



UPC Court of Appeal
UPC-CoA-118/2026
UPC-CoA-119/2026
UPC-CoA-120/2026

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 5 August 2026
concerning an application for suspensive effect pursuant to R. 223 RoP

APPELLANTS (CLAIMANT (1) AND INTERVENER (2) BEFORE THE COURT OF FIRST INSTANCE)

1. **Dolby International AB**, Dublin, Ireland
2. **Vectis IP Ltd.**, London, United Kingdom

(hereinafter also referred to as "Dolby" and "Vectis" respectively)

both represented by attorney at law Dr. Tilman Müller and other attorneys at law and patent attorney Tobias Kaufmann and other patent attorneys of BARDEHLE PAGENBERG Partnership mbB, Munich, Germany

RESPONDENTS (DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **CPYou B.V.**, 'sHertogenbosch, The Netherlands
2. **Acer Italy s.r.l.**, Arese, Italy
3. **Acer Computer GmbH**, Ahrensburg, Germany
4. **Acer Computer B.V (Benelux)**, 's-Hertogenbosch, The Netherlands
5. **Acer Denmark A/S**, Hellerup, Denmark
6. **Acer Finland Oy**, Vantaa, Finland
7. **Acer Computer France**, Asnières-sur-Seine Cedex, France
8. **Acer Sweden AB**, Solna, Sweden

(hereinafter also jointly referred to as "Acer")

all represented by Hsueh-Yen LIN, attorney at law, and other attorneys at law of HOYNG ROKH MONEGIER, Amsterdam, The Netherlands

PATENT AT ISSUE

EP 3 079 153

LANGUAGE OF THE PROCEEDINGS

English

PANEL AND DECIDING JUDGES

Panel 2,

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Order of 8 July 2026 regarding a panel review of the order of 1 May 2026 (R. 333 RoP), issued by the Local Division The Hague in the infringement proceedings (UPC-CFI-1536/2025), the counterclaim for revocation proceedings (UPC-CFI-982/2026) and the counterclaim for FRAND rate-setting proceedings (UPC-CFI-1168/2026)

SUMMARY OF FACTS

1. Dolby lodged an infringement action against Acer for alleged infringement of its European patent 3 079 153 (patent at issue).
2. The patent at issue is one of the patents in the Vectis Opus Patent Pool administered by Vectis. Vectis lodged an application to intervene.
3. On 13 February 2026, Acer requested to add Vectis as a party on the basis of R. 305.1 RoP.
4. On 18 March 2026, Acer lodged a counterclaim for a FRAND rate setting against Dolby and Vectis and a counterclaim for revocation against Dolby. For administrative reasons, Dolby and Vectis obtained access to the counterclaim on 27 March 2026.
5. With the order of 1 May 2026 (hereinafter JR order), the Local Division The Hague *inter alia* admitted the intervention of Vectis in the infringement proceedings (UPC-CFI-1536/2025) in support of Dolby and declared the counterclaim for FRAND rate setting against Vectis admissible.
6. On 18 May 2026, an application for panel review of the JR order pursuant to R. 333 RoP was filed by Dolby and Vectis.
7. On 8 July 2026, the Local Division The Hague denied the review, added "*in as far as necessary*" Vectis as a party on the side of Dolby and granted leave to appeal (hereinafter impugned order).
8. On 23 July 2026, Dolby and Vectis appealed the impugned order.

PARTIES' REQUESTS

9. Dolby and Vectis request *inter alia* that the Court of Appeal declares that

the stay/suspensive effect of the appeal be ordered as follows:

a. the infringement action (UPC-CFI-1536/2025), the counterclaim for revocation (UPC-CFI-982/2026) and the counterclaim for FRAND rate-setting (UPC-CFI-1168/2026) before the Court of First Instance, LD The Hague be stayed in their entirety pending the determination of this appeal;

in the alternative:

b. the proceedings regarding the counterclaim for FRAND rate-setting as directed against both Appellants (UPC-CFI-1168/2026) be stayed pending the determination of this appeal;

in the further alternative:

c. the proceedings regarding the counterclaim for FRAND rate-setting as directed against Vectis alone (UPC-CFI-1168/2026) be stayed pending the determination of this appeal.

