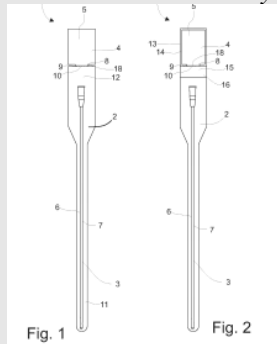


UPC CFI, Local Division Munich, 6 August 2024,
Qufora v Sauer

*method of preparing a ready-to-use urinary catheter
and a catheter assembly*



PATENT LAW – PROCEDURAL LAW

No waiver translation requirements, given that the panel as a whole lacks the necessary language skills with regard to the original German-language documents ([Article 51\(1\) UPCA](#), [Article 42 UPCA](#), [Rule 7\(1\) RoP](#))

- [Art. 51 \(1\) UPCA is based on the idea of a flexible and efficient procedural organisation, whereby an appropriate balance must be struck between the interests of the parties, taking into account the principle of proportionality \(recital 5 of the preamble to the UPCA; Art. 42 UPCA\)](#). Whether such a waiver is appropriate is determined by the specific circumstances of the individual case. A comprehensive balancing of interests must take place. In particular, the language skills of the parties and their representatives and the language skills of the panel must be taken into account. The volume, the length or the quantity and the nature of the documents in question and their relevance to the proceedings is also of relevance. Other aspects may also be relevant in individual cases.
- [However, it is not appropriate to waive the translation into the language of the proceedings, given that the panel as a whole lacks the necessary language skills with regard to the original German-language documents](#)

Opportunity to be heard: The person affected by an order must, in general, be granted a hearing before the order is issued ([Rule 264 RoP](#))

- [Insofar as the Applicants assert that no provision exists in the UPC legislation for a hearing of the Respondent prior to the procedural formalities, and they want to express that the prior hearing of the defendant was inadmissible, this is already contrary to Art. 56\(2\) UPCA and R 264 RoP](#). The person affected by an order must, in general, be granted a hearing before the order is issued.

Source: [Unified Patent Court](#)

UPC Court of First Instance,
Local Division Munich, 6 August 2024

(Voß)

UPC_CFI_67/2024

Procedural Order

of the Court of First Instance of the Unified Patent Court
Local Division Munich
issued on 6 August 2024

APPLICANTS (DEFENDANTS IN THE MAIN PROCEEDINGS):

1. Manfred Sauer GmbH, Im Neurott 7, 74931 Lobbach, Germany,

2. Mr. Manfred Sauer, Im Neurott 7, 74931 Lobbach, Germany,

represented by: Ulrich Naumann, Gregor Jens Hodapp, Daniel Schaft, Patric Werner, ULLRICH & NAUMANN, Partnergesellschaft mbB, Schneidmühlstraße 21, 69115 Heidelberg, Germany.

RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS):

Qufora A/S, Gydevang 28-30, 3450 Allerød, Denmark, represented by: Peter Meyer, SIMMONS & SIMMONS, Lehel Carré, Thierschplatz 6, 80538 Munich, Germany.

PATENT AT ISSUE

European patent n° [EP 2 911 727](#)

PANEL/DIVISION

Panel 2 of the Local Division Munich

DECIDING JUDGE

This Order has been issued by the Presiding Judge Ulrike Voß as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Patent infringement – Request for an Order for no translation

SUMMARY OF FACTS

The Respondent (Claimant in the main proceedings) is suing the Applicants (Defendants in the main proceeding) for patent infringement of patent EP 2 911 727 (ACT_8805/2024 UPC_CFI_67/2024). The Applicants deny infringement. Applicant 1) has also filed a Counterclaim for revocation (CC_28486/2024 UPC_CFI_67/2024). The language of the proceedings is English.

With submission of 9 June 2024 the Applicants requested that the following documents referred to in the Statement of defence and/or in the Counterclaim for revocation need not be translated in accordance with [Rule 24\(j\)](#) and [25\(1\)\(g\) RoP](#):

Exhibits UN 2 to 7, 9, 10, 14, 17 and 26

Exhibit UN 2 Minutes of the taking of evidence by hearing of parties recorded in the oral proceedings before the Opposition Division on 7 December 2022; European patent 2 911 727 (application No. 13 798 915); Hearing of Mr. Uwe Katzenberger;

Exhibit UN 3 Statutory declaration Mr. Uwe Katzenberger dated December 2, 2020, submitted as D16 in the proceedings before the Opposition Division in relation to European patent 2 911 727 (application No. 13 798 915);

