

**ORDER**  
**of the Court of Appeal of the Unified Patent Court**  
**rendered on April 30, 2026**

APPELLANTS (DEFENDANTS IN THE COURT OF FIRST INSTANCE)

1. **Adobe Inc.**, 345 Park Avenue, CA 95110-2704, San Jose, United States
2. **Adobe Systems Software Ireland Limited**, 4-6 Riverwalk, Citywest Business Campus, Saggart, D24DCWO, Dublin 24, Ireland

(hereinafter referred to as “the Adobe companies”)

represented by Mr. Thomas Cuhe, Attorney, Duclos, Thorne, Mollet-Viéville & Associés, Paris, France, and Mr. Andreas Kramer, Attorney, Powell Gilbert LLP, Düsseldorf, Germany

RESPONDENT (PLAINTIFF IN THE COURT OF FIRST INSTANCE)

**KEEEX SAS**, 5 rue de Lissandre, 13013 Marseille, France

(hereinafter referred to as “Keeex”)

represented by Mr. Thibaud Lelong, Attorney at Law, Fidal, Schiltigheim, France

PATENT AT ISSUE

EP 2 949 070

PANEL AND ADJUDICATING JUDGES

Klaus Grabinski, President of the Court of Appeal  
Nathalie Sabotier, legally qualified judge and reporting judge  
Bart van den Broek, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

French

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Paris Local Division dated December 19, 2025
- Case number assigned by the Court of First Instance:  
UPC\_CFI\_530/2025

## **STATEMENT OF FACTS AND CLAIMS OF THE PARTIES**

1. On June 17, 2025, Keeex filed an infringement action based on patent EP 2 949 070 against Adobe Inc. (1), Adobe Systems Software Ireland Limited (2), OpenAI LP (3), OpenAI OpCo LLC (4), OpenAI Ireland Ltd. (5), Truepic Inc. (6), Joint Development Foundation Projects LLC (7), and Coalition for Content Provenance and Authenticity (8), before the Paris Local Division of the Unified Patent Court (the Paris Local Division).
2. On November 13, 2025, the Adobe companies requested that Keeex provide security for recoverable costs and other expenses in the amount of €5,000,000 or, failing that, €2,500,000, or, failing that, in the amount of €1,500,000, in the form of a cash deposit or a bank guarantee.
3. By an order dated December 19, 2025 (the contested order), the Paris Local Division ordered Keeex to provide security for the legal costs incurred by the Adobe companies in the form of a bank guarantee issued by a bank authorized in the European Union in the amount of €50,000.
4. On January 2, 2026, the Adobe companies filed an appeal against this order.
5. In their brief setting forth the grounds for the appeal dated December 31, 2025, received via the CMS on January 2, 2026, the Adobe companies request that the Court of Appeal:
  - set aside the contested order insofar as it set the amount of the security at €50,000 for the Adobe companies;
  - order Keeex to post a bond for the legal fees and other expenses incurred or to be incurred by the Adobe companies in the proceedings within fifteen days of notification of the decision, or alternatively within a period to be specified and, in any event, prior to the oral proceedings;
  - set the security to be provided at the maximum authorized amount for recoverable costs and other expenses at €5,000,000, or failing that, at 50% of this maximum authorized amount, i.e., €2,500,000, or failing that, at 30% of this maximum authorized amount, i.e., €1,500,000;
  - order that this sum be provided in the form of a cash deposit, or failing that, by means of a bank guarantee.
6. In its response filed on January 23, 2026, Keeex requests that the Court of Appeals:
  - uphold the contested order insofar as it set the amount of the security at €50,000 for the Adobe companies;
  - dismiss all of Adobe's claims.
7. The hearing before the Court of Appeal was held by videoconference on March 11, 2026.
8. In a procedural order dated March 31, 2026, the Court of Appeals requested the parties' submissions on the admissibility of the appeal.
9. In briefs filed on April 6, 2026, the Adobe companies ask the Court of Appeals to:
  - declare their appeal admissible,
  - declare that the 15-day period provided for in Rule 220.2 of the Rules of Procedure has not yet begun to run,

- in the alternative, if the Court of Appeal were to hold their appeal inadmissible, grant the Adobe companies a period of time to file a motion for leave to appeal with the trial court, or a motion for discretionary review, as the case may be,
- as a further alternative, to restore the Adobe companies' right to seek leave to appeal pursuant to Rule 320 of the Rules of Procedure.

