



UPC_CFI_582/2024

ORDER

of the Court of First Instance of the Unified Patent Court

Local Division Brussels

Issued on 21 March 2025

Concerning EP 3 732 827

Headnotes:

1. R. 19(1) RoP, and its mentioned time-limit, is not applicable to objections to applications for provisional measures.
2. The amendments made to the Brussels I Regulation were intended solely to establish the (international) jurisdiction of the UPC and did not affect the regime set out in the UPCA regarding its internal (territorial) competence (Art. 33 UPCA). (Territorial) competence of a division of the UPC is a matter of the internal organisation of the UPC.
3. Art. 33(1) UPCA does not follow the same structure (or "*purpose and scheme*") as to be found in the Brussels I Recast Regulation in the sense of a general rule and an exception to that rule. Art. 33(1) UPCA refers to alternative competences under (a) and (b) without stating one of them as a general rule (or principle) and the other as a special rule (or exception). The case law of the CJEU regarding the (international) jurisdiction of a court of a EU Member State, and in particular its interpretation of Art. 7(2) of the Brussels I Recast Regulation (as a derogation (or exception) to the general rule (stated in Art. 4 (1) of the Brussels I Recast Regulation) and therefore to be interpreted restrictively, is not one-to-one applicable with regard to the (territorial) competence of a division of the UPC in application of Art. 33(1) UPCA.
4. Since the UPC has substantive jurisdiction to hear infringement actions or provisional measures for European patents (Art. 3(c) UPCA in conjunction with Art. 32(1)(a) or (c) UPCA), the date of grant of the European Patent should be considered as the objective earliest date to file an action with the UPC (either an action for infringement (Art. 32(1)(a) UPCA) or an action for provisional measures (Art. 32(1)(c) UPCA), and not the date of registration of the unitary effect of this European patent.
5. The conditions to be met to grant preliminary measures are of a cumulative nature in the sense that not meeting one of these conditions implies the claims for provisional measures to be held unfounded without the necessity or obligation for the Court to further assess any other requirement. Such limited assessment is in line with the purpose of an application for provisional measures and the procedural-economy of such proceedings which should not lead to a mini-trial on the merits.

Keywords:

Preliminary objection - Objection regarding Competence of a division – provisional and protective measures – Urgency

APPELLANT / CLAIMANT:

BARCO NV

Represented by:

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and

Laura Coucke (45777/2024) Taylor Wessing N.V.,
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DEFENDANTS:

(1) YEALINK (XIAMEN) NETWORK TECHNOLOGY Co. Ltd.

(2) YEALINK (EUROPE) NETWORK TECHNOLOGY BV

Both represented by: **Ruud van der Velden**, Hogan Lovells, Strawinskylaan 4129 -
1077ZX – Amsterdam, The Netherlands

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor(s)</i>
EP 3 732 827	BARCO NV

LANGUAGE OF THE PROCEEDINGS:

ENGLISH

SUBJECT MATTER OF THE PROCEEDINGS

Application for a preliminary injunction and other provisional measures in application of R. 206(1) and R. 211(1) of the Rules of Procedure of the Unified Patent Court.

PANEL/LOCAL DIVISION

The Panel (LD Brussel) consists of the following judges:

President – Judge-Rapporteur / Legally Qualified Judge:

Legally Qualified Judge:

Legally Qualified Judge:

Technically Qualified Judge:

Samuel Granata

Petri Rinkinen

Mélanie Bessaud

Steven Richard Kitchen

DECIDING JUDGES:

This order is issued by the panel (LD Brussels).

ORAL HEARING:

The oral hearing was held on 14 February 2025.

ABBREVIATIONS/REFERENCES

To improve the readability of this order the following abbreviations and references will be used (in alphabetical order):

BARCO or Applicant or Claimant	BARCO NV
Brussels I Regulation	Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
Brussels I Recast Regulation	Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast)
CMS	Contracting Member State of the Unified Patent Court Agreement
Court	Unified Patent Court
court of appeal	The court of appeal of the Unified Patent Court
court of first instance	The court of first instance of the Unified Patent Court
EPO	European Patent Office
LD	Local Division of the Unified Patent Court
patent	EP 3 732 827B1 filed on 21 December 2018 and granted on 12 June 2024.
RoP or R. (before the relevant rule)	Rules of Procedure of the UPC
§ (followed by a number)	Consideration referred to in this order
UPCA	Agreement on a Unified Patent Court
YEALINK CHINA or Defendant 1	YEALINK (XIAMEN) NETWORK TECHNOLOGY Co. Ltd.
YEALINK EUROPE or Defendant 2	YEALINK (EUROPE) NETWORK TECHNOLOGY BV
YEALINK or Defendants	YEALINK (XIAMEN) NETWORK TECHNOLOGY Co. Ltd. and YEALINK (EUROPE) NETWORK TECHNOLOGY BV

To improve the readability of this order the following references will be used when referring to case law (in alphabetical order):

Aylo v Dish (UPC)	UPC Court of appeal, 3 September 2024, (APL_21943/2024 UPC_CoA_188/2024), <i>Aylo/Dish</i> .
Abbott (UPC)	UPC Court of Appeal, 14 February 2024, (APL_39664/2024 – UPC_CoA_382/2024), <i>Abbott/Sibio (e.a.)</i>
eDate	Judgment of the Court (Grand Chamber) of 25 October 2011 Joined Cases C-509/09 and C-509/09 and C-161/10; ECLI:EU:C:2011:685 <i>eDate Advertising and Others</i> [2011]
Ericsson (UPC)	LD Lisbon dated 15 October 2024 (UPC_CFI_317/2024), <i>Ericsson/Asustek</i>
Melzer	CJEU 16 May 2013, C-228/11, ECLI:EU:C:2013:305, <i>Melzer/MF Global UK</i>
Pinckney	CJEU 3 October 2013, C-170/12, ECLI:EU:C:2013:635, <i>Pinckney/KDG Mediatech</i>
Wintersteiger	CJEU 19 April 2012, C-523/10, ECLI:EU:C:2012:220, <i>Wintersteiger/Products 4U</i>

I. PROCEDURAL BACKGROUND

1. An application for provisional measures was filed on 2 October 2024 and was (after an invitation to remedy deficiencies (R. 16(3)) entered in the Register on 10 October 2024 and was assigned an action (ACT_544338/2024) and UPC-number (UPC_CFI_582/2024) (R. 17(1)).
2. YEALINK CHINA was requested on 11 October 2024 to inform the LD Brussels whether an electronic address could be used for service (with reference to R. 271(1)). On 18 October 2024 YEALINK CHINA informed the LD Brussels to use the official channels for service.
3. YEALINK EUROPE was served on 18 October 2024.
4. On 22 October 2024, the Judge-Rapporteur issued a preliminary procedural order (ORD_57585/2024) requesting BARCO and YEALINK EUROPE to submit their views on the possible separation of the proceedings pursuant to R. 303(2) and R. 303(3).
5. On 25 October 2024 (2.36pm), the Court received an e-mail from the representatives of BARCO, confirmed by a subsequent e-mail from the representatives of YEALINK EUROPE (2.58pm), stating the following with reference to mentioned preliminary procedural order:

(...)

