



UPC_CFI_2082/2026
Local Division MANNHEIM

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

Issued on 11/08/2026

HEADNOTE:

- Even though the respective size of the parties and their domiciliation are important factors to decide on an application pursuant to R. 323 RoP, the fact that the Claimants have demonstrated their capacity to litigate in English by filing other actions in comparable circumstances shall be taken into account and considered with regard to the need for efficient communication and coordination of the adverse party that must prepare its defence within strict time constraints.

KEYWORDS:

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

APPLICANTS AND DEFENDANTS IN THE MAIN PROCEEDINGS:

1- Google LLC

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2- Google Germany GmbH

ABC-Straße 19, 20354, Hamburg – DE

Represented by: Marcus Grosch, Jesko Preuß, Andreas Hahne, Holger Hiss – Quinn Emanuel

RESPONDENTS AND CLAIMANTS IN THE MAIN PROCEEDINGS:

1- BF exaQC AG

Nördliche Münchner Str. 31, 82031, Grünwald – DE

2- ParTec AG

Possartstr. 20, 81679, München – DE

Represented by: Iram Kamal – Frohwitter

PATENTS AT ISSUE: EP3743812

EP3614263

SUMMARY OF FACTS

1. By a statement of claim filed on 11 June 2026, BF exaQC AG and ParTec AG (hereinafter collectively referred to as “the Respondents” or “the Claimants” in reference to their role in the main proceedings), brought an infringement action against the Applicants (hereinafter collectively referred to as “Google” or “the Defendants” in reference to their role in the main proceedings), based on EP3614263 and EP2164678 titled respectively “*application runtime determined dynamical allocation of heterogeneous compute resources*” and “*a computer cluster arrangement for processing a computation task and method for operation thereof*”.
2. By a procedural application dated 23 July 2026 the Defendants, referring to R. 323 RoP, requested that the language of the proceedings be changed from German 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. The Claimants in the main action were subsequently requested, in accordance with R. 323.2 RoP, to state within ten days their position on the admissibility of the Application and the use of the language in which the patent was granted, namely English, as the language of the proceedings.
3. BF exaQC AG and ParTec AG submitted their written comments on 5 August 2026.
4. The panel of the Local Division Mannheim was consulted in accordance with R. 323.3 RoP.

INDICATION OF THE PARTIES' REQUESTS:

5. The Applicants request that the language in which the patent was granted, i.e. English, be used as the language of the proceedings pursuant to Art. 49 (5) UPCA and R. 323.1 RoP.
6. BF exaQC AG and ParTec AG request that the Court dismiss the Application and, in the alternative, that the respective order be subject to the following conditions:
 - 1) The Claimants shall be permitted to submit their pleadings provisionally in German with a translation in English to be provided within a time limit determined by the Court (R. 323.3 RoP).
 - 2) The costs of translating all annexes submitted by the Claimants to English shall be borne by the Defendants (R. 324 RoP first sentence in conjunction with R. 323.3 RoP).
 - 3) Simultaneous interpretation from German into English shall be ordered for the oral hearing at the Defendants' expense (R. 323.3 RoP; a motion under R. 109 RoP being reserved).

POINTS AT ISSUE:

7. The Applicants state that they reached out to the Claimants who did not respond to suggest using English as language of the proceedings pursuant to Art. 49 (3) UPCA in conjunction with R.321.1 RoP, and that the requested change should be granted for the following reasons:
 - English has been designated as an available language before the LD Mannheim pursuant to Art. 49 (2) UPCA and R.14.1 (b) RoP.
 - Even if the balancing of respective interests of the parties is equal – which is not the case here – the position of the Defendants is decisive.
 - Both Defendants are part of the US - based Google group where the working language is English. This language is used by all employees for their communication and coordination, including with the technical staff. Therefore, ensuring an effective defence entails a considerable financial and temporal burden on the Applicants who are forced to translate all materials of the proceedings into English and conversely, provide a German version of their briefs and pleadings to the Court.
 - English is the most commonly used language in the field of technology in question, as evidenced in particular by EP'263 that cites exclusively English-language technical literature. The Statement of Claim itself confirms this by the use of English terminology, which is necessary for a correct understanding of the claim features. Against this background, it is to be expected that, in the event of validity attacks, all additional evidence and prior art documents will be provided in English.