10. In briefs dated April 10, 2026, Keeex, for its part, requests that the Court of Appeal declare the appeal filed by the Adobe companies against the order of December 19, 2025, inadmissible, for lack of prior leave to appeal pursuant to Rule 220.2 of the Rules of Procedure, and to dismiss all of their claims (primary and alternative) and, in particular, not to grant Adobe leave to appeal the contested order.

### **ARGUMENTS OF THE PARTIES**

11. Regarding the admissibility of their appeal, the Adobe companies first argue that the contested order, insofar as it refers to Rule 220.1 of the Rules of Procedure, must be interpreted as directly authorizing the appeal, that is, without prior authorization or other conditions, and that, within the particularly short 15-day period allotted to them by the Rules of Procedure, they chose the most reasonable course of action, which was to follow the instructions in the order. They add that this interpretation is all the more reasonable in that it had also been accepted by Keeex in its initial response brief and that the potential inadmissibility of the appeal would constitute a decision *ultra petita* by the Court of Appeal.
12. The Adobe companies further argue that it would be inequitable and, consequently, contrary to the preamble of the Rules of Procedure, for the error of the trial court to prejudice them, as well as Keeex, since, if a new application for security were to be filed, additional costs would have to be borne by that company. The Adobe companies also argue that an appeal of an order granting security for costs at the same time as the final decision or the decision on the merits would be entirely irrelevant. The Adobe companies specify that both German and French courts apply a reasonable principle of admitting the admissibility of appeals filed after the deadline due to an erroneous reference in a judgment or order.
13. Regarding the substance of their appeal, the Adobe companies emphasize that the contested order correctly acknowledges the need for a security for costs, but that the amount set is far from sufficient to cover the costs incurred in their defense against the highly aggressive action brought by Keeex. The Adobe companies add that the amount of the security should be set at the maximum amount of recoverable costs, increased to €5,000,000 to account for the complexity of the case, or, at the very least, set at 30% of that sum. The Adobe companies request, in any event, a significant increase in the amount that Keeex has been ordered to post as security for costs, noting that the Court of Appeal has already had occasion to rule that the defendant's financial position compared to that of the plaintiff is not a relevant criterion for the application of the provisions of Rule 158 of the Rules of Civil Procedure, contrary to what the Paris Local Division held here.
14. Keeex, for its part, argues that the appeal is inadmissible, as the Adobe companies did not seek authorization from the court of first instance to appeal prior to bringing the matter before the Court of Appeal, in accordance with Rule 220.2 of the Rules of Procedure. It adds that there is no

It is doubtful that, pursuant to Rule 158.3 of the Rules of Procedure and relevant case law, the contested order falls under Rule 220.2 of the Rules of Procedure, and that the order's reference to an inapplicable provision could in any way render this appeal admissible or constitute authorization to appeal. Keeex states that the principle of procedural fairness cannot have the effect of preventing the application of known procedural rules that pursue a legitimate objective, whereas the national case law cited by the Adobe companies has the effect of postponing the starting point of the appeal and not of admitting the admissibility of an irregular appeal.

15. On the merits of the appeal, Keeex argues that the Adobe companies seek only to impose an excessive and disproportionate security on it, which is incompatible with the principles governing proceedings before the JUB as set forth in the Preamble to the Rules of Procedure. Keeex adds that the Adobe companies have not substantiated the costs incurred in support of their claim in the amount of €5,000,000, noting that, in any event, costs incurred in defending themselves before the JUB are recoverable only if they are reasonable and proportionate.

