

Kluwer Patent Blog

Curio v 10x Genomics Change of Language appeal – English as a lingua franca at the UPC?

Brian Cordery, Ewan MacAulay (Bristows) · Friday, April 26th, 2024

On 17 April 2024, the Court of Appeal of the UPC handed down its decision concerning the language of proceedings in the (undoubtedly ground-breaking) case of *Curio Bioscience v 10x Genomics*. Curio had applied in January to have the language of proceedings changed from German to English, but their application was rejected in February at first instance by the Düsseldorf Local Division.

The Court of Appeal overruled the first-instance court, holding that it had not taken into account all relevant circumstances under Article 49(5) UPCA. Presiding Judge Rian Kalden, together with legally qualified judges, Ingeborg Simonsson and Patricia Rombach, held that relevant circumstances could include:

- The language mostly used in the field of technology involved, particularly the language in which the evidence (including the prior art) is written;
- The nationality or domicile of the parties;
- The relative size of the parties and their resources to deal with international disputes; and
- The effect of a change of language on the course of the proceedings, including possible delays.

However, the nationalities and language skills of the representatives before the court and the judges hearing a case were held not to be generally relevant circumstances.

In this case, the Court of Appeal gave considerable weight to the facts that both parties were US companies, and that the language of the underlying technology was English, as was almost all of the evidence relied on by the parties. The Court also accepted Curio's submission that, as it is a much smaller company than 10x Genomics, it would suffer a heavier burden from the language of the proceedings being different from the company language. The Court did not, however, attach much weight to 10x Genomics' reliance on the fact that 20% of EU citizens would speak German as a native language and 10% as a foreign language, as it did not relate either to the dispute or to the parties.

The criteria relied on by the Court of Appeal suggest that English may continue to become more prominent as a language of proceedings at the UPC. As of the time of publication, the proportion of all cases in English is on par with German and the trend has shown English increasing rapidly. The high proportion of proceedings in German may be due to the fact that the German Local Divisions did not confirm that English language proceedings would be acceptable until the UPC

start date. However, even within German local divisions the use of English as the language of the proceedings is on the rise (in April 2024, 57% of the UPC cases in German local divisions were issued in English).

The importance given to the language of the prior art may be one fact that favours the rise of English as a language for UPC proceedings. With over 90% of indexed scientific articles in the natural sciences and over 52% of PCT applications since 1978 published in English[1], it is statistically more likely that any cited prior art in a UPC action will have been originally written in English.

Additionally, conducting UPC cases in English opens up a larger pool of judges – potentially reducing the risk of delays to the proceedings, with the consequent reduced likelihood that a change of language to English would be held to have a significant adverse effect on the course of proceedings. This was a point emphasised by Dutch UPC Judge Edgar Brinkman at the Fordham conference earlier this month.

One countervailing consideration is that defendants located only in a single country of the EU may be less likely to operate in English. In their judgment, the Court of Appeal drew attention to the wording of Article 49(5) stating that the position of the defendant in particular should be taken into account – in circumstances where the outcome of the balancing of interests is equal, then the position of the defendant is the deciding factor. For smaller defendants located in UPC territories which can demonstrate that an additional burden would be imposed by having proceedings in English, it still seems likely that they will be able to have the proceedings conducted in another of the UPC languages.

[1] By way of comparison, Chinese was the second most common language for PCT publications in 2022, with 23.4%. German, the second most-common EU language, was behind both Japanese and Korean with 5.3% of publications.

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please [subscribe here](#).

Kluwer IP Law

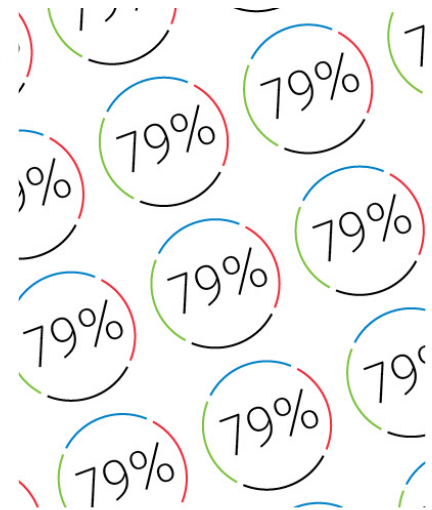
The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Friday, April 26th, 2024 at 4:30 pm and is filed under [Unitary Patent, UPC](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.