

UPC CFI, Local Division The Hague, 26 June 2024,
Amycel

PATENT LAW – PROCEDURAL LAW

Simultaneous interpretation during the oral hearing into Polish allowed, but to be decided later whether the costs thereof shall become costs of the proceedings ([Article 51 UPCA](#), [Rule 109 RoP](#), [Rule 150 RoP](#))

- [Rule 109 RoP](#) includes a double/twofold ‘appropriateness-test’, in the sense that it is to be decided (i) whether allowing translations during the oral hearing is appropriate and (ii) whether it is appropriate that the costs of such interpretation shall become costs of the proceedings.

- [Simultaneous interpretation will in general already be appropriate if the language of the proceedings is not a language that is sufficiently familiar to \(one of\) the parties or to their counsel.](#) The threshold for allowing interpretation as such is therefore low for [R. 109.1](#)-requests. For [R. 109.4](#)-requests the threshold seems even lower: for self-paid translations the only restriction seems to be whether it is practically possible ([R. 109.2](#) second sentence).

- [Generally it cannot reasonably be expected that the UPC provides translations to all languages, even if these have no relationship at all with the UPC or with one or more Contracting Member States.](#)

This [Polish] is not an official language of a Contracting Member State (CMS) nor is it an official or designated language of the CMS of the Local Division The Hague where the main action was filed (which are English and Dutch). The language of the European patent that is the subject of this action is English. Polish is also not an official or designated language of any other Local or Regional division of the UPC, nor of the European Patent Office. Generally, it cannot reasonably be expected that the UPC provides translations to all languages, even if these have no relationship at all with the UPC or with one or more CMS.

- [it seems reasonable to interpret R. 109.5 in such a way that it does not prevent the Defendant from submitting the costs incurred for interpretation for recovery as costs of the proceedings at a later point in the proceedings, if facts and/or circumstances are established that make it unreasonable for Defendant to bear these costs.](#)

A precondition for such recovery would be that Amycel’s main action is dismissed and Amycel is ordered to bear the costs of the proceedings, but this alone is not sufficient

Source: [Unified Patent Court](#)

UPC Court of First Instance,
Local Division The Hague, 26 June 2024
(Kokke)
UPC_CFI_195/2024

ACT_23163/2024

App_35134/2024

Procedural Order

of the Court of First Instance of the Unified Patent Court
Local Division The Hague
delivered on 25/06/2024
concerning [R. 109 RoP](#)

HEADNOTE:

[R. 109.1 RoP](#) request rejected. [R. 109.4 RoP](#) request granted. Double appropriateness-test

Keywords:

[R. 109 RoP](#).

APPLICANT/S

[...] (Applicant, Defendant in main proceedings)

[...]

Represented by Michal Przuluski

RESPONDENT/S

Amycel LLC

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Represented by Hendrik W.J. Lambers

PATENT AT ISSUE

Patent no. Proprietor/s

[EP1993350](#) Amycel LLC

DECIDING JUDGE

FULL PANEL

Presiding judge Edger Brinkman

Judge-rapporteur Margot Kokke

Legally qualified judge Rute Lopes

This order has been issued by the judge-rapporteur (“JR”).

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE APPLICATION

1. Applicant, Defendant in the main action, hereinafter the Defendant, filed a request pursuant to [Article 51\(2\) UPCA/R. 109.1 RoP](#) (hereinafter: the Application) for the court to provide (simultaneous) interpretation facilities between English and Polish during the oral hearing in the preliminary injunction proceedings. The oral hearing will take place on 9 July 2024.

2. As reasons for the request, Defendant submits the following (sic):

The Defendant is a natural person and he believes his command of English would be insufficient to confer all the information that he wishes to submit. Without the interpretation the Defendant might also face difficulties following the oral submissions of both parties’ representatives. Providing for interpretation during the oral hearing will ensure quicker case proceedings. What shall be noted is that the Defendant is not a lawyer or a patent attorney - his professional activity is solely related to mushrooms. The Defendant is not a big enterprise, he does not have an inhouse counsel. Nevertheless, he would like to take part in the oral hearing, as the matter at hand is of high importance, and numerous substantive questions, related to mushrooms production, might appear during the oral hearing. It shall be noted that according to Article 53(1)(a) UPCA hearing the parties is one of the means giving evidence, and thus it is in the interest of the fair proceedings to allow [the Defendant] to give his testimony in Polish

(with interpretation into English). Finally, the domicile of the Defendant is Poland, and English is not the official language of Poland. The Applicant has provided the Defendant with a translation of the application for provisional measures in Polish with the service of the application.

3. Applicant in the main action, hereinafter the Amycel, was given the opportunity to comment on the Application. It requests that the court dismiss the Application for the following reasons:

- in case the Application is granted, the costs of interpretation will become costs of the proceedings within the meaning of [R. 150 RoP](#) pursuant to [R. 109.5 RoP](#), which will possibly put an additional cost-burden on Amycel;
- Amycel will not use the interpretation;
- Defendant chose to be active in European countries outside Poland including on the territory of Contracting Member States of the UPC;
- The commercial business language is English, also used by Defendant as such;
- Defendant expressed doubts whether his command of English would be sufficient to follow the hearing, but did not state that he has no command of English at all;
- Defendant's language concerns can be addressed equally well by engaging an interpreter at his own expense in consultation with the Registry ([R. 109.4 RoP](#)). Amycel does not object to the court interpreting the Application to that effect.

