Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC_CFI_871/2026
Local Division Brussels

ORDER

of the President of the Court of First Instance in the proceedings before the Local Division BRUSSELS pursuant to R. 323 RoP (language of the proceedings)

Issued on 27/04/2026

HEADNOTE:

- A rapid decision on a request to change the language of the proceedings benefits both parties and to the case management. As a general principle, further submissions that are not foreseen by R. 323.2 should therefore not be considered.
- In assessing the interests of the parties for deciding on an Application pursuant to R. 323 RoP, the fact that English is predominantly used in the field of the technology in question and the ensuing advantage to conduct the dispute in this language, do not outweigh the relevance of particular circumstances relating to the respective size and domicile of the companies involved.

KEYWORDS:

Change of the language of the proceedings – Art. 49 (5) UPCA and R. 323 RoP

APPLICANTS (DEFENDANTS IN THE MAIN PROCEEDINGS):

1- ESKO-SOFTWARE BV
Raymonde de Larochelaan 13, 9051 Ghent – BE

2- ESKO-GRAPHICS BV
Raymonde de Larochelaan 13, 9051 Ghent – BE

Represented by: Kristof Roox, Jan-Diederik Lindemans, Margot Horowitz and Margaux Dejonghe – Crowell

RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS):

IN(K)CONTROL BV
E3 laan 43, 9800 Deinze – BE

Represented by: Kristof Neefs – Inteo – Timothy Van de Gehuchte – Portelio – Ellen Crabbe – Brantsandpatents.

PATENT AT ISSUE: EP3841735

SUMMARY OF FACTS

By a statement of claim filed on 10 March 2026, In(k)control BV brought an infringement action against the Applicants (hereinafter collectively referred to as "Esko" or "the Defendants" in reference to their role in the main proceedings) based on EP 3841735 titled *"Method and system for improving the print quality".*

By a procedural application dated 16 April 2026, the Defendants, referring to R. 323 RoP, requested that the language of the proceedings be changed from Dutch to English (hereinafter "the Application"). The Application was forwarded to the President of the UPC Court of First Instance pursuant to R. 323.1. RoP and the Claimant in the main action was subsequently requested, in accordance with R. 323.2 RoP, to state within 10 days its position on the admissibility of the Application and on the use of the language in which the patent was granted, namely English, as language of the proceedings.

In(k)control BV submitted their written comments on 20 April 2026.

The Applicants replied by a statement dated 23 April 2026.

The Claimant requested that the Court reject this further submission or alternately give them the opportunity to respond.

The panel of the LD Brussels has been consulted in accordance with R. 323.3 RoP.

INDICATION OF THE PARTIES' REQUESTS:

The Applicants request that the current language of the proceedings be changed to the language in which the patent was granted – i.e. English – with immediate effect.

In(k)control BV requests that the Court dismiss the Application.

POINTS AT ISSUE:

The Applicants state that while the sole justification indicated by the Claimant relates to the registered offices of all parties in the Flemish Region of Belgium where "Dutch is the official language", all relevant circumstances – historical, factual and procedural aspects of the case – indicate that English should nevertheless be the language of the proceedings, for the following reasons:

- The patent was granted in English. The presentation of arguments in Dutch would give rise to interpretation issues and affect the proper understanding of technical terms which have no common equivalent in both languages. The whole procedure before the EPO was conducted in English.
- Both parties held discussions and exchanged legal and technical arguments – likely to be re-used – in English during the pre-contentious phase.
- Despite In(k)control's formal choice of Dutch as the language of the proceedings, the Statement of Claim is predominantly drafted in English, the same applies to the documents filed in support of the infringement action. Explanations relating to the allegedly infringing product contain almost exclusively references to English-language sources, without any Dutch translation.
- English is the usual working language in the industry and field of technology in question, as evidenced by the documents submitted by the Claimant.
- The Claimant itself indicates that Esko is "a multinational that was formed in 2001 from a merger of Barco Graphics and Purup-Eskofot (…) part of the US NYSE-listed Veralto group" whose usual working language is necessarily English.
- The PowerPoint document used by In(k)control to present its technology to Esko in April 2023 was drawn up entirely in English, their website is in this language too.
- Considering all circumstances of the case, the requested change would benefit all parties given the tight deadlines and considerable costs associated with proceedings before the Unified Patent Court.

