

Kluwer Patent Blog

Language change allowed at The Hague division Unified Patent Court

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The president of the UPC local division The Hague has allowed to change the language of the proceedings from Dutch to English in an infringement action of Plant-e Knowledge and Plant-e against Arkyne Technologies, because ‘the language initially chosen [was] significantly detrimental to the Applicant’.

The order of president Florence Butin was [issued on 18 October 2023](#).

In an application dated 21 September 2023, Arkyne, referring to both R. 322 and R. 323 of the Rules of Procedure (RoP), asked for a change of the language of the proceedings from Dutch into English as the language in which the patent had been granted. Plant-e Knowledge and Plant-e (claimants in the main proceedings) replied that there was no reason to change the language of the proceedings in written comments submitted on 13 October 2023.

Admissibility

The UPC first looked at the admissibility of the application, particularly in view of the text of R. 323.1 RoP: ‘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, the party shall include such Application in the Statement of Claim, in the case of a claimant, or in the Statement of Defense, in the case of a defendant.’

But according to the president of the court: ‘As R. 323 RoP refers to Art. 49 (5) UPCA abovementioned which (...) does not specify any timeframe for such request possibly made “at any time during the written procedure”, it shall not be interpreted as precluding that an application to use the language in which the patent was granted can be lodged before the statement of defense is lodged (...).’



Also, she stated: ‘such interpretation would in addition be counter to the general aims as mentioned in the Preamble of the RoP which provide in particular in Point 4 that “Flexibility shall be ensured

by applying all procedural rules in a flexible and balanced manner with the required level of discretion for the judges to organize the proceedings in the most efficient and cost effective manner” considering indeed that the obligation for the defendant to apply for a language change at the occasion of the statement of defense is likely to slow down the course of the proceedings.’

Arkyne contended it is a small Spanish company being still in the start-up phase and forced to incur considerable translation costs which causes disproportionate and unnecessary financial burden whereas one of the purposes of the UPC system is to make European patent litigation affordable for small and medium-sized enterprises

Merits of the application

As to the merits of the application, Arkyne contended it is a small Spanish company being still in the start-up phase and forced to incur considerable translation costs which causes disproportionate and unnecessary financial burden whereas one of the purposes of the UPC system is to make European patent litigation affordable for small and medium-sized enterprises. ‘He states that the requested change is in contrast not objectionable to the Respondents, being together an international company that uses English as working language. He also argues that the original language in which the patent was granted is the primary source of the legal discussion including the grant file. Finally the Applicant refers to previous correspondence between the representatives of both parties and most recent summons being all written in English, and states that the reasons given by the claimants in the main proceedings – here the Respondents – for not translating their productions in Dutch are all valid and therefore support the Application.’

Plant-e Knowledge and Plant-e argued that ‘the inconvenience raised by the Applicant is neither disproportionate nor disadvantageous with regard to the low translation costs and the possibility to use the Dutch language for the oral hearings without interpretation needs.’

Order

The president of the UPC concludes that ‘it is not disputed that both parties have a good command of English (...). Consequently, the use of English would not affect the interests of the Respondents (...).

the decision to change or not to change the language of the proceedings into the language in which the patent was granted shall be determined with regards to the respective interest at stake without it being necessary to constitute a disproportionate disadvantage

Furthermore, it follows from Art. 49 (5) UPCA that the decision to change or not to change the language of the proceedings into the language in which the patent was granted shall be determined with regards to the respective interest at stake without it being necessary to constitute a disproportionate disadvantage. As a result, it may be sufficient that – amongst all relevant circumstances also to be considered – the language initially chosen is significantly detrimental to the Applicant.

In that regard, being sued before the Court in a language that they do not master is an important inconvenience for the Applicant even if being assisted by Dutch representatives. (...) In addition, it has to be taken into consideration that the Respondents did not put forward a particular justification for not agreeing to the requested change. (...)

FOR THESE GROUNDS, It is ordered that: 1 – The application shall be granted and the language of the proceedings changed into the language in which the patent at issue has been granted, namely English. 2 – The present order shall not be conditional on specific translation or interpretation arrangements. 3 – The costs incurred by the Applicant shall be dealt with in the main proceedings. (...)'

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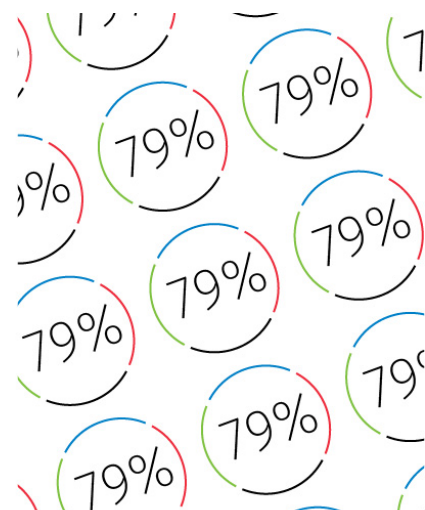
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