- The Claimants would not suffer an apparent disadvantage from the requested change despite being headquartered in Germany. Using the language of the patent cannot be considered unfair to them as they were granted IP rights in English and initiated parallel proceedings in this language based on the same patents, namely against another defendant before the LD Düsseldorf, and based on EP'263 before the LD Munich. Moreover, ParTec AG maintains a website exclusively in English while BF exaQC AG does not seem to have its own one.
 - The managing director authorized to represent the Claimants is a co-inventor of EP'812, which evidences in-depth knowledge of technical terminology in the field covered by both patents. His law firm is explicitly targeting an English-speaking audience.
 - Given the early stage of the proceedings, the requested change would not cause any delays.
 - The LD hearing the case would not face any disadvantage or additional burden that could result from a change from German to English. They have decided numerous cases in the latter language and have not yet issued orders in the present proceedings.
 - With regard to R. 324. RoP, an English translation of the Statement of Claim is already available, and exhibits provided in German shall not necessarily be translated even from the Defendant's perspective.
8. BF exaQC AG and ParTec AG contend that the Application is admissible but should be dismissed for the following reasons:
- It has already been decided in proceedings involving the same Claimants that conducting the proceedings in German did not raise a fairness issue (UPC_CFI_627/2024) and the Defendants have not put forward any new circumstances that would justify a different outcome in the present case.
 - The Claimant is entitled to choose the language of the proceedings as a general principle. Art. 49(5) UPCA provides for an exception which must be interpreted narrowly.
 - Deciding upon an application pursuant to R. 323.2 RoP requires an overall assessment of all relevant circumstances that are listed in UPC_CoA_101/2024 and UPC_CoA_354/2024.
 - The conditions under which the position of the Defendant(s) is decisive are not met here. Instead, the weighing-up exercise clearly justifies that German remains the language of the proceedings; indeed, three out of the four parties are domiciled in Germany. Moreover, the second Defendant is responsible for the sale, marketing and support regarding the disputed products, and provides the staff for the German data centres.

- Compared to the Claimants that are small entities, the Defendants' group ranks among the world's highest turnover and well-capitalised companies with structures enabling them to conduct proceedings in a foreign language.
- The internal working and corporate language of the Claimants is German. It was previously stated in the above-mentioned case that there was no evidence pointing in another direction.
- Individual language skills of representatives or specific board members do not compensate for the usual working language; this is equally true for both sides.
- There is no balanced situation allowing the Defendant's position to be the decisive factor. The Defendant's procedural rights are not impaired while there are in fact compelling reasons to continue proceedings in German.
- The parallel proceedings mentioned by the Applicants involve other defendants and other matters in dispute. According to UPC_CoA_207/2024, circumstances that do not relate to the specific case are of less relevance.

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

GROUND FOR THE ORDER:

1- Merits of the Application to change the language of the proceedings:

9. 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 alternatively the other language designated pursuant to Art. 49(2). It is further provided by R. 323 (1) and (3) RoP that "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".
10. Regarding the criteria that may be considered to decide on the Application, Art. 49 (5) UPCA specifies that it may be granted "on grounds of fairness and taking into account all relevant circumstances, including the position of parties, in particular the position of the defendant".

11. By an order dated 17 April 2024, the UPC Court of Appeal (hereinafter “CoA”) ruled that these circumstances should primarily relate to the specific case, such as the language most commonly used in the relevant field of 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_CoA_101/2024, Apl_12116/2024, para. 22-25). Moreover, the internal working language of the parties, the possibility of internal coordination and of support on technical issues have also been considered relevant circumstances (UPC_CoA_354/2024, Apl 38948/2024, Order dated 18 September 2024, para. 26-27).
12. In the event where the outcome of this balancing of the respective interests is equal, the CoA stated that the position of the defendants should be the decisive factor according to Art. 49 (5) UPCA considering the flexibility afforded to the claimant – who often has the choice of where to file its action and can generally choose the most convenient timeframe to draft its Statement of Claim – while the defendant is directly bound by strict deadlines.
13. 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).
14. With regard to the provisions and case law cited above, the Application to change the current language of the proceedings to English is justified for the following reasons.
- Legal framework provided for by Art. 49 (5) UPCA and R. 321 to 324 RoP:
15. As a general principle, the Claimant may file an infringement action in any of the languages that have been designated pursuant to Art. 49 (1) and/or Art. 49 (2) UPCA. Where considerations of fairness – which must be substantiated by the Applicant(s) – are raised, the relevant factors to be taken into account to limit this right have been clarified by the CoA in its decisions dated 17 April 2024 (UPC_CoA_101_2024 – APL_12116/2024) and 18 September 2024 (UPC_CoA_354/2024 – APL_38948/2024). The requested change cannot be granted for reasons of mere convenience or preference. Conversely, the circumstances put forward by the Applicants must lead to the conclusion that the adverse party is significantly disadvantaged in the organisation of its defence by the language primarily chosen.