Exhibit UN 4 Minutes of the taking of evidence by hearing of parties recorded in the oral proceedings

	before the Opposition Division on 7 December 2022; European patent 2 911 727 (application No. 13 798 915); Hearing of Mr. Manfred Sauer;
Exhibit UN 5	5 Minutes of the taking of evidence by hearing of parties recorded in the oral proceedings before the Opposition Division on 7 December 2022; European patent 2 911 727 (application No. 13 798 915); Hearing of Mr. Joachim Kaiser;
Exhibit UN 6	Compilation of Documents; submitted as D13 during the opposition proceedings in relation to European patent 2 911 727 (application No. 13 798 915); and
Exhibit UN 7	Minutes of the taking of evidence by hearing of parties recorded in the oral proceedings before the Opposition Division on 7 December 2022; European patent 2 911 727 (application No. 13 798 915); Hearing of Mr. Werner Kepp;
Exhibit UN 9	Statutory declaration Mr. Werner Kepp dated November 19, 2020, submitted as D17 in the proceedings before the Opposition Division in relation to European patent 2 911 727 (application No. 13 798 915);
Exhibit UN 10	Statutory declaration Mr. Joachim Kaiser dated November 19, 2020, submitted as D15 in the proceedings before the Opposition Division in relation to European patent 2 911 727 (application No. 13 798 915);
Exhibit UN 14	European patent publication EP 1 958 656 A1; submitted as D3 in the proceedings before the Opposition Division in relation to European patent 2 911 727 (application No. 13 798 915);
Exhibit UN 17	Submission of the opponent in preparation of the oral proceedings before the Opposition Division; filed on September 1, 2022, in the proceedings before the Opposition Division in relation to European patent 2 911 727 (application No. 13 798 915); and
Exhibit UN 26	German patent publication DE 10 2009 031 447 A1; submitted as D5 in the proceedings before the Opposition Division in relation to European patent 2 911 727 (application No. 13 798 915)

In its statement dated 15 July 2024 the Respondent opposes the request and requests its dismissal.

In a Preliminary Order dated 26 July 2024, the Court indicated that the application was unlikely to be granted. In a submission dated 31 July 2024, the Applicants stated that they uphold the “Request for an Order for no translation” filed on 9 June 2024. The request concerns documents filed in an official language of the EPO (German), with a Local Division in a contracting member state (Germany) of the UPCA where that very language is the official language of the courts (§ 184 S. 1 GVG) and native speakers of that language are involved for both parties and on the bench. If the Court considers the above-described circumstances insufficient to qualify for a waiver of the translation requirement, it would appear that the provisions of Art. 51 (1) UPCA will have little or no scope of practical application with the UPC. Merely as an auxiliary measure, the Applicants filed machine translations (English) of Exhibits UN 2 to 7, 9, 10, 14, 17 and 26.

GROUND FOR THE ORDER

I.

According to [Rule 7 \(1\) RoP](#), written pleadings and other documents, including written evidence, shall be lodged in the language of the proceedings unless the

Court or the Rules of Procedures otherwise provides. Pursuant to [Article 51 \(1\) \[UPCA\]](#), a panel may, to the extent deemed appropriate, dispense with translation requirements. The waiver will save translation costs and avoid unnecessary work.

[Art. 51 \(1\) UPCA](#) is based on the idea of a flexible and efficient procedural organisation, whereby an appropriate balance must be struck between the interests of the parties, taking into account the principle of proportionality ([recital 5 of the preamble to the UPCA](#); [Art. 42 UPCA](#)).

Whether such a waiver is appropriate is determined by the specific circumstances of the individual case. A comprehensive balancing of interests must take place. In particular, the language skills of the parties and their representatives and the language skills of the panel must be taken into account. The volume, the length or the quantity and the nature of the documents in question and their relevance to the proceedings is also of relevance. Other aspects may also be relevant in individual cases.

II.

In light of the aforementioned principles, the request for an Order for no translation is hereby dismissed. In accordance with the basic rule of [R 7 \(1\) RoP](#), the Exhibits UN 2, 3, 4, 5, 6, 7, 9, 10, 14, 17, 26 are to be translated into English. In the circumstances of this case, it is not appropriate to dispense with the translation of the German-language documents in accordance with [Art. 51 \(1\) UPCA](#).

1)

The Applicants are individuals with their domicile and residence in Germany, who are represented by German-speaking lawyers and patent attorneys. Furthermore, the Respondent, which has its registered office in Denmark, is represented by a German-speaking lawyer. This indicates that representatives from both sides are involved whose native language is German. Additionally, the parties’ written submissions suggest that the patent attorney representing the Respondent also has a sufficient knowledge of the German language. Ultimately, however, this does not need to be clarified, nor does it need to be clarified whether the party itself has sufficient knowledge of the German language.

However, it is not appropriate to waive the translation into the language of the proceedings, given that the panel as a whole lacks the necessary language skills with regard to the original German-language documents. The 3rd LQJ does not have the requisite knowledge of the German language. He is unable to read or understand German-language documents. However, both are essential, particularly for the appropriate independent preparation of the oral hearing and for the decision of the current legal dispute, in which the 3rd LQJ is also actively involved. At present, it is also not apparent that the documents in question are not relevant.

