness of proceedings and efficiency, thus ensuring expeditious decisions; In conformity with principles of proportionality, flexibility, fairness and equity.

Request by Appellant for shortening the time period for filing the Statement of response by Respondent in appeal rejected; disproportionate to the time the Appellant has itself taken for the Statement of appeal ([Rule 9 RoP](#), [Rule 224 RoP](#))

- Request for expedition of appeal by Appellant after having used full 15 days for Statement of appeal, which would give Respondent only 4 working days to respond, and would require the Court of Appeal to decide the case on the very same day, without the opportunity to hear the parties, (i) insufficiently takes into account the interests of the Respondent to be given sufficient time to properly prepare its Statement of response and (ii) would be contrary to the principles of proportionality, fairness and equity.

- The Court of Appeal is aware that this means that the Statement of defence [by the Appellant] will shortly have to be lodged in the contested language of proceedings (German) in the proceeding before the Court of First Instance, but is of the opinion that under the circumstances at hand the interests of the Respondent and the principles of due process outweigh the interests of the Appellant.

5. The Appellants filed the request for expedition of the appeal, at the same time as it lodged the Statement of appeal, containing the grounds of appeal, on 12 December 2023, outside office hours, having used the full 15 days available under [R.224.1\(b\)](#) and [R.224.2\(b\)](#) RoP. Even if their request would have been granted the very next day, it would give the Respondent only 4 working days to respond, and would require the Court of Appeal to decide the case on the very same day, without the opportunity to hear the parties.

6. The Court of Appeal is of the opinion that the Appellant has thus with its request insufficiently taken into account the interests of the Respondent to be given sufficient time to properly prepare its Statement of response, in proportion to the time the Appellant has

itself taken to prepare its Statement of grounds of appeal. Allowing the request for expedition of the appeal would be contrary to the principles of proportionality, fairness and equity that the court has to take into account when applying the Rules of Procedure.

Source: [Unified Patent Court](#)

UPC Court of Appeal, 18 December 2023

(Kalden, Simonsson and Rombach)

UPC Court of Appeal

UPC\_CoA\_472/2023

App\_594327/2023

**ORDER**

of the Court of Appeal of the Unified Patent Court issued on 18 December 2023

concerning a request for shortening of a time period pursuant to [R.225\(e\)](#), [R.9.3\(b\)](#) Rules of Procedure (expedition of the appeal)

**HEADNOTES:**

- In proceedings before the Court of Appeal, which do not involve technical issues, the Court of Appeal can decide without technically qualified judges.

- In an appeal against an order pursuant to R.323 RoP (language of the proceedings) a request by the Appellant applied for on the last day of the time periods under R.224.1(b) and R.224.2(b) RoP for shortening of a time period pursuant to R.9.3 (b) RoP for lodging the Statement of response has been dismissed in view of the interests of the respondent and principles of due process, even though this means that in the proceedings before the Court of First Instance the Statement of defence has to be lodged in the contested language of proceedings.

**KEYWORDS:**

- Decision with the participation of three legally qualified judges.

- Expedition of the appeal, [R.225 \(e\)](#), [R.9.3 \(b\) RoP](#)

**APPELLANTS (AND DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE CFI):**

**1. Guangdong OPPO Mobile Telecommunications Corp. Ltd.**

**2. OROPE Germany GmbH**

represented by: Mr. Rien Broekstra, Advocaat, and Mr. Andreas Kramer, Rechtsanwalt, Vossius & Brinkhof UPC Litigators

**RESPONDENT (AND CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE CFI):**

**Panasonic Holdings Corporation**

represented by: Ms Miriam Kiefer, Attorney at Law, Kather Augenstein Rechtsanwalte Part GmbH