In order to arrive at a pragmatic solution avoiding the need for a separation of proceedings, counsel for Barco and Yealink Europe (Defendant 2) have discussed and request to proceed in accordance with the following agreed approach:

- *Counsel for Yealink Europe (Defendant 2) indicates that Yealink China (Defendant 1) would be prepared to accept alternative service of the Application for Provisional Measures if your Court sets the deadline for the Objection to the Application, including any preliminary objections, for both Yealink Europe (Defendant 2) and Yealink China (Defendant 1) in accordance with the deadline agreed between the parties (see next bullet);*
- *Both counsel agree to set the deadline for filing the Objection to the Application, including any preliminary objections, for both Yealink Europe (Defendant 2) and Yealink China (Defendant 1) at six (6) weeks as from the acceptance of service and appearance in the proceedings by Yealink China (Defendant 1) and,*
- *Yealink China (Defendant 1) will accept service and appear in the proceedings within one working day following the confirmation by Your Court of the deadlines. Acceptance of service and appearance in the proceedings does not mean that competence and jurisdiction will not be contested by Yealink China (Defendant 1) and/or Yealink Europe (Defendant 2).*
- *Acceptance of this proposed schedule by Barco should not be construed as an indication that there is any less urgency in resolving this matter.*

(...)

6. The Court in its order dated 29 October 2024 (ORD_58944/2024), after accepting the procedural terms, decided not to separate the proceedings and set the following submissions-agenda:

Action	Party/Parties	Date
Objection to Application for Provisional Measures	(YEALINK)	17 December 2024
Reply to Objection for Provisional Measures	(BARCO)	7 January 2025
Rejoinder to Reply to Objection for Provisional Measures	(YEALINK)	21 January 2025

7. On 17 December 2024, YEALINK uploaded to the UPC Case Management System their "*Objection for PI*" including i.a. a preliminary objection on the (territorial) (in)competence of the LD Brussels and a petition to request the President of the court of first instance to allocate a *technically qualified judge* from the pool of judges (cf. Art. 18 (3) UPCA).
8. The petition was forwarded to mentioned President and subsequently a *technically qualified judge* (Mr. Steven Richard KITCHEN) was allocated to the panel.
9. By order dated 6 January 2025 (ORD_68736/2024), the Court confirmed the date for the oral hearing (14 February 2025).
10. On 7 January 2025, BARCO uploaded in the UPC Case Management System its "*Reply to the Objection for PI*" and on 21 January 2025 YEALINK uploaded in the UPC Case Management System their "*Rejoinder to Reply to the Objection for PI*"

II. SUMMARY OF THE FACTS

II.A. Parties

II.A.1. *The Applicant (BARCO)*

11. BARCO claims to be a global technology company founded in Belgium in 1934. Focused on three core markets (Entertainment, Enterprise and Healthcare), it develops and markets presentation tools, displays, monitors, video walls, projectors, LED screens and streaming devices. BARCO says it launched an "*award-winning meeting room system*" called **ClickShare** in 2012. Barco continued to improve the technology, resulting in the launch of a wireless conferencing system in 2020 and wireless video bars in 2024.
12. BARCO claims its *ClickShare-system* is a wireless meeting room system for easy video conferencing, collaboration and presentation. The system would allow presenters and

participants to simultaneously connect to the meeting room's audiovisual equipment and, for example, share their presentations on a presentation screen in the meeting room.

II.A.2. YEALINK (*YEALINK CHINA and YEALINK EUROPE*)

13. Established in 2001, YEALINK CHINA claims to be a leading provider of communication and collaboration solutions specializing in video conferencing, voice communication, and collaboration. YEALINK has launched *Yealink MeetingBar A20* in 2020, *Yealink RoomCast* in 2021 and *Yealink WPP30* in 2022 (hereafter the reference to “*Yealink*” when indicating the mentioned devices will be omitted). Visually, these devices, possibly relevant for the assessment of the application for provisional measures where BARCO refers to several “*set-ups*” of these devices (see hereafter), can be represented as follows:

Meeting Bar (A20)	RoomCast	WPP 30
		

14. YEALINK EUROPE is the European branch of YEALINK CHINA. YEALINK claims that YEALINK EUROPE was established to meet certain certification requirements in Europe.

II.B. *US procedure between BARCO and YEALINK CHINA*

15. Parties refer to a patent lawsuit filed by BARCO against subsidiaries of YEALINK CHINA in the United States of America by complaint dated 14 November 2023 before the Eastern District Court of Texas (Case No. 2:2023-cv-00521). This lawsuit followed a warning letter from BARCO to US subsidiaries of YEALINK CHINA dated 17 May 2023. In that letter, BARCO stated that it had purchased the *MeetingBar A20* and *WPP30* and that it had conducted an infringement analysis. In its “*Disclosure of Asserted Claims and Infringement Contentions*” (served by BARCO on 11 March 2024), BARCO also alleged infringement by the *RoomCast*. BARCO states indeed in its Application for provisional measures that the US proceedings relate “*to the same products of YEALINK*”. BARCO mentions that, as a result of above proceedings, YEALINK would have instructed its US distributors to cease the sale of WPP 30.

16. As mentioned, YEALINK also refers to the US proceedings but notes that none of the patents enforced by BARCO in the US proceedings concern family members of the patent in the present proceedings. Therefore, where the YEALINK devices to be held infringing (more specific in its different Set-Ups infringing the method as claimed in the patent (see § 26)) seem identical, the patents on which the US proceedings are based are different to this proceedings.

II.C. The Patent

II.C.1. *Timetable of the grant of the patent*

17. The following dates (represented as a timetable) constitute the procedural history of the granting of the patent at the EPO:

Date	Action
21 December 2018	Filing of the patent application
6 May 2024	Formal communication by the EPO of its intention to grant a European Patent
12 June 2024	Date of publication and mention of the grant of the patent (Bulletin 2024/24)
2 July 2024	Request for unitary effect
23 August 2024	Unitary effect was registered

II.C.2. *The (relevant) claims of the patent*

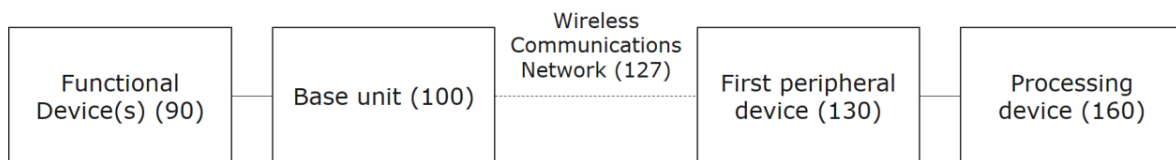
18. The (relevant) Claims as formulated in the patent are the following:

CLAIM 1	<p>A method for making one or more functional devices (90) in a meeting room available to a processing device (160) of a meeting participant, the one or more functional devices (90) being connected to a base unit (100) of a wireless communications network (127), the one or more functional devices (90) having one or more fixed or configurable Universal Serial Bus USB endpoints, an endpoint comprising a data source or a data sink, the processing device (160) having a memory, a display and an operating system (164), the base unit (100) comprising at least a transmitter and a digital processing engine, and wherein a first peripheral device (130) has a receiver, the method comprising:</p> <ul style="list-style-type: none"> coupling the first peripheral device (130) to the processing device (160) via a serial connection and the first peripheral device (130) communicating with the processing device (160) via a generic communications protocol over the serial connection; exposing and making available the one or more functional devices (90) by the base unit (100) to the first peripheral device (130) by exposing at least one of the one or more fixed or configurable endpoints of the one or more functional devices (90), by configuring one or more endpoints with descriptor fields, on the first peripheral device (130) to provide the functionality of the at least one of the one or more fixed or configurable endpoints of the one or more functional devices (90) to the processing device (160); transmitting data from the one or more functional devices (90) to the base unit (100), transmitting the data from the base unit (100) to the first peripheral device (130) over the wireless communications network (127), and transmitting the data from the first peripheral device (130) to the processing device (160) via the one or more exposed fixed or configurable endpoints using the generic
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	communications protocol for communication between the processing device (160) and the first peripheral device (130).
CLAIM 12	A system comprising a network adapted to carry out the method steps of any of the claims 1 to 11.
CLAIM 13	A computer program product comprising instructions for carrying out the method of any one of claims 1 to 11 when the instructions are executed by a processing system.

II.C.3. Diagram “in order to visualise the different devices at play”

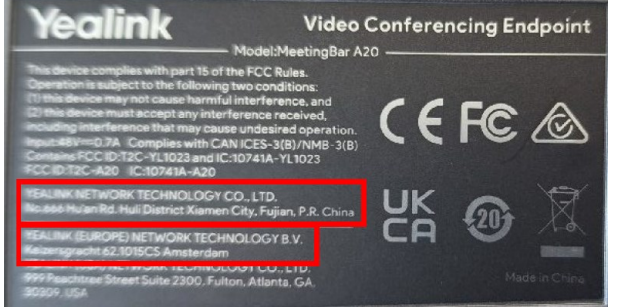
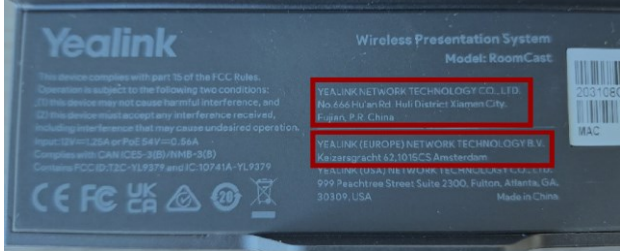

19. Although not a disclosed figure in the patent, BARCO provides the following diagram, which it claims illustrates the “dynamic between the different devices” as numerically identified in the above-mentioned relevant claims:



II.D. The (relevant) YEALINK devices and (alleged infringing) Set-Ups

20. On 29 August 2024, BARCO purchased the YEALINK devices as represented in § 13 and had an infringement analysis performed of these devices based on the patent. The results of this analysis were available to BARCO on 17 September 2024.
21. BARCO (through a third-party end-customer in Belgium) purchased these YEALINK devices on 29 August 2024 through the Bechtle-website (www.bechtle.com/nl). The YEALINK devices were subsequently supplied to this Belgian end-customer (see bailiff report (C3 Annex of BARCO)). BARCO indicates that the Bechtle-website has a Dutch language option and allows delivery in i.a. Belgium.
22. BARCO indicates that the YEALINK devices are also offered to (Belgian) end-customers through the following websites:
- online-shop of M/Medientechnik (<http://m-medientechnik24.de> with the possibility to delivery in 30 countries (i.a. Belgium)
 - www.presentatiestore.nl providing delivery options throughout Europe (i.a. Belgium)
 - www.amazon.com with delivery option i.a. in Belgium
 - www.shop.avc.dk Ricoh AVC (here the Court should mention that the evidence is in Danish and was not translated by BARCO).

23. In addition to the foregoing, BARCO also refers to the product labels provided on the ordered YEALINK devices where YEALINK CHINA is mentioned as the product manufacturer and also mentioned in the declaration of conformity regarding the CE marking (together with YEALINK EUROPE):

MeetingBar A20	
RoomCast	
WPP 30	

24. Finally, in its reply to objection, BARCO argues that through its website www.yealink.com, YEALINK CHINA actively promotes the YEALINK devices, referring potential customers to their sales contacts in the relevant region or asking to contact them directly. During the oral hearing, BARCO further argued that YEALINK CHINA is offering the products in Belgium via its website, www.yealink.com, e.g. by providing material such as Exhibit B7 (YEALINK WPP30 Datasheet). BARCO also refers to communication with YEALINK CHINA (through their website: www.yealink.com/en/contact) regarding an information request about “*conferencing room solutions in Belgium*”. In the response, the following email address is indicated Benelux@yealink.com and further a “*YEALINK Benelux account manager*” is mentioned. Additionally, in this response, YEALINK CHINA requested information regarding the preferred reseller of the requester and, if not available, YEALINK CHINA indicates they will be “*happy to recommend a trusted (reseller)*”. BARCO states that YEALINK EUROPE’s involvement in the commercialisation is also confirmed by the contact information mentioned in the manuals of the MeetingBar A20, WPP30, and

the RoomCast provided in the boxes of the test purchases (Annex C2). In these manuals, YEALINK EUROPE is identified as the European point of contact, indicating that YEALINK EUROPE is responsible for the commercialization within the European Union of these YEALINK devices.

25. In its claims, BARCO refers to “Set-Up(s)” wherein the YEALINK devices represented in § 13 are relevant. BARCO holds that “the typical user flow” when implementing the meeting room system by using the YEALINK devices as mentioned in § 13 proves an infringement of the patent claims 1, 12 and 13. This user flow when implementing the meeting room system is visually represented by BARCO by indicating the following allegedly infringing Set-Ups, detailed below:

Set-ups YEALINK		
SET-UP 1		
Yealink Meeting Bar (A20)	WPP 30	
SET-UP 2		
(video/audio)		
Stand-alone video/audio	RoomCast	WPP 30

26. Referring to its explanatory diagram (see § 19) BARCO then provides the following visual representation of the allegedly infringing YEALINK Set-Ups:

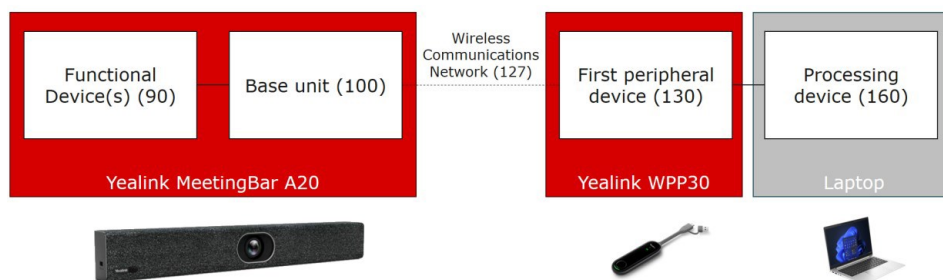


Diagram mapped on the Yealink Set Up including the all-encompassing MeetingBar Product

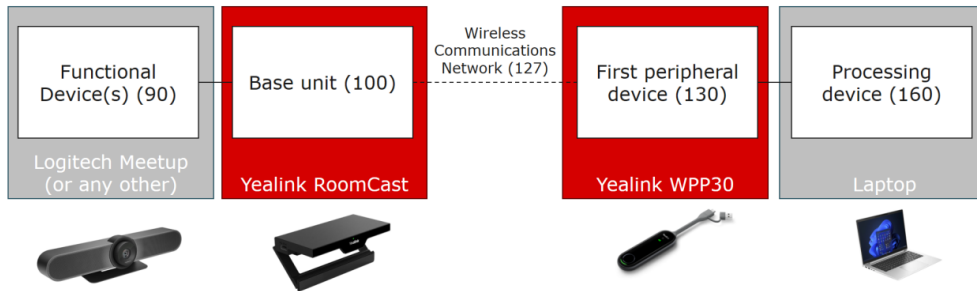


Diagram mapped on the Yealink Set Up including the RoomCast and stand-alone video/audio device

III. REMEDIES SOUGHT AND SUBMISSIONS

III.A. Claims BARCO

27. BARCO requests that the Court, for the CMS in which the Patent is in force:

a. Grants a preliminary injunction against the Defendants, with immediate effect after service of the order to be rendered in this matter, to prohibit the continuation of the infringement, in particular:

- i. By making, offering and / or placing on the market the Yealink Set Ups which implement the method of Claim 1 or which implement the system of Claim 12 of EP 3 732 827; or*
 - ii. By importing or storing the Yealink Products for the purposes of implementing the method of Claim 1 or the system of Claim 12 of EP 3 732 827; or*
 - iii. By making, offering and / or placing on the market Yealink Products with a computer program as protected by Claim 13 of EP 3 732 827.*
- (Articles 62(1), 25(a) and 26 UPCA);*

or in the discretion of the Court, in the alternative,

Grants a preliminary injunction against the Defendants from infringing the Patent with immediate effect after service of the order to be rendered in this matter, by making, offering and / or placing on the market the Yealink Set Ups, or importing or storing the Yealink Products for those purposes (Articles 62(1), 25(a) and 26 UPCA);

b. Orders the Defendants to provide to the representatives of Barco, within 4 weeks after service of the order rendered in this matter, with a written statement, substantiated with appropriate documentation of:

- i. the origin and distribution channels of the Yealink Products in the Contracting Member States in which the Patent is in force (including the full names and addresses of the legal entities that are involved);*
- ii. the quantities delivered, received or ordered, as well as the price obtained for Yealink Products in the Contracting Member States in which the Patent is in force; and*

iii. the identity of any third party involved in any infringing act, in particular in the production or distribution of Yealink Products in the Contracting Member States in which the Patent is in force (including the full names and addresses of the legal entities that are involved).

(Article 62(1) and 67 UPCA and Rule 211RoP)

c. Orders the Defendants to deliver up to a bailiff appointed by Barco, at their own expense, or alternatively orders the seizure, of any Yealink Products having a computer program as protected by Claim 13 of EP 3 732 827 in stock and / or otherwise held, owned or in the direct or indirect possession of the Defendants in the Contracting Member States in which the Patent is in force, within 1 week after service of the order to be rendered in this matter, and to provide counsel for Barco with proper evidence of the full and timely compliance with this order within 10 days after the delivery up to the bailiff or seizure (Article 62(3) UPCA and Rule 211(1)(b)RoP);

d. Orders the Defendants to comply with the orders above, subject to a recurring penalty payment of up to EUR 250,000.00 or another amount as the Court may order, to the Court for each violation of, or non-compliance with, the order(s), plus up to EUR 100,000.00 for each day, or part of a day counting as an entire day, that the violation or non-compliance continues, or another amount as determined by this Court in the proper administration of justice (Article 62(1) UPCA and Rule 354(3) RoP);

e. Appends an order for the enforcement to its decision, while declaring that the order is immediately enforceable (Article 82(1) UPCA);

f. Orders the Defendants to jointly and severally bear reasonable and proportionate legal costs and other expenses incurred by Barco in these proceedings and orders, insofar such costs are to be determined in separate proceedings for the determination of such costs, that the Defendants pay to Barco by means of an interim award of costs of the sum of EUR 11,000.00 or another amount as the Court may order (Article 69 UPCA and Rule 211(1)(d) RoP).

28. Further, BARCO requests that the amount of security (if any) be fixed separately for each enforceable part of the Court's decision.

III.B. Requests and Submissions YEALINK

29. YEALINK requests the Court as follows:

- I. that the Application is dismissed;*
- II. should the Court dismiss the Application, or should Claimant withdraw the Application, that the Court orders Claimant to bear the legal costs and other expenses incurred by Defendants in an amount of EUR 112,000 or another amount specified by the Court as interim costs (Art. 211.1(d) RoP);*
- III. in the alternative: in case the Court considers the Application to have merits, to reject the immediate enforceability of any order rendered; or*

IV. *in the further alternative: to render any order immediately enforceable only against the provision of an adequate security by deposit or bank guarantee by the Applicant in favour of the Defendants to be determined by the Court, after giving the parties an opportunity to be heard on the amount and calculation of the security, for appropriate compensation for damages likely to be caused to the Defendants which the Claimant may be liable to bear in the event that the Court revokes the order for provisional measures (Art. 62 para. 5, Art. 60 para. 7UPCA; R. 211.5 sentence 1, 2 RoP);*

30. The requests made by YEALINK are argued as follows (presented in its essentials):

- YEALINK lodges a (preliminary) objection regarding the (territorial) competence of the LD Brussels based on R. 19.1(b) in conjunction with Art. 33(1) UPCA. YEALINK requests that BARCO's application for provisional measures be dismissed.
- After providing the Court information regarding the technical background of the patent (referring to the common general knowledge) and the person skilled in the art, YEALINK notes that BARCO did not provide a clear position on the claim construction of the patent and present its own claim construction.
- Based on the common general knowledge and the claim construction, YEALINK alleges that it does not infringe the patent as the devices in their alleged Set-Ups (i) ROOMCAST and WPP 30 (ii) MEETING BAR and WPP 30 do not fall within the scope of the patent.
- YEALINK further questions the validity of the patent and introduces arguments on (i) lack of novelty, (ii) lack on inventive step, (iii) inadmissible extension, and (iv) insufficiency of disclosure.
- YEALINK then argues the lack of factual and temporal necessity and that the weighing of interest should lead to the conclusion that BARCO's request for provisional measures should be dismissed.
- Finally, YEALINK goes into the actual measures sought and generally argues the lack of clarity of these measures.

IV. (INTERNATIONAL) JURISDICTION AND (TERRITORIAL) COMPETENCE

IV.A. Admissibility of the (preliminary) objection

31. Referring to R. 19(1)(b) in conjunction with Art. 33(1) UPCA and stating that a preliminary objection should be distinguished from a statement of defence (R. 19(6)), BARCO argues that in application of R. 19(7) and due to YEALINK lodging its preliminary objection too late, the (international) jurisdiction of the UPC and the (territorial) competence of the LD Brussels should be considered accepted. As such, the preliminary objection should be held inadmissible for being lodged too late.

Specifically, BARCO argues that because service was made on 18 October 2024 (for YEALINK EUROPE) and 30 October 2024 (for YEALINK CHINA), any preliminary objection should have been filed no later than 18 November 2024 and 30 November 2024, respectively.

32. The Court finds that the objection relating to the (territorial) competence of LD Brussels is admissible based on the following considerations:
33. The communication to the Court dated 25 October 2024 explicitly states the following (the underlined words are provided by the Court):

“Both counsel agree to set the deadline for filing the Objection to the Application, including any preliminary objections, for both Yealink Europe (Defendant 2) and Yealink China (Defendant 1) at six (6) weeks as from the acceptance of service and appearance in the proceedings by Yealink China (Defendant 1) and, [—]”

This agreement was confirmed by the Court in its order ORD_58944/2024 dated 29 October 2024. Due to this procedural order, YEALINK was permitted to introduce any objection (including objections related to (international) jurisdiction and (territorial) competence) in its “*Objection to the PI*” at the latest on 17 December 2024.