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

16. The undisputed fact that English is the language most commonly used in the field of technology in question (mechanism for executing computation tasks in a given environment and computer cluster arrangements for processing a computation task) is clearly reflected by the technical literature cited and by the terminology used in the Statement of Claim. This use of the language in which the patent is granted is of importance to discuss the scope of protection and validity of the titles, as underlined by Art. 49 (3) and (6) UPCA and recalled by existing case law (UPC_CoA_101/2024, para. 33-35).
17. As the significant difference in size – and subsequent corresponding resources – between the parties is not disputed either, the main question submitted to the Court is whether BF exaQC AG and ParTec AG had valid reasons to file their action in German that ultimately, in the context of the overall assessment and balance of interests for the purposes of the present Application, shall prevail over the additional time, resources and organisational burden of conducting the dispute in the current selected language for Google. In order to ensure their defence, they have to coordinate and exchange in particular with technical and legal services exclusively in their usual working language. This preparatory work requires both translation of the adverse party's submissions into English, and translation of the documents to be provided to the Court into German. This circumstance is to be considered with regard to the structural disadvantage faced by the Defendant(s) in the UPC rules of procedure, as acknowledged by the decisions mentioned above and most recently in UPC_CFI_1146/2026 (order dated 28/07/2026).
18. As correctly noted by the Respondents, the fact that ParTec AG operates a website exclusively in English was not considered as an indication of a general use of this language for their internal communication in the context of another application pursuant to R. 323 RoP. In this previous case, the choice made by the Claimants to file their action in German was deemed justified given their status as a small and medium-size enterprise ("SME") – subject of particular attention in the UPC framework – compared to the resources of the Defendants, and by the fact that they are both headquartered in Germany, as it was the case for one of the Applicants (UPC_CFI_627/2024, order dated 16 January 2025).
19. BF exaQC AG and ParTec AG rightly note that the facts mentioned in this decision are not different in the case at hand.

20. However, new circumstances have occurred that justify another outcome to the present Application. Indeed, in the meantime, the Claimants initiated infringement actions in English, against the same Defendants before the LD Munich based on EP3614263, and similarly on May 2026 before the LD Düsseldorf against several entities of another international group. These other proceedings are of relevance here, as they demonstrate that BF exaQC AG and ParTec AG are capable of litigating in English, a language that was chosen from the outset in comparable circumstances regarding the situation of the Defendants and the subject-matter (to the extent debated in the context of the present Application). Based on the above, using English as the language of the proceedings does not still appear to be detrimental to the Claimants.

- *Balance of respective interests in the case at hand:*

21. Even though the respective size of the parties and their domiciliation must be taken into account as a general rule to ensure a fair access to justice especially for SMEs, it cannot be decisive in the present case in light of the proven capacity of the Claimants to conduct their proceedings in English, while the Defendants are facing a significant procedural disadvantage in the preparation of their defence in German – as substantiated above – within tight time limits.

22. Finally, as stated by the Defendants that intended to proceed by way of agreement among the parties before filing the present Application, the requested change, implemented at an early stage prior to any substantial order being issued, will not affect the course of the proceedings (CoA_101/2024 – APL_12116 – order dated 17 April 2024 – para. 25).

23. The Application shall consequently be granted.

2- Subsequent arrangements pursuant to R. 323.3 and R. 324 RoP

24. According to R. 323.3 RoP, the order may be conditional on specific translation or interpretation arrangements. It is furthermore stated in R. 324 RoP that an application under R. 321.1 or R. 323.1 RoP shall specify whether existing pleadings and other documents should be translated and at whose cost. If the parties cannot agree, the judge-rapporteur or the President of the Court of First Instance, as the case may be, shall decide in accordance with Rule 323.3 RoP.

25. Considering the circumstances that justify the use of the language in which the patents were granted, there is no evidence to suggest that the arrangements requested as an alternative would be beneficial. Furthermore, simultaneous interpretation during the oral hearing may be decided upon reasoned request at a later stage by the judge-rapporteur pursuant to R. 109 RoP, whether appropriate.

26. The present order shall therefore not be conditional on further specific translation or interpretation arrangements.

ON THESE GROUNDS

- 1- The language of the proceedings shall be changed to the language in which the patent was granted, namely English.
- 2- The present order shall not be conditional on specific translation or interpretation arrangements.
- 3- 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 11 August 2026

NAME AND SIGNATURE

Florence Butin
President of the UPC Court of First Instance