**PATENT AT ISSUE**

EP 2 207 270

**PANEL**

Second Panel

**DECIDING JUDGES:**

This order has been adopted by

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

Patricia Rombach, legally qualified judge

### The court of appeal decides with three legally qualified judges.

According to [Art. 9.1 of the Agreement on a Unified Patent Court \(UPCA\)](#), any panel of the Court of Appeal shall sit in a multinational composition of five judges. It shall sit in a composition of three legally qualified judges who are nationals of different Contracting Member States and two technically qualified judges with qualifications and experience in the field of technology concerned. Notwithstanding this, a procedural request such as the present one, where no technical issues are at hand, can be adjudicated by three legally qualified judges. This is consistent with the logic underlying the composition of the panels of the Court of First Instance ([Art.8 UPCA](#) and [R.33, 34, 37.3, 57](#) and [72 RoP](#)) and by way of analogy with [Art.9.2 UPCA](#). It also ensures the cost effectiveness of proceedings and efficiency, thus ensuring expeditious decisions ([UPCA, 6th Consideration](#)), since otherwise one or several weeks would have to be added for the purpose of allocating two technically qualified judges with qualifications and experience in the field of technology concerned. Finally, it is in conformity with [paragraphs 2 through 4 of the Preamble of the RoP](#), according to which the Rules shall be applied and interpreted in accordance with [Art. 41\(3\), 42](#) and [52\(1\) UPCA](#) on the basis of the principles of proportionality, flexibility, fairness and equity. Proportionality shall be ensured by giving due consideration to the nature and complexity of each action and its importance. Flexibility shall be ensured by applying all procedural rules in a flexible and balanced manner with the required level of discretion for the judges to organise the proceedings in the most efficient and cost effective manner.

### IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Date: 27 November 2023
- Action number attributed by the Court of First Instance: UPC\_CFI\_222/2023; ACT\_578710/2023

### SUMMARY OF FACTS

By order of 27 November 2023, the President of the Court of First Instance rejected an application by the Appellants for a change of the language of the proceedings from German to English.

The Appellants have appealed the order and, in the main proceeding before the Court of Appeal, APL\_594230/2023, requested that the Court of Appeal overturns the order and decide that the language of the proceedings is changed to the language of the patent in suit, i.e. English.

### INDICATION OF PARTIES' REQUESTS

The Appellants have requested that the Court of Appeal (i) gives the Respondent a deadline for response of five working days and (ii) render a decision as soon as possible thereafter, if possible at least three days before 22 December 2023, pursuant to R.9.3 (b) RoP. The Appellants argue that they have an urgent interest that they can file their first Statement of defence and Counterclaim in the Proceedings before the Court of First Instance, due on 22 December 2023, in English.

### POINTS AT ISSUE

Request for a shortening of a time period (expedition of the appeal), R.225 (e), R.9.3 (b) RoP

### GROUND FOR THE ORDER

1. The request for a shortening of the time period is admissible.
2. There is no need to consult the Respondent about this request.
3. Pursuant to [R.224.2 \(b\)](#) the Respondent has 15 days from service of the Statement of grounds of appeal to lodge a Statement of response.
4. [R.9.3 \(b\)](#) empowers the Court to shorten any time period on a reasoned request by a party.
5. The Appellants filed the request for expedition of the appeal, at the same time as it lodged the Statement of appeal, containing the grounds of appeal, on 12 December 2023, outside office hours, having used the full 15 days available under [R.224.1\(b\)](#) and [R.224.2\(b\)](#) RoP. Even if their request would have been granted the very next day, it would give the Respondent only 4 working days to respond, and would require the Court of Appeal to decide the case on the very same day, without the opportunity to hear the parties.
6. The Court of Appeal is of the opinion that the Appellant has thus with its request insufficiently taken into account the interests of the Respondent to be given sufficient time to properly prepare its Statement of response, in proportion to the time the Appellant has itself taken to prepare its Statement of grounds of appeal. Allowing the request for expedition of the appeal would be contrary to the principles of proportionality, fairness and equity that the court has to take into account when applying the Rules of Procedure. The Court of Appeal is aware that this means that the Statement of defence will shortly have to be lodged in the contested language of proceedings (German) in the proceeding before the Court of First Instance, but is of the opinion that under the circumstances at hand the interests of the Respondent and the principles of due process outweigh the interests of the Appellant.
7. The request for a shortening of the time period for a Statement of response shall be rejected.

### ORDER

The request for a shortening of a time period is rejected.

### INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY CONCERNING THE NEXT STEPS

This order closes App\_594327/2023.

Issued on 18 December 2023

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