#### **GROUNDS FOR THE ORDER**

16. Pursuant to Rule 158.3 of the Rules of Procedure, the order for security for costs states that an appeal may be filed in accordance with Art. 73 of the AJUB and Rule 220.2 of the Rules of Procedure. According to these provisions, such orders may either be appealed together with the appeal against the decision or may be appealed with the authorization of the Court of First Instance.
17. It follows from these provisions that the authorization to appeal referred to in Rule 220.2, except in the case of an appeal filed jointly with the appeal against the decision, must be expressly granted by the Court of First Instance and that such authorization cannot be presumed.
18. Furthermore, it is incumbent upon the Court of Appeal to examine ex officio whether the time limits and rules applicable to the appeal have been complied with (see, for example, R.229 RdP).
19. In this regard, the Court of Appeal has already had occasion to clarify that where the Court of First Instance merely stated, in general terms at the end of the operative part of the contested order, that said order "is subject to appeal under the conditions provided for in the provisions of R. 220.2 RdP," it merely refers, for informational purposes, in accordance with the "model order" available on the JUB website, to the applicable provisions of the Rules of Procedure, without expressly authorizing the parties to appeal its order (order of October 9, 2024, UPC\_CoA\_586/2024, Suinno Mobile v. Microsoft, para. 14; order of October 15, 2024, UPC\_CoA\_01/2024, Photon Wave v. Seoul Viosys, para. 9; order of May 12, 2025, UPC\_CoA\_328/2024, Ballinno v. Kinexon, para. 33; Order of February 4, 2026, UPC\_CoA\_930/2025, EOFlow v. Insulet, para. 22).
20. In the absence of leave to appeal granted by the Court of First Instance, an immediate appeal, irrespective of the final decision, is inadmissible (see, for example, order of March 14, 2024, UPC\_CoA\_5/2024, Abbott v. Dexcom).
21. The strict application of the rules governing the procedures for appeal as set forth in the Rules of Procedure meets the requirement of legal certainty and the need to avoid any

discrimination or arbitrary treatment in the administration of justice (see, on this point, the order of April 26, 2024, UPC\_CoA\_500/2023, AIM v. Supponor, para. 17 and the case law cited).

22. The Court of Appeal has already accepted an exception to the strict application of the rules on time limits for appeals in cases where an ambiguity resulting from a combined reading of Art. 62 AJUB and Rules 220.1(c) and 224.1(b) of the Rules of Procedure, combined with erroneous or at least incomplete information provided by the Court of First Instance, had led the appellant to believe that a two-month time limit applied for appealing a decision ruling on both provisional measures and permanent injunctions, when in reality he had only 15 days to appeal the provisional measures (Order of April 26, 2024, UPC\_CoA\_500/2023, AIM v. Supponor, Heading). It is not, however, necessary to determine whether other exceptional circumstances would justify a departure from the strict application of the Rules of Procedure in the event of an excusable error, since no inexcusable error has been demonstrated here.
23. Indeed, in the *present* case, the operative part of the contested order contains the following sentence: *“Holds that this decision is subject to appeal pursuant to Rule 220.1 of the Rules of Procedure.”*
24. As Adobe points out, the contested order thus contains erroneous information regarding the rules applicable to the appeal. In accordance with R. 158.3 RdP and the relevant case law of this Court, orders for security for costs fall under R. 220.2 RdP and not R. 220.1, as the Paris Local Division incorrectly stated.
25. The Adobe companies were nevertheless fully aware (and should have been aware) that the contested order contained an error regarding the terms of the appeal, since they themselves stated on page 6 of their brief setting forth the grounds for the appeal that *“The appeal against the order is admissible pursuant to Art. 73(2) AJUB and R. 220.2 RdP (R. 220.1 appears to have been cited in error in the order).”* Thus, even before the expiration of the appeal period, the Adobe companies identified that the reference to R. 220.1 was erroneous and that R. 220.2 should have been cited. As noted above in paragraphs 17 and 19, the mere mention of this provision in a decision, without express leave to appeal, as in the present case, cannot be considered as leave to appeal within the meaning of Rule 220.2 of the Rules of Procedure. The Adobe companies nevertheless immediately appealed the order without first seeking authorization from the Paris Local Division in accordance with Rule 220.2. Contrary to their contention, the Adobe companies could and should have sought authorization to appeal within the time limit set forth in the Rules of Procedure.
26. It follows from the foregoing that the Court of Appeal can only conclude that the Adobe companies, which were aware of the erroneous nature of the reference to the applicable appeal procedures, as evidenced by this clarification added to their notice of appeal, were not, in this instance, the victims of any confusion attributable to the court. The initiation of the appeal proceedings without first complying with the provisions of R. 220.2 RdP must therefore be considered attributable to them and not as an excusable error.
27. Furthermore, the Court of Appeal sees no exceptional circumstances here comparable to those that led to the aforementioned order of April 26, 2024 (UPC\_CoA\_500/2023, AIM v. Supponor).