GROUND FOR THE ORDER

4. [Art. 51\(2\) UPCA](#) provides that, at the request of one of the parties, and to the extent deemed appropriate, any division of the Court of First Instance and the Court of Appeal shall provide interpretation facilities to assist the parties concerned at oral proceedings. [Art. 51\(1\)](#) sets out that any panel of the Court (...) may, to the extent deemed appropriate, dispense with translation requirements. [Article 51 UPCA](#) is further elaborated in [R. 109 RoP](#). The wording of [R. 109 RoP](#), in so far as relevant here, is as follows:

1. At the latest one month before the oral hearing including any separate hearing of witnesses and experts a party may lodge a Request for simultaneous interpretation which shall contain: (...).

2. The judge-rapporteur shall decide whether and to what extent simultaneous interpretation is appropriate and shall instruct the Registry to make all necessary arrangements for simultaneous interpretation. In the event that the judge-rapporteur refuses to order simultaneous interpretation the parties may request arrangements to be made, so far as practically possible, for simultaneous interpretation at their cost.

(...)

4. A party wishing to engage an interpreter at its own expense shall inform the Registry at the latest two weeks before the oral hearing.

5. Costs for simultaneous interpretation are costs of the proceedings to be decided upon under [Rule 150](#) except where a party engages an interpreter at its own expense under paragraph 4; these costs are borne solely by that party.

5. According to this Rule, the JR must therefore judge if and to what extent the [R. 109.1](#)-request for simultaneous interpretation is appropriate. The JR understands this rule to include a double/twofold 'appropriateness-test', in the sense that it is to be decided (i) whether allowing translations during the oral hearing is appropriate and (ii) whether it is appropriate that the costs of such interpretation shall become costs of the proceedings.

6. For practical reasons, and at the suggestion of Amycel, the Defendant's request is considered to be principally a [R. 109.1](#)-request (interpretation organised by the court the costs thereof being/becoming costs of the proceedings) and alternatively a [R. 109.4 RoP](#)-request (interpretation at his own expense), especially as the main action is an application for provisional measures in which the time left before the oral hearing is limited.

(i) Should simultaneous interpretation be allowed?

7. It is beyond doubt that actively conducting a hearing in a foreign language places higher demands on the parties and their counsel in terms of their language knowledge compared to merely reading written documents. In order to effectively meet the requirements of the fundamental right to be heard, it is therefore important to allow parties to use simultaneous interpreter(s) if they deem this necessary to enable them to participate fully in the oral hearing that is held in a language that they are not familiar with. Simultaneous interpretation will in general already be appropriate if the language of the proceedings is not a language that is sufficiently familiar to (one of) the parties or to their counsel. The threshold for allowing interpretation as such is therefore low for [R. 109.1](#)-requests. For [R. 109.4](#)-requests the threshold seems even lower: for self-paid translations the only restriction seems to be whether it is practically possible ([R. 109.2](#) second sentence).

8. In this case, the Defendant, who is a Polish private individual, deems it necessary to use an interpreter to/from Polish during the oral hearing to be able to participate fully. The JR will respect the Defendant's judgement regarding his own language skills and shall thus allow simultaneous interpretation during the hearing. There are no practical objections to facilitating this on the side of the court.

(ii) Who shall bear the costs of interpretation?

9. The more difficult question to be answered in this context, is whether it is appropriate that the costs of the simultaneous interpretation become costs of the proceedings to be decided upon under [R. 150 RoP](#).

10. In this case, translation to/from the Polish language is requested. This is not an official language of a Contracting Member State (CMS) nor is it an official or designated language of the CMS of the Local Division The Hague where the main action was filed (which are English and Dutch). The language of the European patent that is the subject of this action is English. Polish is also not an official or designated language of any other Local or Regional division of the UPC, nor of the European Patent Office. Generally, it cannot reasonably be expected that the UPC provides translations to all

languages, even if these have no relationship at all with the UPC or with one or more CMS.

11. On the other hand, Defendant has chosen to expand his business outside Poland to UPC territory where he cannot, or at least not usually, conduct his business in Polish. To the contrary, the general international business language is English, which he is apparently also using as such. He also deliberately took the risk that he would be taken to court over patent infringement in the Netherlands, as proceedings on the merits against the Defendant for infringement of the (Polish national counterpart of) the same patent that is the subject of this action are pending in Poland since July 2023. These proceedings and the present action were both started after the Defendant was warned by Amycel that his products allegedly infringe the patent.

12. In view of the above circumstances and at this point in time with limited knowledge of the arguments of defendants on the merits of the case, the JR shall therefore reject the request for the Court to arrange simultaneous interpretation and for the costs involved to become costs of the proceedings. The Defendant is permitted to engage an interpreter at his own expense. He can contact the registry to arrange practicalities to this effect.

13. According to the JR, it seems reasonable to interpret [R. 109.5](#) in such a way that it does not prevent the Defendant from submitting the costs incurred for interpretation for recovery as costs of the proceedings at a later point in the proceedings, if facts and/or circumstances are established that make it unreasonable for Defendant to bear these costs. A precondition for such recovery would be that Amycel's main action is dismissed and Amycel is ordered to bear the costs of the proceedings, but this alone is not sufficient.

ORDER I.

Rejects the [R. 109.1 RoP](#)-request;

II. Allows Defendant to engage an interpreter at his own expense pursuant to [R. 109.4 RoP](#).

[...]

ORDER DETAILS

ORD_35405/2024

App_35134/2024

UPC_CFI_195/2024 - ACT_23163/2024

Action type: Application for provisional measures