10. Acer requests that the Court of Appeal dismiss the application for a stay or suspensive effect.

PARTIES' SUBMISSIONS

11. In summary, Dolby and Vectis submit the following.

- The counterclaim against Vectis does not fall within Art. 32(1)(a) UPCA. This is made clear by the wording and the purpose of this provision.
- One of the panel's fundamental errors is treating R. 315.4 RoP as a self-sufficient basis for directing a counterclaim against an intervener, without first establishing that the counterclaim falls within the jurisdiction of the Court.
- The panel invokes R. 316.3 RoP ("the intervener is bound by the decision") to conclude that Acer would otherwise be "precluded" from suing Vectis elsewhere. R. 316.3 RoP is governing interventions procured by invitation under R. 316.1-316.2 RoP, not voluntary interventions under R. 313 RoP.
- Art. 47 UPCA defines which entities possess the substantive qualification to be a proper counterparty to a licence dispute.
- R. 19 RoP does not apply to counterclaims.
- Even if R. 19 RoP applied, it could not override the primacy of Art. 26 Brussels Ia Regulation ("Brussels Ia").
- The judge-rapporteur did not treat the admissibility of the counterclaim against Vectis as settled or waived, to the contrary, it expressly and separately ruled that it "declares the counterclaim against Vectis admissible", thereby itself creating an appealable finding on precisely the question the panel now claims was forfeited. The Court cannot, on the one hand, issue a discrete and reviewable order on the admissibility of the counterclaim against Vectis, and on the other hand hold that the objection to that very admissibility was waived for want of an earlier, and procedurally unavailable, Preliminary objection.
- The impugned order is contradictory and unclear as to whether Vectis is added as a party or not. It is entirely unclear what "in as far as necessary" means and on which reasons this order is based.
- The impugned order ignores that R. 305 RoP requires an application by a party, i.e. the court cannot add a party on its own motion. Acer's request under R. 305 RoP was effectively dismissed by the judge-rapporteur. By declaring that it will nonetheless decide such a non-existent request in Acer's favour, the panel in its decision therefore completely abandons its position as an impartial court between the parties.

- The JR order, in its operative part only “declares the counterclaim against Vectis (...) admissible”. It contains no corresponding ruling on the admissibility of the identical counterclaim against Dolby.
- Art. 8(3) Brussels Ia does not extend to a third-party counterclaim. For a third-party counterclaim, jurisdiction would have to rest on Art. 4(1) Brussels Ia, which requires a domicile in an EU Member State, while Vectis is domiciled in the United Kingdom.
- Art. 7(2) Brussels Ia (abuse of dominance) does not apply either, since Vectis holds no patent and no dominant market position. Art. 26 Brussels Ia (submission) is equally inapplicable. Vectis appeared as intervener, not as “counterclaim-defendant”, and has expressly and consistently contested jurisdiction.
- The Vectis Opus Patent Pool includes non-European patents, while the UPC’s jurisdiction is limited to European patents and European patents with unitary effect (Art. 2(g) UPCA). A global FRAND rate necessarily encompasses rights the Court has no competence to adjudicate – an outcome in direct tension with the European Union’s own position before the WTO (WT/DS632), where the EU has objected to exactly this kind of unilateral global rate-setting by a court lacking jurisdiction over the foreign patents concerned.
- Acer’s requests suffer from material deficiencies, rendering the counterclaim as pleaded inadmissible.
- Acer seeks a declaratory finding, this lacks a legitimate interest because a performance claim is available (cf. LD Mannheim, Panasonic v Oppo, para. 249). Acer’s auxiliary request, seeking “any terms the Court would find to be FRAND”, is open ended, lacks any defined rate, scope, or duration, and is accordingly too indeterminate to be enforceable (CF: LD Mannheim, Panasonic v Oppo, para. 248).
- Acer is sufficiently protected by the FRAND defense.
- Pending determination of the jurisdictional question, a stay is the only means of preventing Dolby and Vectis from having to litigate the merits of a claim that may subsequently be found never to have been properly before the UPC at all.
- R. 21.2 RoP applies mutatis mutandis. Should the Court of Appeal not apply R. 21 RoP by analogy, the same stay is accordingly warranted under the Court’s general case-management discretion pursuant to R. 295(m) RoP.
- Should the Court of Appeal grant neither of the above, Dolby and Vectis request suspensive effect pursuant to Art. 74(1) UPCA and R. 223 RoP.
- Proceeding without a stay creates a risk for unnecessary submissions, disclosure and case-management measures on a jurisdictionally and substantively contested branch of the case – exactly the inefficiency R.21 RoP and in the alternative, R. 295 RoP and Art. 74(1) UPCA are designed to prevent.

