

**Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 29 November 2024
concerning EP 3 594 009 B1**

CLAIMANT:

FUJIFILM Corporation, 26-30, Nishiazabu 2-chome, Minato-ku, Tokyo 106-8620, Japan,

represented by: Lars Baum, HOYNG ROKH MONEGIER, Steinstraße 20, 40212
Düsseldorf, Germany

electronic address for service: lars.baum@hoyngrokh.com

DEFENDANT:

1. Kodak GmbH, Kesselstraße 19, 70327 Stuttgart, represented by its CEOs Sven Freyer and
Manfred Stegmaier, at the same place,

represented by: Eva Acker, Freshfields Bruckhaus Deringer Rechtsanwälte
Steuerberater PartG mbB, Feldmühleplatz 1, 40545
Düsseldorf, Germany

electronic address for service: eva.acker@freshfields.com

2. Kodak Graphic Communications GmbH, Kesselstraße 19, 70327 Stuttgart, represented by
its CEOs Sven Freyer and Manfred Stegmaier, at the same place,

represented by: Eva Acker, Freshfields Bruckhaus Deringer Rechtsanwälte
Steuerberater PartG mbB, Feldmühleplatz 1, 40545
Düsseldorf, Germany

electronic address for service: eva.acker@freshfields.com

3. Kodak Holding GmbH, Kesselstraße 19, 70327 Stuttgart, represented by its CEOs Sven Freyer
and Manfred Stegmaier, at the same place,

represented by: Eva Acker, Freshfields Bruckhaus Deringer Rechtsanwälte
Steuerberater PartG mbB, Feldmühleplatz 1, 40545
Düsseldorf, Germany

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PATENT AT ISSUE:

European patent n° EP 3 594 009 B1

PANEL/DIVISION:

Panel of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Presiding Judge Thomas acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: Rule 109.1 RoP – Request for simultaneous interpretation

SUMMARY OF FACTS:

The Claimant is a company based in Japan. It brought an infringement action against the three Defendants, all based in Germany, and chose English as the language of the proceedings.

The Claimant filed a request for simultaneous interpretation from English into Japanese at the oral hearing for its attending representatives who do not have the sufficient language skills to follow the course of the oral hearing in English with the necessary level of detail. According to the Claimant, simultaneous interpretation is necessary to enable the Claimant to make use of its procedural rights for reasons of the fair trial principle and equality of arms in the proceedings.

The Defendants object to the request only in respect of Rule 109.1 RoP and to the translation costs becoming costs of the proceedings.

PARTIES' REQUESTS:

The Claimant requests,

the simultaneous interpretation from English to Japanese at the oral proceedings on December 17 and 18, 2024.

The Defendants request,

to reject the Claimant's request for simultaneous interpretation from English to Japanese at the oral proceedings according to R. 109.1 RoP.

GROUND FOR THE ORDER:

Pursuant to Art. 51(2) UPCA, any division of the Court of First Instance shall, at the request of a party and to the extent appropriate, provide interpretation to assist that party in oral proceedings. This general principle is further specified in R. 109.2 (1) RoP to the effect that the Judge-Rapporteur shall decide, upon a timely request pursuant to R. 109.1 RoP, whether and to what extent simultaneous interpretation is appropriate. If he considers it appropriate, he shall instruct the Registry to make all necessary arrangements. The costs of simultaneous interpretation in such a case shall be included in the costs of the proceedings, R. 150 RoP. If the Judge-Rapporteur refuses

the request for simultaneous interpretation, a party may, at its own expense, engage a simultaneous interpreter and request that arrangements for simultaneous interpretation be made, as far as is practically possible, at its own expense (Rule 109.2 (2) RoP in conjunction with Rule 109.4 of the RoP; cf. CFI, LD Düsseldorf, UPC_CFI_363/2023, procedural order of 12 July 2024). If a party avails itself of this possibility, the costs incurred shall not be regarded as costs of the proceedings within the meaning of the last sentence of Rule 109.5 RoP; they shall be borne solely by the party instructing the interpreter. LD The Hague summarises a two-step approach for the examination of R. 101 RoP: first, to decide whether it is appropriate to allow interpretation during the oral hearing, and second, to decide whether it is appropriate that the costs of such interpretation shall become cost of the proceedings (cf. CFI, LD The Hague, UPC_CFI_195/2024, procedural order of 25 June 2024, para 5).

Having said that, based on the Claimant's arguments, the simultaneous interpretation in the present case is appropriate. Conducting an oral hearing in a foreign language makes greater demands on the language skills of the Claimant's representatives than simply reading written documents and communicating orally in internal meetings that can be interrupted at any time. In order to ensure a fair hearing, it is certainly appropriate for the Claimant to have the use of simultaneous interpreters, to enable its representatives to fully understand all technical contributions to the oral hearing in English which they normally cannot understand without the use of additional translation aids.

However, it does not seem appropriate that the cost of the simultaneous interpretation should become a part of the cost of the proceedings. Japanese is neither an official language of the Contracting Member States nor an official or designated language of the Local Division Düsseldorf, where the infringement action was filed in English. As the Local Division The Hague has already pointed out, the UPC cannot generally be expected to provide interpretation into all languages (see CFI, Hague District Court, UPC_CFI_195/2024, procedural order of 25 June 2024, para. 10). Yet, another argument against making the costs incurred cost of the proceedings is that the Claimant's representatives are able to understand and follow the oral hearing in English as such. They simply put forward that they are unable to follow the oral hearing to a necessary degree of detail without interrupting to ask questions or using additional translation aids. The mere desire to better understand the proceedings in real time, as if they were being conducted in Japanese, does not justify a request for the Court to provide simultaneous interpretation making the costs incurred cost of the proceedings. That is all the more true considering that these arrangements are associated with great organisational effort for the sub-registry.

But the Claimant is free to use an interpreter at his own expense (see R. 109.4 RoP), who may, if necessary, use the simultaneous interpretation equipment available in the court room.

ORDER:

1. The Claimant may, at its own expense, engage an interpreter who may, if necessary, use the equipment available in the courtroom for simultaneous interpretation.
2. If the Claimant wishes to make use of this possibility, it shall inform the sub-registry of the Local Division Düsseldorf at least two weeks before the oral hearing.
3. The request is dismissed in all other respects.

DETAILS OF THE ORDER:

App_61390/2024 related to the main proceeding ACT_578607/2023

UPC-Number: UPC_CFI_355/2023

Subject of the Proceedings: Patent infringement action

Issued in Düsseldorf on 29 November 2024

Presiding Judge Thomas