The fact that two of the three legally qualified judges are native speakers does not absolve the Applicants of their obligation to provide a translation. In certain instances, it may be suitable for judges to translate a document for their colleagues or to provide assistance with the translation, particularly if they possess a basic

understanding of the language in question. Additionally, judges may opt to utilise a machine translation tool independently. Nevertheless, this can only be considered for a few annexes or exhibits and short or manageable texts. This is not the issue under discussion. The 3rd LQJ has no knowledge of the German language. The translation of eleven exhibits is required. The Exhibits include among other things, submissions, witness statements and statutory declaration to support an alleged prior use. Some of the Exhibits comprise several pages. Furthermore, it must currently be assumed that the specific wording of the documents may also be relevant. Given the number, scope and nature of Exhibits UN 2, 3, 4, 5, 6, 7, 9, 10, 14, 17, 26, it would be disproportionate to expect the rest of the panel to provide a translation of the 3rd LQJ. Apart from that, it is not the Court's role to provide the parties with the necessary translation work.

The argument put forth by the Applicants that the documents in question are written in an official language of the EPO does not assist them in achieving a favourable outcome. In accordance with [Rule 7\(1\) RoP](#), the relevant language into which the documents are to be translated is that of the proceedings. This is determined in accordance with [Article 49 UPCA](#), whereby, as Article 49(1) UPCA shows, the language of proceedings does not necessarily have to be an official language of the EPO. The official languages of the EPO are only pertinent to [Article 49\(2\) and \(3\) UPCA](#). Nevertheless, [Rule 7\(1\) \[RoP\]](#) is founded upon the language of the proceedings pertaining to the specific legal dispute. The question of whether an alternative language could have been selected is, in principle, irrelevant. It is also inconsequential whether the alternative language that could have been selected is an official language of the EPO. It is not possible to derive a restriction from either [R 7 \(1\) RoP](#) or [Art. 51 \(1\) UPCA](#) indicating that the necessity for translation is less significant if the documents in question are in an official language of the EPO. This is also readily comprehensible. The status of the language in question as an official language of the EPO is inconsequential; in either case, it will not be understood.

Furthermore, the fact that the Munich Local Division is situated in a Contracting State where German is the language of the courts (Section 184 GVG) is neither pertinent nor relevant to the discussion. The rules set forth in the German Courts Constitution Act (Gerichtsverfassungsgesetz, GVG) do not apply to the UPC. The Munich Local Division is not part of the German jurisdiction, but rather forms part of the Unified Patent Court.

The court does not concur with the Applicants' assertion that there would be minimal or no practical scope for the application of [Article 51\(1\) UPCA](#) in the event that their arguments not result in a waiver of the translation requirement.

2)

Insofar as the Applicants assert that no provision exists in the UPC legislation for a hearing of the Respondent prior to the procedural formalities, and they want to

express that the prior hearing of the defendant was inadmissible, this is already contrary to [Art. 56\(2\) UPCA](#) and [R 264 RoP](#). The person affected by an order must, in general, be granted a hearing before the order is issued.

The Applicants' assertion that it is not expedient to conduct a separate written procedure on the Application in the age of machine translations and that this is contrary to [recital 6 of the UPCA](#) is similarly unpersuasive.

Insofar as this argument is directed at the Court on the grounds that the Respondent was heard prior to the issuing of the order, the above applies. The fact that something is not or not very expedient is not in itself sufficient to restrict the Respondent's right to be heard. Insofar as this argument is to illustrate that the translation requirement can be fulfilled without further difficulty through the use of machine translations, this only proves that the Applicants themselves assume that they can fulfill the requirements of [R 7 \(1\) RoP](#) without any problems. If this is indeed the case, it also speaks against waiving the translation requirement in the context of balancing the various interests involved.

III.

Although the Applicants maintained their Application at the explicit request of the Court, they filed as an auxiliary measure a translation of the Exhibits into English. They have thus alternatively complied with the requirements of [Rule 7\(1\) RoP](#). It is therefore not necessary to order (once again) a translation of the Exhibits. It is sufficient to dismiss the Applicants' request.

ORDER

For these grounds, after having heard the parties, the Court (judge-rapporteur) orders:

The Application of the Applicants dated 9 June 2024 is dismissed.

DETAILS OF THE ORDER

Order no. ORD_40041/2024 related to the main proceeding ACT_8805/2024

UPC number: UPC_CFI_67/2024

Action type: Infringement Action

Related proceeding no. Application No.: 33560/2024

Application Type: Generic procedural Application

Issued 6 August 2024

Ulrike Voß Presiding Judge