34. Making abstraction of above-mentioned consideration regarding the (confirmatory) order (ORD_58944/2024), the Court holds that R. 19(1)(b) as such is not applicable to applications for provisional measures. The Court holds that the *preliminary* objection referred to in R. 19(1)(b) relates to proceedings on the merits. It is clear from the wording of this rule and its textual location in the RoP (under Chapter 1 “*Written Procedure*” and Section 1 “*Infringement Action*” and explicitly referred to in R. 48 for the “*Revocation Action*” and R. 66 for the “*Action for declaration of non-infringement*”) that it is intended to give the Court the opportunity to decide, for example, on (international) jurisdiction or (territorial) competence before deciding the case on the merits (for the action referred to above). No explicit reference is made to R. 19(1)(b) in the rules governing an Application for provisional measures.

This is based on procedural economy and the (extended) timeframe within which the parties in actions referred to above (infringement action, revocation action and action for declaration of non-infringement) must present their arguments. Thus, the objection relating to (international) jurisdiction and (territorial) competence is called a “*preliminary*” objection compared to other objections relating to the merits of the case. An application for “*provisional*” measures does not follow such an extended timeframe, because the procedure itself already follows an accelerated timeframe (“*summary procedure*”). For the same reason that no interim procedure is provided

for (due to the summary nature of the procedure), the written procedure follows its own momentum. The Court may invite the defendant to submit any written objection (R. 209(1)(a)), without distinguishing between objections listed under R. 19(1) or any other objection, within a timeframe based on factual or procedural circumstances of the case. Although such a time-limit will, in most cases, be shorter than the one provided for in R. 19(1)(b) (due to the summary nature of the proceedings), it may be longer depending on the factual circumstances. The factual circumstances considered by the Court in this case included YEALINK CHINA's acceptance of service (and thus no need to separate proceedings - see § 6) on the (agreed) condition that it would raise its objections, *"including any preliminary objection,"* six weeks *"from acceptance of service"*.

IV.B. Assessment of the objection regarding competence

IV.B.1. Objection as argued by YEALINK

35. YEALINK challenges the (territorial) competence of the LD Brussels, arguing that BARCO *"has not sufficiently explained why the 'actual or threatened infringement has occurred or is likely to occur specifically in Belgium (i.e. the Contracting State in which the LD Brussels is located) and not in another Contracting State"* (in application of Art. 33(1) (a) UPCA). YEALINK argues that reference to sales/offers via websites (such as *"bechtle.com"*, *"presentatiestore.nl"*, *"Amazon/B2BFLIW"*, *"m-medientechnik24.de"* and *"Ricoh AVC"*) that are not owned, operated or otherwise affiliated with YEALINK is not sufficient for the LD Brussels to consider itself competent under Art. 33(1) (a) UPCA. In general, YEALINK argues that BARCO cannot rely on the alleged infringement by a third party (who is not a party to the dispute within the meaning of Art. 33(1) (a) UPCA) to have the case decided by the LD Brussels. YEALINK contends that this follows from the fact that the same term is used in Art. 32 (1) (a) UPCA, to which the preamble of Art. 33(1) (a) UPCA refers. YEALINK then states that *"actions for actual or threatened infringement of patents"* should therefore be read as *"infringements by the defendants against whom the action is directed"* and not *"infringements by third parties who are not parties to the dispute"*.

IV.B.2. (International) jurisdiction of the UPC

36. The UPC is a common court within the meaning of Art. 71a(1) Brussels I Regulation (Art. 71a(2)(a) Brussels I Regulation). Therefore, the UPC has jurisdiction in cases where the courts of a CMS would have (international) jurisdiction under the Brussels I Recast Regulation in an action within the meaning of Art. 32(1) UPCA (Art. 71b(1)

Brussels I Recast Regulation) (*Aylo v. Dish* (UPC) paragraph 10). In paragraph 11, the court of appeal in *Aylo v. Dish* (UPC) further held that under Art. 7(2) Brussels I Recast Regulation, the courts of a CMS have (international) jurisdiction in an action for infringement within the meaning of Art. 32(1)(a) UPCA against a person domiciled in an EU Member State where the harmful event occurred or may occur in that CMS, thus establishing a direct link between said article of the UPCA and Art. 7(2) Brussels I Recast regulation. Art. 7(2) Brussels I Recast regulation States as follows:

A person domiciled in a Member State may be sued in another Member State:

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur

37. In its Application for provisional measures (p. 15 – under number 21), BARCO explicitly states the following regarding the (international) jurisdiction of the UPC:

“Under Article 7(2) Brussels I Recast Regulation, the courts of a Contracting Member State have jurisdiction in an infringement action within the meaning of Article 32(1)(a) UPCA against a person domiciled in an EU Member State where the harmful event occurred or may occur in that Contracting Member State”.

The harmful event referred to by BARCO (as the connecting factor) is the offering and supplying to end users in Belgium of YEALINK devices infringing BARCO's patent (with reference to the facts set out under § 24-26).

38. In the present case, YEALINK does not contest the (international) jurisdiction of the UPC. Thus, although the communication to the Court dated 25 October 2024 states that "*Acceptance of service and appearance in the proceedings does not imply that the competence and jurisdiction of Yealink China (Defendant 1) and/or Yealink Europe (Defendant 2) is not contested*", YEALINK did not and does not appear to contest the (international) jurisdiction of the UPC.

39. It should be noted that while YEALINK in its "*Reply to the Application for Provisional Measures*" (p. 16) argues that based on the above, the LD The Hague would be competent, YEALINK in its "*Rejoinder to Reply to Objection for Provisional Measures*" (p. 15) argues somewhat differently that the case should have been brought in the LD "*where YEALINK EUROPE is domiciled - namely the LD the Hague - or in the local division of the (CMS) where YEALINK itself commits infringing acts*" (without providing information regarding a specific competent LD). These arguments are read in conjunction with the objections to the application under Art. 33(1) (a) UPCA as they relate to the (territorial) competence of the LD Brussels.

IV.B.3. (Territorial) Competence of the LD Brussels

a) *Introductory remarks regarding Art. 33(1)(a) UPCA when applying Art. 7(2) Brussels I Recast Regulation (and the related case law of the CJEU)*

40. The amendments made to the Brussels I Regulation were intended solely to establish the (international) jurisdiction of the UPC and did not affect the regime set out in the UPCA regarding its internal (territorial) competence (Art. 33 UPCA). The question of which division is competent is a matter of the internal organisation of the UPC, in the same way as on a national level a particular court has territorial competence (or not). The Brussels I Recast Regulation and the settled case law of the CJEU serve as guiding principles for the interpretation of Art. 32 UPCA (see *Aylo v. Dish* (UPC)) upholding the contested decision/order that the place "*where the actual or threatened infringement has occurred or may occur as referred to in Art. 33(1)(a) UPCA must be interpreted in the same way as the place where the harmful event occurred or may occur*" of Art. 7(2) Brussels I Recast Regulation, and consequently held that the provisions have a similar purpose, namely to define a ground (connecting factor) for (international) jurisdiction or (territorial) competence on the basis of the connection between the subject matter of the dispute and the court or division (*Aylo v. Dish* (UPC), paragraph 26).
41. Although the court of appeal has established the above-mentioned principle regarding competence (after an extensive reasoning that the UPC has (international) jurisdiction), there is a major difference in the application of Art. 7(2) Brussels I Recast Regulation in the interpretation of Art. 33(1)(a) UPCA compared to its interpretation of Art. 32 (1)(a) UPCA.

Art. 7(2) Brussels I Recast Regulation refers to "*special jurisdiction*" (heading 2, under which this article resorts). Therefore, Art. 7(2) Brussels I Recast Regulation is to be regarded as a derogation from the general rule of the (international) jurisdiction of the courts of the defendant's domicile stated in Art. 4(1) of the Brussels I Recast Regulation. Such derogation is established by putting forward a particularly close connecting factor between the dispute at hand and the courts of the place where the harmful event occurred, which justifies the attribution of jurisdiction to those courts and this in the interests of the proper administration of justice and the efficient conduct of proceedings (see *Wintersteiger*, paragraph 18 (with reference to *eDate* paragraph 40), *Pinckney* paragraph 24, and *Melzer* paragraph 23). The UPCA, however, in Art. 33(1) UPCA does not follow the same structure (or "*purpose and scheme*") as to be found in the Brussels I Recast Regulation regarding (territorial) competence in

the sense of a general rule and an exception to that rule. Art. 33(1) UPCA refers to alternative competences under (a) and (b) without stating one of them as a general rule (or principle) and the other as a special rule (or exception) (indicated by the use of the suffix "or" between Art. 33(1) (a) UPCA and Art. 33(1) (b) UPCA). In other words, it is correct to state that Art. 33(1) UPCA makes forum shopping possible, as a claimant can, to a certain extent, bring an action before a LD where the defendant is located or where the threatened infringement occurs or may occur. Therefore, the assessment of a "*closer*" connecting factor is not necessary to justify the attribution of (territorial) competence to a specific LD. Any connecting factor in application of Art. 33(1)(a) UPCA or Art. 33(1)(b) UPCA justifies the (territorial) competence of a LD and this in the interests of the proper administration of justice and the efficient conduct of proceedings. This approach takes into consideration the specific nature of the UPC being (substantive) competent for European patents with (or without) unitary effect, inherently implying a multi-territorial competence.

42. Therefore, Art. 33(1) UPCA establishes the possibility of parallel competence of LDs. Consequently, the objection of YEALINK, where it argues that BARCO does not provide any argument why the LD of another CMS would not have competence (see § 35 ("*... and not in another CMS*" (p. 12 "*Objection to the Application for Provisional Measures*")), can be disregarded as more than one LD may be (territorially) competent to hear the same dispute.
43. Based on the above, the case law of the CJEU regarding the (international) jurisdiction of a court of a EU Member State, and in particular its interpretation of Art. 7(2) of the Brussels I Recast Regulation (as a derogation (or exception) to the general rule and therefore to be interpreted restrictively (see *Pinckney* paragraph 25)), is not one-to-one applicable with regard to the (territorial) competence of a division in application of Art. 33(1) UPCA, because it is clear that the offset is different. While the referred case law of the CJEU regarding Art. 7(2) Brussels I Recast Regulation in the *Aylo v. Dish* (UPC) is certainly applicable regarding the assessment of (international) jurisdiction of the UPC (based on Art. 32 (1)(a) UPCA), it should be applied less restrictively, when assessing (territorial) competence (based on Art. 33(1)(a) UPCA).
44. Furthermore, and as second *caveat*, it should be noted that the established case law of the CJEU (with specific reference to *Wintersteiger* and *Pinckney*) is based on *national* rights (be it copyrights or national trademarks), which are clearly of a different nature to European patents with unitary effect. While these national rights are subjects to the principle of territoriality (see *Pinckney*, paragraph 39, with reference to copyright and a national trademark), and this element should be taken

into account when assessing the closer connecting factor of a dispute, such national (territorial) principles can be disregarded when assessing the competence of a LD based on a European patent with unitary effect.

b) *Applying Art. 7(2) Brussels I Recast Regulation (and the case law of the CJEU) in the application of Art. 33(1)(a) UPCA*

45. Based on the case-law of the CJEU (even based on a restrictive interpretation of Art. 7(2) of the Brussels I Recast Regulation), the Court finds that the LD Brussels has (territorial) competence to hear the case, which would in fact mean that, based on a less restrictive interpretation of the aforementioned article, it would certainly have (territorial) competence. This less restrictive interpretation comes into play when interpreting *Melzer* (see § 56).

46. In application of these restrictive principles the Court indeed holds that the LD Brussels has competence to hear the case based on the following considerations:

- BARCO alleges and sufficiently proves that YEALINK devices on which it bases its infringement allegations (see § 24 - 26) were ordered from and delivered to Belgium. Further, BARCO alleges and sufficiently proves that Yealink is actively promoting and offering the YEALINK devices to end-customers in Belgium via their website and their Benelux Account Manager. As such the LD Brussels, as the local division in a “Contracting Member State where the actual or threatened infringement had occurred or may occur” should be considered (territorially) competent in application of Art. 33(1) (a) UPCA.
- The objection by YEALINK is based on the assumption that the establishment of competence on the basis of Art. 33(1) (a) UPCA (and as such Art. 7(2) of the Brussels I Recast Regulation) requires a conclusive argumentation by BARCO for the alleged direct and/or indirect infringement in the CMS and a submission of all objective characteristics of the alleged tort. However, it is clear as mentioned by the court of appeal in *Aylo v. Dish* (UPC) (paragraph 18 with reference to *Pinckney* paragraph 41) that the identification of the place of where the harmful event occurred for the purpose of Art. 7(2) Brussels I Recast Regulation cannot depend on criteria, which are specific to the examination of the substance, and which do not appear in that provision. Whether YEALINK CHINA and/or YEALINK EUROPE committed the infringement (either direct in application of Art. 25 UPCA and/or indirect in application of Art. 26 UPCA) falls within the scope of the examination of the substance of the action (cf. *Wintersteiger* paragraph 26). A conclusive argumentation relating to the conditions of either Art. 25 UPCA or Art. 26 UPCA is required for granting the claims in

the infringement action but is not decisive for the establishment of (international) jurisdiction or (territorial) competence pursuant to Art. 7(2) Brussels I Recast Regulation (and as such the competence of the LD Brussels based on Art. 33(1) (a) UPCA) (see Procedural order of Hamburg LD, UPC_CFI_525/2024 18 December 2024).

- Where YEALINK argues that "*actions for actual or threatened infringement of patents*" should be read as "*infringements by the defendants against whom the action is directed*", they include a criterium ("*by the defendants against whom the action is directed*") which can neither be read into Art. 7(2) Brussels I Recast Regulation (in the sense of an "*harmful event committed by the defendant against whom the action is directed*") neither in Art. 33(1) (a) UPCA (in the sense of "*where the actual or threatened infringement has occurred or may occur committed by the defendant against whom the action is directed*"). The Court finds that YEALINK is inconsistent in stating that the case (against YEALINK CHINA and YEALINK EUROPE as multiple defendants) could have been brought before the LD The Hague based on the application of Art. 33(1)(b) UPCA (being the LD hosted in the CMS where YEALINK EUROPE has its residence), but does not read into this article the additional (criterion) that it reads into Art. 33(1)(a) UPCA. In particular, the last sentence of Art. 33(1)(b) UPCA states that "*(a)n action may be brought against multiple defendants only if the defendants have a commercial relationship and if the action relates to the same alleged infringement*" and YEALINK does not include the criterium "*committed by the defendant (who has his residence in the CMS where the LD is hosted) against whom the action is directed*". In other words, when applying Art. 33(1)(b) UPCA, YEALINK actually seems to agree that whether or not YEALINK EUROPE committed the infringing acts is a matter of assessing the substance of the action. The Court considers that the same subsequent assessment regarding the substance of the action applies to the application of Art. 33(1)(a) UPCA.
- To conclude, the objection formulated by YEALINK does not apply and, as such, does not interfere with the finding that the LD Brussels is (territorially) competent to hear the case based on the (sole) criterion mentioned in Art. 33(1)(a) UPCA, in conjunction with Art. 7(2) of the Brussels I Recast Regulation ("*where a harmful event has occurred or may occur*"). BARCO has alleged and, for the purpose of assessing competence, provided sufficient evidence that the event indeed occurred in Belgium (more specifically the actual receipt of YEALINK devices by a Belgian end-customer and the communication to the Belgium end-customer when using the YEALINK website regarding the supply of its devices).

47. In considering *Melzer*, it should be noted that the factual circumstances (and allegations) in *Melzer* and the present case are different. In *Melzer*, the CJEU held that "*[i]n circumstances such as those described in the order for reference, where only one*

of several alleged perpetrators of an alleged harmful act is sued before a court within whose jurisdiction he has not acted, the connecting factor based on the acts of the defendant is in principle absent" (see *Melzer*, paragraph 30). Thus, in the order for reference it was not alleged that all the perpetrators of the alleged harmful event had acted within the jurisdiction of the national court, but only one who had not been sued before that national court. In *Melzer*, it does not appear to have been disputed that the perpetrator did not act within the jurisdiction of the national court before which he was sued. In the present case, BARCO alleges that YEALINK EUROPE and YEALINK CHINA both acted in Belgium as the perpetrators of the alleged harmful act (i.e. the infringement) and for this reason both are sued before the LD Brussels.

48. Further, the less restrictive application of the Art. 7(2) Brussels I Recast Regulation is of importance when taking into consideration the reasoning by the CJEU in *Melzer* and more specifically its finding that *"Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2001 (identical provision of Art. 7(2) Brussels I Recast Regulation) must be interpreted as meaning that it does not allow the courts of the place where a harmful event occurred which is imputed to one of the presumed perpetrators of damage, who is not a party to the dispute, to take jurisdiction over another presumed perpetrator of that damage who has not acted within the jurisdiction of the court seized"*. In paragraph 22 of mentioned decision the CJEU recalls that the provisions of Regulation 44/2001 (identical to Brussels I Recast Regulation) must be interpreted independently, by reference to its *scheme and purpose* (referring i.a. to *eDate* paragraph 38), whereafter it explains this *scheme and purpose* in paragraph 22 stating that Art. 5 (3) Regulation 44/2001 (identical provision of Art. 7(2) UPCA Brussels I Recast Regulation) should be applied by way of derogation from the fundamental principle laid down in Art. 2 (c) of the Regulation 44/2001 (identical provision of Art. 4 (1) Brussels I Recast Regulation). After going into the interpretation of close connecting factors to be taken into account in the application mentioned Art. 5 (3) Regulation 44/2001 (identical provision of 7(2) UPCA Brussels I Recast Regulation) but also the alternative connecting factors, the importance of general scheme and objectives of the Regulation 44/2001 (i.e. today Brussels I Recast Regulation) is then highlighted in paragraph 36 and the CJEU comes to the decision above mentioned.

Regarding the competence assessment of a division of the UPC as provided for in Art. 33(1) UPCA (see § 41), the *"scheme and purpose"* (as the starting point in *Melzer*'s reasoning) does not apply. The fact that one of the defendants (YEALINK EUROPE) is domiciled in the Netherlands does not lead to the sole competence of the LD The Hague, nor can it be considered a *closer* connecting factor to override the connecting

factor of the place of infringement to justify the (territorial) competence of the LD Brussels in application of Art. 33(1) (a) UPCA and this because BARCO alleges that YEALINK EUROPE and YEALINK CHINA acted in Belgium at least by offering their products online to Belgian market. Therefore (besides the factual differences and allegations directed to one of the perpetrators who did not act within the jurisdiction of the national court where he was sued), the reasoning in *Melzer* can be disregarded and does not affect this Court's finding that the LD Brussels has (territorial) competence to hear the case.

49. Finally, and for the sake of completeness, and should it not be implicitly answered by the Court's reasoning above, the Court is not convinced by YEALINK's argument that "*Dutch judges*" sitting in the LD The Hague would have to apply the "*settled case law of the Supreme Court of the Netherlands*" when assessing patent infringements, because (i) the subject matter of the protection in this case is a European patent with unitary effect (which has no national place of registration and results in the same protection and claim interpretation irrespective of the competent division and thus has an equal connecting factor) (ii) no division of the UPC is bound by national supreme court decisions.

V. GROUNDS FOR DECISION

V.A. Guiding principles in the assessment of provisional measures

50. Initiation of a case on the merits should be considered the standard (default) for initiating patent infringement actions. Therefore, an application for provisional measures should be the exception to this standard (default). Since the rights of the defence in such proceedings are not protected to the same extent as they are in proceedings on the merits, a request for provisional measures can only be granted in exceptional circumstances. These exceptional circumstances may relate to temporal and/or factual necessity, considering a balance between the rights of the applicant and the rights (of the defence) of the respondent (which are already limited by nature - due to the summary nature of a provisional measures procedure).
51. The guiding principles for the assessment of an application for provisional measures in the RoP have been established in (recent) case law of the UPC (and clearly articulated in *Ericsson* (UPC) with reference to the relevant case law of the court of first instance and the court of appeal).

52. For ease of reference, these guiding principles (also taking into consideration *Abbott* (UPC)), and more specifically the conditions for granting an application for provisional measures, are set out below:
- Entitlement: an applicant should provide reasonable evidence with a sufficient degree of certainty that he is entitled to initiate proceedings under Art. 47 UPCA.
 - Validity and infringement: an applicant should provide reasonable evidence with a sufficient degree of certainty that the patent is valid and that its rights are being infringed, or that such infringement is imminent (R. 211.2.)
 - Urgency: an applicant should prove its need for early and prompt protection of its right to avoid further damage resulting from delays in resolving the case on its merits. This would not be the case if an applicant has acted negligently or hesitated in requesting provisional measures after gathering all the necessary elements for legal action (from an objective standpoint and taking into consideration factual circumstances). To assess urgency from an objective standpoint, it is necessary that the applicant provides the Court with a specific date when he became aware the alleged infringement. (R. 211.4.)
 - Weighing the interest of the parties: an applicant should prove that the balance of interests weighs in his advantage (R. 209(1)(b), 211(2) and (3)).
53. With regard to the allocation of the burden of proof in provisional measure proceedings the following guidelines need to be taken into consideration:
- Only a *prima facie* analysis of the facts (conditions) is required. Such *prima facie* analysis is articulated in R. 211 (2) by only requiring from an applicant to prove with “*a sufficient degree of certainty*” the made allegations. Achieving a sufficient degree of certainty requires the Court to consider it “*at least more likely than not*” that the conditions of mentioned rule are met: (i) the applicant is entitled to initiate proceedings, (ii) the patent is valid, and (iii) the patent is infringed.
 - Although the mentioned conditions already state that it is up to an applicant to provide the requested evidence (and as such bears the burden of proof), the burden of proof that the patent is *not* valid in respect of *inter partes* preliminary injunctions lies with the defendant.
 - The *prima facie* analysis (articulated as a “*a sufficient degree of certainty*”) does not apply for the assessment of (i) the (international or substantive) jurisdiction of the UPC and (territorial) competence of a division (which foregoes any decision or order of the Court), (ii) the requirement of urgency, and (iii) the weighing of interests.

54. Finally, it should be noted that the mentioned conditions are of a cumulative nature in the sense that not meeting one of these conditions implies the claims for provisional measures to be held unfounded without the necessity or obligation for the Court to further assess any other requirement. Such limited assessment is in line with the purpose of an application for provisional measures and the procedural-economy of such proceedings which should not lead to a mini-trial on the merits.

V.B. Urgency

55. As stated in *Ericsson* (UPC) (paragraph 50 with reference to the relevant UPC case law to date), an applicant is expected to be diligent in seeking a remedy against the alleged infringer, having gathered all necessary evidence, from the moment the infringement began or from the time the applicant became aware of said infringement. If the applicant has acted negligently or hesitated in requesting provisional measures after gathering all the necessary elements for a promising legal action (from an objective standpoint), it must be concluded that the applicant was not genuinely interested in promptly enforcing its rights. In such circumstances, it would be inappropriate for the Court to grant the requested provisional legal protection.
56. BARCO does not provide the Court with a specific date on which it became aware of the alleged infringement. BARCO argues that this is not necessary because it could not initiate proceedings before 23 August 2024 (see § 17), the date on which the unitary effect was registered. As such, BARCO argues that the commencement of proceedings on 2 October 2024 (considering the time necessary to gather and analyse evidence) demonstrates that BARCO acted diligently and is indeed genuinely interested in enforcing its rights promptly.
57. However, since the UPC has substantive jurisdiction to hear infringement actions or provisional measures for European patents (Art. 3(c) UPCA in conjunction with Art. 32(1)(a) or (c) UPCA), and BARCO was granted a European patent on 12 June 2024, it is not 23 August 2024 (date of the registration of the unitary effect) that should be considered as the objective earliest date for BARCO to file an action with the UPC (either an action for infringement (Art. 32(1)(a) UPCA) or an action for provisional measures (Art. 32(1)(c) UPCA), but indeed rather 12 June 2024. If unitary effect is registered during UPC proceedings, and if such unitary effect would lead to an amendment of the originally sought relief, the applicant has sufficient means to amend its claims (if necessary, by applying R. 263).

Based on the factual circumstances in the US proceedings (see § 15), the Court is sufficiently convinced that BARCO was aware of the allegedly infringing YEALINK

devices on (or before see § 58) 12 June 2024. BARCO itself states in its balancing of interests argument that "*the infringing products have been on the market for a long time*" (see p. 112 of its "*Reply to Objection for Provisional Measure*"), indicating that they were clearly on the market prior to 12 June 2024. With this knowledge, BARCO could have purchased the YEALINK devices in Belgium on that date and subsequently conduct an infringement analysis. Considering that between the date of purchase on 29 August 2024, the subsequent infringement analysis report on 17 September 2024, and the request for provisional measures on 2 October 2024, a purchase on 12 June 2024, would have reasonably led to the filing of an infringement action and/or a request for provisional measures with the UPC on 15 July 2024.

Considering 15 July 2024 (i.e., 2 ½ months prior to the filing of the request for provisional measures) as a reasonable subjective earliest date for the initiation of proceedings, this is sufficient to find a lack of urgency.

58. If such a delay could already be considered unacceptable under an urgency assessment based on (strict) UPC case law (see LD Düsseldorf, 31 October 2024, UPC-CFI_463/2023, ACT-590953/2023), depending on the circumstances of the case, the Court also takes into consideration that (i) BARCO's earlier knowledge than 12 June 2024 (taking into account the dates of 17 May 2023 and 31 March 2024 (see § 15 - relating to the US proceedings) of the existence of the alleged infringing devices, (ii) the fact that BARCO itself states that the infringing devices have been on the market for a long time (see p. 112 of its "*Reply to Objection for Provisional Measure*" mentioned in § 57), and (iii) the letter from the EPO announcing the EPO's intention to grant on 6 May 2024 (§ 17).

Therefore, BARCO could already have taken the necessary preparatory steps even earlier than the objective earliest starting date of 12 June 2024 and this would have accelerated the introduction of the procedure for requesting provisional measures.

In view of this delay, the Court finds that the Applicant acted negligently or hesitated to apply for provisional measures after it had been able to gather all the necessary elements for a legal action - from an objective point of view, especially in view of the one-year proceedings before the UPC which would have led to a decision before the summer 2025 if an infringement action was lodged immediately.

V.C. Other requirements

59. As mentioned under § 54 the conditions to be met to grant preliminary measures are cumulative. As the Court finds a lack of temporal necessity, the Application for provisional measures is dismissed without a need to assess any further requirements.

VI. LEGAL COSTS

60. As the Application for provisional measures is dismissed, the unsuccessful party is obliged to bear the costs of the proceedings in accordance with Art. 69(1) UPCA, in this case, BARCO.
61. BARCO estimated the value of the case at € 1.000,000.00 and as YEALINK explicitly does not dispute this amount, the Court has no reason to consider otherwise.
62. Both BARCO (during the hearing) and YEALINK (in its submissions) hold that the legal expenses exceed the ceiling for recoverable costs associated with the respective value of the proceedings (set at € 112.000 by the Administrative Committee in its Decision on scale of ceilings of 24 April 2023), the legal costs are awarded for this ceiling.

VII. ORDER

The Court

1. **Holds that the LD Brussels is competent to hear the Application for provisional measures.**
2. **Dismisses the Application for provisional measures based on lack of urgency.**
3. **Orders NV BARCO to bear reasonable and proportionate legal costs and other expenses incurred by YEALINK (XIAMEN) NETWORK TECHNOLOGY CO. Ltd. and YEALINK (EUROPE) NETWORK TECHNOLOGY BV in these proceedings, up to the applicable ceiling of € 112.000 (Art. 69(1) UPCA; R. 118(5) and R. 150(2) RoP).**
4. **Sets the value of the dispute at € 1.000.000,00.**

Order issued on 21 March 2025 by the Local Division Brussels of the UPC:

Samuel GRANATA President and Judge-Rapporteur Legally Qualified Judge	
Mélanie BESSAUD Legally Qualified Judge	
Petri RINKINEN Legally Qualified Judge	
Steven Richard KITCHEN Technically Qualified Judge	
Déborah PLETINCKX Clerk	

INFORMATION ABOUT APPEAL

This order may be appealed in accordance with Art. 73 UPCA and R. 211(6) RoP, R. 220(1) RoP and, 224(1) RoP) within 15 calendar days of the notification of this order.

Leave to appeal is granted.

ORDER DETAILS

ORDER No.	ORD_68979/2024
ACTION NUMBER:	ACT_54438/2024
UPC Number:	UPC_CFI_582/2024
Action type:	Application for Provisional Measures (R.206 RoP)