28. The appeal must therefore be declared inadmissible because the appellants failed to request, within the prescribed time limit, leave to appeal the contested order.
29. Given the inadmissibility of the appeal and in the absence of an excusable error on the part of the Adobe companies, the Court of Appeal is not in a position to, nor does it see any reason to, extend the deadline for filing a motion to authorize the appeal or to conduct a “discretionary review” as requested by the Adobe companies.
30. As previously noted in paragraph 27 of this order, the Adobe companies have not demonstrated the existence of any exceptional circumstances that would justify remanding the case to the Court of First Instance to seek leave to appeal (order of July 29, 2024, UPC\_CoA\_1/2024, Hanshow Technology v. VusionGroup; see also Order of March 30, 2026, UPC\_CoA\_302/2025, Rematec v. Europe Forestry).
31. Nor is there any reason to grant the Adobe companies’ application for *restitutio in integrum* pursuant to Rule 320 of the Rules of Procedure. Indeed, it cannot be accepted that the failure to meet the 15-day deadline could be regarded as being due to a cause which, “despite all due diligence,” was “beyond the control” of the Adobe companies. As noted above, the Adobe companies identified the error made by the Paris Local Division regarding the appeal procedures and have not provided a convincing explanation for their decision not to apply the Rules of Procedure at that time. Moreover, the Adobe companies may still appeal the contested order under Rule 220.2, and the fact that an immediate appeal is preferable, as they argue, and is no longer possible is, in this instance, the result of their procedural conduct.
32. Finally, the Adobe companies’ request to reopen the oral phase must be rejected. After having solicited their written comments, it does not appear necessary to hear the parties on the issue of the admissibility of the appeal during an oral hearing. It is recalled that the admissibility of the appeal is, in principle, determined by a formal review of the notice of appeal (see, e.g., Rule 229 of the Rules of Procedure). For this same reason, when ruling on the admissibility of the appeal, an order does not rule *ultra petita*.
33. For the sake of completeness, the Court of Appeal considers it useful to recall that the relative financial situation of the plaintiff compared to that of the defendant does not constitute a criterion within the meaning of Rule 158 of the Rules of Procedure. This is all the more so when the low level of funding for the action results from a deliberate decision by the plaintiff (order of September 17, 2024, UPC\_CoA\_219/2024, Audi v. NST). It is also recalled that, should they prevail in the main action, the Adobe companies would then be entitled to recover reasonable and proportionate legal fees (R.152.1 and R.152.2 RdP), the ceiling for which is set by the “Schedule of Ceilings for Recoverable Fees” of April 24, 2023. According to the annex, when the value of the dispute exceeds €50,000,000, the cap on recoverable costs is €2,000,000. If the conditions are met, a security deposit should be set in accordance with this scale and the ceiling for recoverable costs, weighted according to the relevant circumstances of the case (such as, on the one hand, the fact, alleged by Keex, that it is an SME, and on the other hand, the potential synergy among the four defense teams in this case).

**FOR THESE REASONS,**

The appeal is dismissed as entirely inadmissible.

Rendered in Luxembourg, April 30, 2026

KLAUS  
STEFAN  
MARTIN  
Grabinski

Digitally signed  
by KLAUS STEFAN  
MARTIN Grabinski  
Date: April 30, 2026  
12:15:37 +02:00

Klaus Grabinski, President of the Court of Appeals

Nathalie,  
Jeanne,  
Danielle  
SABOTIE  
R

Digitally signed  
by Nathalie,  
Jeanne, Danielle  
SABOTIER Date:  
April 30, 2026  
12:35:35 +02:00

Nathalie Sabotier, Legally Qualified Judge and Reporting Judge

Bartholomeus  
Johannes  
van  
den Broek

Digitally signed by  
Bartholomeus Johannes  
van den Broek  
Date:  
04/30/2026  
12:24:43 +02:00

Bart van den Broek, legally qualified judge