12. Acer defends the impugned order and, in summary, submits the following.

- The narrow procedural application by Acer for an order to produce evidence / confidentiality / adding a party was made prior to the initiation of the counterclaim and the Application for review was made later than one month after initiation of the counterclaim. The Application for Review was therefore not the appropriate submission for Dolby and Vectis to advance its arguments regarding jurisdiction in the substance of the case.
- Arguments regarding jurisdiction and the substance of the case are all irrelevant to the question that the Court of Appeal needs to address: whether intervener Vectis can be a defendant to a counterclaim, based on either R. 315.4 or 305 RoP.
- Acer indicated its willingness to stay the The Hague proceedings if the proceedings between Fraunhofer (the other main patentee in the Vectis Opus Patent pool) and Acer before the Hamburg Local Division would also be stayed.
- R. 21 RoP does not apply. In any event, the requirement of exceptional circumstances also applies to a

“reasoned request” according to R. 21.2 RoP.

- Dolby and Vectis cannot change the procedural scope of the 13 February 2026 Application and the impugned order, by advancing jurisdiction arguments that are irrelevant to the issue to be decided, and which arguments it moreover failed to make in a timely Preliminary objection before 3 May 2026 or in the first response to the relevant claim in the main action. If there would be any ground for assessment of Dolby and Vectis’ jurisdiction arguments at all (*quod non*), the proper place is by the Local Division in the decision in the main action.
- In addition, regardless of the outcome of the present appeal, the first instance proceedings will inevitably deal with Acer’s FRAND defence, including the negotiation record between Acer and Vectis and the offers made on both sides, as well as the rate-setting counterclaim against Dolby.

GROUNDS

13. Dolby’s requests to stay the CFI proceedings or grant suspensive effect of the appeal are admissible but unfounded.

No stay according to R. 21.2 RoP

14. Dolby and Vectis primarily rely on R. 21 RoP. According to R. 21.2 RoP, when an appeal against a decision or order on a Preliminary objection is lodged, proceedings at first instance may be stayed by the judge-rapporteur or the Court of Appeal.

15. When deciding whether to grant a stay of the proceedings, it is not necessary to establish whether R. 19 to R. 21 RoP should be applied by analogy if the third-party counterclaimant objects to the UPC’s jurisdiction. Even if R. 21 RoP should be applied in this case, there is no reason to stay the proceedings.

16. As a general rule, the main proceedings are not stayed pending the decision of the Court of Appeal on an order rejecting a Preliminary objection. This general rule follows from the principle underlying R. 19.6 RoP and Art. 74(1) UPCA, that proceedings before the Court of First instance must as far as possible continue unhindered by any (procedural) appeals (CoA, 21 June 2024, UPC-CoA-227/2024, *MALA v Nokia*, para. 8 [page 6]). The Court of Appeal may grant a stay under exceptional circumstances, having regard to the relevant circumstances of the case, such as the stage of the proceedings before the Court of First Instance, the stage of the appeal proceedings and the interests of the parties (*MALA v Nokia*, para. 9 [page 6]).

17. There are no such exceptional circumstances in this case. Regardless of the outcome of the present appeal, the Court of First Instance will inevitably deal with Acer’s FRAND defence, including the negotiation record between Acer and Vectis and the offers made on both sides.

18. A stay might be appropriate if the impugned order were manifestly erroneous (*Mala v Nokia*, para. 10 [page 6]). However, this is not the case here.

19. In so far as Dolby and Vectis oppose the international jurisdiction of the UPC over Vectis, the impugned order stated that neither Vectis nor Dolby filed a Preliminary objection within one month. This can only be interpreted to mean that the Local Division The Hague did not rule on international jurisdiction; rather, it merely sought to determine the admissibility of the counterclaim against Vectis, regardless of international jurisdiction. This is not manifestly wrong. Dolby and Vectis claim, unsuccessfully, that they raised their

objection in their initial response to the counterclaim and in their submission of 9 March 2026. The Response to the counterclaim was lodged on 17 June 2026, which was more than one month after Dolby's and Vectis' access to the counterclaim on 27 March 2026. The submission of 9 March 2026 only deals with the scope of Art. 32 UPCA but not with international jurisdiction. This means that the time limit for lodging a Preliminary objection in accordance with R. 19.1 RoP has expired. Consequently, a decision on international jurisdiction may be part of the final decision but cannot be decided in accordance with R. 20 RoP (see CoA, 27 March 2026, UPC-CoA-409/2025, *NUC v Hurom*, para. 56).