In(k)control BV contends that the Application should be rejected for the following reasons (relating to admissibility and substantive grounds, successively):

- Even though its request is not premature in light of the current case law, the Claimant should have provided an email address and designated a person authorized to receive service pursuant to R. 19.2 (a) RoP. Moreover, the Application falls within the competence of the President of the UPC – Court of First Instance (to whom it was ultimately forwarded).
- Under Article 49(1) of the UPCA, the language of the proceedings before the local divisions of the Court is as general rule the official language or one of the official languages of the hosting Member State, while Art. 49(5) provides for an exception.
- In weighing up considerations of equity according to this provision, the Court must take into account the objectives of the UPCA which include preventing small and medium-sized enterprises from encountering difficulties in enforcing their patent rights (5/09/2024, Advanced Bionics v Med-El, UPC_CoA_207/2024).
- All parties are domiciled in the Flemish Region of Belgium where Dutch is the sole official language.
- The Claimant is a small entity while in contrast, the Defendants are part of a financially strong international group used to conducting patent disputes in this context.
- The requested change would represent unnecessary procedural complexity and unjustified costs incurred by the Claimant, in particular with regard to the front-loaded proceedings where all arguments have been anticipated in the language primarily chosen.
- As the Defendants are established in the Dutch-speaking region, they may – pursuant to Article 9 of Regulation (EU) 2020/1784 – request a certified translation into Dutch of any decision for the purpose of its enforcement.
- Even though the Claimant admits that it is proficient in English, it is wrongly alleged that they work and communicate internally in this language.
- The mere fact that the patent was granted in English is not sufficient to consider changing the language of the proceedings. The prior correspondence between the parties was not exchanged in English at the Claimant's initiative. It is entirely customary in patent litigation that statements include quotations in the original language of the documents submitted.

Further facts and arguments as raised by the parties will be addressed below if relevant for the outcome of this Order.

GROUNDS FOR THE ORDER:

1- Admissibility of further submissions

The UPC Rules of procedure set out for strict time limits and a specific calendar for all types of actions. This aims to ensure that all further exchanges and/or time extensions are granted upon justification in the context of an efficient albeit fair case management. As mentioned below, a rapid decision on the requested change benefits both parties and case management. According to these general principles, the reply dated 23 April 2026 – which is not foreseen by R. 323.2 and was submitted without prior authorisation – cannot be considered (UPC_CFI_375/2023 – order dated 05/03/2024).

2- Admissibility of the Application

As rightly recalled by the Claimant, Art. 49(5) UPCA does not require the application for a language change to be included in the Statement of Defence. Accordingly, R. 323.3 must be interpreted in such a manner that it does not preclude the lodging of the application beforehand. This interpretation ensures that the requested change – should it be granted – is implemented as early as possible to limit its impact on the course of the proceedings (UPC_CoA_207/2024 – order dated 5/09/2024).

Pursuant to R.19 (c) RoP, the Defendant may lodge a Preliminary objection concerning *"the language of the Statement of Claim [R. 14]".* By referring to R. 14 which pertains to the use of languages under 49 (1) and (2) UPCA, this provision explicitly narrows the scope of a Preliminary objection to these legal requirements. In contrast, R. 323 permits a change in the language of the proceedings initially selected by the Claimant, as provided under Art. 49 (5) UPCA based *"on grounds of fairness"* invoked by the Applicants. R. 19.2 (a) RoP is therefore not applicable in the present case (UPC_CFI_583/2024 – order dated 9/01/2025 – LD Paris).

As the Application was forwarded to the President of the CFI, its admissibility is no longer disputed based on the fact that it was directed to "the Judge rapporteur or the Court, Brussels Local Division".

3- Merits of the Application

According to Art. 49(1) UPCA, the language of the proceedings before a local division must be an official language of its hosting Member State or alternately the other language designated pursuant to Art. 49 (2). It is further provided by R. 323 RoP that "1. If a party wishes to use the language in which the patent was granted as language of the proceedings, in accordance with Article 49(5) of the Agreement (…) [t]he President, having consulted [the other parties and] the panel of the division, may order that the language in which the patent was granted shall be the language of the proceedings and may make the order conditional on specific translation or interpretation arrangements".

Regarding the criteria that may be considered to decide on the Application, Art. 49 (5) UPCA specifies that "(…) the President of the Court of First Instance may, on grounds of fairness and taking into account all relevant circumstances, including the position of parties, in particular the position of the defendant, decide on the use of the language in which the patent was granted as language of proceedings (…)".

By an order dated 17 April 2024, the UPC Court of Appeal (hereinafter "CoA") ruled that when deciding on a request to change the language of the proceedings to the language of the patent for reasons of fairness, all relevant circumstances must be considered. These circumstances should primarily relate to the specific case, such as the language most commonly used in the relevant technology, and to the position of the parties, including their nationality, domicile, respective size, and how they could be affected by the requested change (UPC_CofA_101/2024, Apl_12116/2024, para. 22-25). It was furthermore stated that the internal working language of the parties, the possibility of internal coordination and of support on technical issues are relevant circumstances (UPC_CoA_354/2024, Apl 38948/2024, Order dated 18/9/2024, para. 26-27). Conversely, arguments referring to the conditions in which the final decision may be enforced have been considered of less relevance in the overall assessment, as they relate to the outcome of the trial and not to the respective situation of the parties during the proceedings (UPC_CFI_448/2025 – Order dated 3/07/2025; UPC_CFI_743/2025 – order dated 29/10/2025).

In the event that the result of the balancing of interests is the same in the context of this overall assessment, the CoA found that the emphasis placed "in particular" on the position of the defendant under Art. 49 (5) UPCA is justified by the flexibility afforded to the claimant which frequently has the choice of where to file its action – since any local or regional division in which an infringement is threatened or taking place is competent – and can generally choose the most convenient timeframe to draft its Statement of Claim, while the defendant

is directly bound by strict deadlines. The position of the defendant(s) is consequently the decisive factor if both parties are in a comparable situation.

In the same decision, the CoA also held that "for a claimant, having had the choice of language of the patent, with the ensuing possibility that the claimant/patentee may have to conduct legal proceedings in that language, as a general rule and absent specific relevant circumstances pointing in another direction, the language of the patent as the language of the proceedings cannot be considered to be unfair in respect of the claimant" (para. 34).

With regard to the abovementioned provisions and caselaw, the Application shall be dismissed for the following reasons.

- *Interpretation of the legal framework provided for by Art. 49 (5) UPCA and R. 321 to 324 RoP:*

Art. 49 (5) UPCA and subsequent rules of procedure provide for a general principle according to which the Claimant is offered the choice to file its infringement action in one of the official "local" languages of the Member State hosting the division or in another EPO language – in this case English – designated pursuant to Art. 49 (2) UPCA. This right conferred to the party initiating the action can be limited for considerations of fairness which must be substantiated by the Applicant(s). Relevant factors to be considered in assessing such fairness issue have been clarified by the CoA in its decisions dated 17/04/2024 (UPC_CoA_101_2024 – APL_12116/2024) and 18/09/2024 (UPC_CoA_354/2024 – APL_38948/2024), cited above.

- *Circumstances related to the case and the position of the parties:*

According to its description, the patent relates to methods and systems for improving the print quality and/or correcting printing errors, in particular in digital printing. It is not disputed that documents referring to the allegedly infringing product – notably for informational and promotional purposes – are in English, which is the language commonly used in this field of technology. This entails that both parties which operate in this sector necessarily use English for their external communication directed to potential clients and trading partners. It is therefore not surprising that the cease notice requested by the Claimant is drafted in English.

As validly stated by the Applicants, litigating in the language in which the patent in question has been granted is beneficial to all parties and facilitates the discussions on scope of protection conferred, validity and infringement. This is evidenced by the content of the Statement of Claim, which indeed refers to English terms and excerpts of the description for the sake of clarity, and by the number of references to English documents such as those

relating to technical background of the invention and the allegedly infringing product, amongst others.

This significant advantage of conducting the dispute in the language of the patent is considered in relation with the choice made by the Claimant in the granting process, and the resulting legal consequences.

As previously ruled by the Court of Appeal, the general principle according to which the language of the patent cannot be unfair to the Claimant applies in the absence of specific circumstances leading to another conclusion.

One of such circumstances can be the respective size of the parties, bearing in mind that the UPC legal framework intends to address the situation faced by small and medium-sized enterprises which may have difficulties to enforce their patents. An example of this is found in the financial provisions of the UPCA, according to which the Court fees shall grant "a right balance between the principle of fair access to justice, in particular for small and medium-sized enterprises" and adequate contributions for the costs incurred by the Court.

In the case in question, it is not disputed that the Claimant – wholly owned subsidiary of Etivoet BV, 100% shareholder of RBC – is a small company. This is attested by its declaration pursuant to R. 370.8 (a) RoP which indicates that In(k)control meets the criteria for a small enterprise as defined in the Annex to the Recommendation of the European Commission n°2003/361 (Annex A3 – declaration and financial statements of In(k)control, Etiovoet and RBC), while the Defendants are part of an international group with corresponding resources that can be mobilised to handle the dispute (Annex B3 - Esko-Graphics BV's financial statements). Each party is therefore in a different position.

Moreover, ESKO as well as In(k)control have their registered offices in a Dutch-speaking territory of Belgium, which has been considered as a valid reason to file an infringement case in the respective "local" language (UPC_COA_207/2024 – order dated 5/09/2024 – para. 12; UPC_CoA_902/2025, order dated 19/12/2025). Even though its field of activity entails that it uses English as a working language, the Claimant has legitimate interests to initiate its action in Dutch. On the other hand, the Defendants fail to substantiate how the requested change from Dutch – which is an official language of the region where they are headquartered – put them at a significant disadvantage.

In light of the above, the fact that English is used in the field of the technology in question does not outweigh the relevance of the particular circumstances relating to the respective dimension of the parties and their domicile.

The Application must consequently be dismissed.

ON THESE GROUNDS

1- The Application to change the language of the proceedings from Dutch to English is dismissed.

2- An appeal may be brought against the present order within 15 calendar days of its notification pursuant to Art. 73. 2 (a) UPCA and R.220 (c) RoP.

INSTRUCTIONS TO THE PARTIES AND TO THE REGISTRY

The next step requires the Applicants to file the Statement of Defence within the time period prescribed by the Rules of Procedure.

ORDER

Issued on 27 April 2026

NAME AND SIGNATURE

Florence Butin
President of the UPC Court of First Instance

FLORENCE ANNE BUTIN
Signé numériquement par FLORENCE ANNE BUTIN
Date : 2026.04.27 12:46:06 +02'00'