20. The merits of the Local Division's assessments with regard to the following questions will insofar as relevant be reviewed and decided by the Court of Appeal in its order in the appeal proceedings: whether the counterclaim against Vectis falls within Art. 32(1)(a) UPCA, whether it was necessary to add Vectis as a party pursuant to R. 305 RoP, whether by seeking a declaratory finding Acer lacks a legitimate interest because a performance claim is available, whether the auxiliary requests suffer from material deficiencies and whether the two last named alleged deficiencies are subject of the JR order and the impugned order at all. In any event, Dolby and Vectis have failed to demonstrate that the Local Division's findings and considerations constitute manifest errors, i.e. factual findings or legal considerations which prove to be untenable already based on a summary assessment (CoA, 29 October 2024, UPC-CoA-549/2024, *Belkin v Philips*).

21. In particular, Dolby and Vectis claim, unsuccessfully, as Acer's application to add Vectis as a party according to R. 305 RoP was effectively dismissed by the JR order the panel could not add Vectis as a party on the side of Dolby. The JR order left "this basis undecided, as R. 315.4 RoP makes plain that an intervenor is to be treated as party, unless otherwise ordered by the Court".

22. The impugned order does not contradict itself or provide unclear information as to whether Vectis has been added as a party or not. It states there that "*in case the Court of Appeal would not follow this Court to declare the counterclaim admissible against Vectis as an intervenor, the Court will order it be added as a party*". This makes it clear that the Local Division added Vectis as a party on the side of Dolby according to R.305 RoP, but only under the condition that it is not sufficient for the admissibility of the counterclaim that Vectis as intervenor has to be treated as a party in accordance with R. 315.4 RoP. The question of whether such a condition is admissible, will be reviewed by the Court of Appeal, if necessary.

No stay according to R. 295

23. Contrary to what Dolby and Vectis suggest, R. 295(m) RoP does not justify the stay of the proceedings either. The same principles apply here as for R. 21.2 RoP.

Suspensive effect pursuant to Art. 74(1) UPCA and R. 223 RoP

24. There are also no exceptional circumstances that would justify an order granting suspensive effect to the appeal, as set out in Art. 74(1) UPCA and R. 223 RoP. In this regard, it must be examined whether the appellant's interest in maintaining the status quo – namely, in avoiding the immediate effects of the impugned order – until a decision is made on the merits of the appeal, exceptionally outweighs the Respondent's interest in the immediate enforcement of this order (CoA, 26 May 2026, UPC-CoA-76/2026, *Xingi v Avient*, para. 14). A category of situations that could justify suspensive effect arises where the impugned order is manifestly wrong (CoA, 29 October 2024, UPC-CoA-549/2024, *Belkin v Philips*, para. 60; *Xingii v Avient*, para. 18). As stated above (para. 17-21), the impugned order is not manifestly wrong.

Dolby's appeal

25. Pursuant to R. 220.1 RoP, only a party adversely affected by a decision may lodge an appeal. This also applies to appeals pursuant to R. 220.2 RoP (see CoA, 30 May 2025, UPC-CoA-845-2024, *Belkin v Philips*, para. 27). As follows from Art. 73(2) UPCA, this requires that the party has been unsuccessful, in whole or in part, in its submissions.
26. The JR order, in its operative part only declares the counterclaim against Vectis admissible. It contains no corresponding ruling on the admissibility of the identical counterclaim against Dolby.
27. It follows that the JR order and the impugned order do not adversely affect Dolby. Dolby submits, unsuccessfully, that procedural economy and legal certainty require the admissibility of the counterclaim against Dolby to be resolved alongside the closely related question of the admissibility of the counterclaim against Vectis. This does not change the fact that there has been no decision by the Local Division The Hague that is currently open to appeal.
28. To conclude, Dolby's appeal is inadmissible. And alone for this reason, there is no reason to stay the proceedings between Acer and Dolby before the Local Division The Hague.

ORDER

Dolby's and Vectis' requests to stay the first instance proceedings and the other requests are rejected.

Issued on 5 August 2026

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge