

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 10 March 2026
request for a discretionary review (R. 220.3 RoP)

Keywords

Request for discretionary review (R. 220.3 RoP), Re-establishment of rights (R. 320 RoP), Time extension (R. 9.3 (a) RoP)

APPLICANTS AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE

1. **Angelalign France Technology SASU**, Paris, France
2. **Europe Angelalign Technology B.V.**, Amsterdam, The Netherlands
3. **Angelalign Technology (Germany) GmbH**, Cologne, Germany
4. **Italy Angelalign Technology S.R.L.**, Milan, Italy

(hereinafter referred to as '**Defendants**')

represented by: Dr. Arno Riße, Tim Smentkowski and Dr. Julius Winkler, Rechtsanwälte and UPC representatives, ARNOLD RUESS Rechtsanwälte Part mbB, Düsseldorf, Germany

RESPONDENT AND APPLICANT BEFORE THE COURT OF FIRST INSTANCE

Align Technology, Inc., Tempe, Arizona, United States

(hereinafter jointly referred to as '**Applicant**')

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PATENT AT ISSUE

EP 4 295 806

DECIDING JUDGE

This order has been adopted by Ulrike Voß as standing judge.

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Procedural Order of 26 February 2026 issued by the Local Division Düsseldorf
- Reference numbers: UPC_CFI_1747/2025

LANGUAGE OF THE PROCEEDINGS

English

SUMMARY OF FACTS

1. On 27 November 2025, the Applicant lodged an application for provisional measures against the Defendants, before the Local Division Düsseldorf (hereinafter 'Local Division').
2. By an order issued on the same day by the Local Division, the Defendants were invited to lodge an objection to the Application for provisional measures within one month of service of the Application.
3. On 12 December 2025, the Defendants lodged a request for extension of the time limit to file an objection, requesting for it to be set uniformly for all Defendants on 30 January 2026. This request was granted by the Local Division by way of an order issued on 17 December 2025. On 30 January 2026, the Defendants have filed an objection.
4. By way of an order issued on 30 January 2026, the Applicant was given the opportunity to submit a written response to the objection to the Application for provisional measures by 13 February 2026. Moreover, the Defendants were given the opportunity to rebut until 27 February 2026. The oral hearing was further scheduled for 31 March 2026.
5. On 13 February 2026, the Applicant filed a reply. On 20 February 2026, the Court communicated to the parties that the Applicant should check the reply and take immediate action, if necessary, since, at first glance, it appeared to be a submission from another case.
6. On 20 February 2026, the Applicant filed another reply dated 13 February 2026 and signed on 20 February 2026. In an accompanying letter, it stated that the Applicant's reply in this case was ready for filing on 13 February 2026, but due to a human error, a reply document relating to another case between the parties was signed and submitted. Pursuant to R. 9.3(a) RoP, the Applicant requested that the deadline for filing the (correct) reply be retrospectively extended to 20 February 2026. The Applicant furthermore stated that it agreed to a corresponding extension of time period for the Defendants of at least one week.
7. By way of an order issued on 23 February 2026, the Defendants were given the opportunity to comment on this request. In their statement filed on 24 February 2026, the Defendants requested that the Court rejects the request for retrospective extension of the time limit, declares inadmissible the reply to the objection filed on 20 February 2026, and extends the deadline for the Defendants to comment on the submission made by the Applicant on 13 February 2026 to 3 March 2026.
8. On 26 February 2026, the Local Division issued a Procedural Order (the "impugned Order"), ruling that:
 - the deadline for the submission of the written response by the Applicant is retroactively extended to 20 February 2026;
 - the request to declare inadmissible and disregard the reply of 20 February 2026 is dismissed;

- the deadline for the Defendants to submit their written response to the 20 February 2026 is extended until 6 March 2026;
 - leave to appeal is not granted.
9. On 27 February 2026, the Defendants lodged a request for discretionary review of the impugned Order pursuant to R. 220.3 RoP. On 2 March 2026, the Court fees for this request were paid.

DEFENDANTS REQUEST

10. The Defendants request:

- I. The Procedural Order of the Court of First Instance issued on 26 February 2026 is reviewed by the Court of Appeal.
- II. The Procedural Order of the Court of First Instance issued on 26 February 2026 is set aside insofar as it
 1. retroactively extends the deadline for the submission of the written response by the Respondent (and Applicant in the Court of First Instance) to 20 February 2026, and
 2. dismisses the request by Appellants (and Defendants in the Court of First Instance) to declare inadmissible and disregard the Applicant's reply of 20 February 2026.
- III. The Court of Appeal
 1. rejects the request made by the Respondent (and Applicant in the Court of First Instance) in its brief of 20 February 2026 for retrospective extension of the reply deadline to 20 February 2026.
 2. declares inadmissible and orders the Court of First Instance to disregard the reply filed by the Respondent (and Applicant in the Court of First Instance) on 20 February 2026.

DEFENDANTS' SUBMISSIONS (SUMMARY)

11. The Defendants are of the opinion that the impugned Order has a very significant impact on the final decision. Moreover, the impugned Order raises fundamental legal questions that have not yet been addressed by the Court of Appeal. In particular, the Court of Appeal has not yet decided
- whether a retrospective extension of a time limit is possible under R. 9.3 (a) RoP if not just the court order is issued after the expiry of the time limit but even the extension request itself is filed only (long) after the time limit has expired, in particular due to negligence, and
 - what the hierarchy between R. 9.3 (a) RoP and R. 320 RoP is in case of a missed reply time limit in proceedings for preliminary measures; in particular whether the strict requirements set out in R. 320 RoP (lack of negligence and need to provide affidavit evidence) can be circumvented by making use of R. 9.3 (a) RoP even in cases where the time limit is missed due to negligence.
12. Regarding the first question, the Defendants point out that the Divisions of the Court of First Instance answer this question differently. While the Local Division in the impugned Order permitted an extension of the deadline on the basis of an application submitted after the deadline had expired, the Local Division

Hamburg is of the opinion that R. 9.3 (a) RoP does not cover extension requests being filed after the expiry of the time limit (UPC_CFI_58/2024, Order 2 June 2025 – Lionra v Cisco).

13. Furthermore, the Defendants claim that the impugned Order is manifestly erroneous. Firstly, because it is based on R. 9.3 (a) RoP even though only R. 320 RoP is applicable here and thereby circumvents the strict requirements of R. 320 RoP. Secondly, because the Local Division exceeded its discretionary powers even if R. 9.3 (a) RoP were applicable because its discretionary decision is partly based on wrong facts and it creates a gross procedural imbalance between the parties in view of parallel proceedings UPC_CFI_723/2025.

GROUNDS FOR THE ORDER

14. The request for discretionary review is admissible but must be denied.

I.

15. If the Court of First Instance does not allow an appeal against a procedural order it has made (R. 220.2 RoP), the affected party may, pursuant to R. 220.3 RoP, file a request for discretionary review with the Court of Appeal within 15 days. The Court of Appeal (Standing Judge) shall make an order on the request in accordance with R. 220.4 RoP.
16. When deciding whether to allow a discretionary review of an impugned order, it is particularly important to consider whether the impugned procedural order of the Court of First Instance is manifestly incorrect and whether the impugned order raises a fundamental question of law, that its review is necessary to ensure a consistent application and interpretation of the RoP or any other objective of the discretionary review (UPC_CoA_805/2025, Order 1 September 2025 – Centripetal v. Keysight). In this context, the stage and/or schedule of the first-instance proceedings may also be relevant (UPC_CoA_2/2026, Order 6 January 2026 – Angelalign Technology v. Align Technology).

II.

1)

17. The impugned Order of the Local Division is not manifestly incorrect.

a)

18. The Local Division in the impugned Order correctly applied R. 9.3 (a) RoP and not R. 320 RoP.
19. R. 320 RoP concerns re-establishment of rights. According to this, the Court may upon request, where a party has failed to observe a time limit set by the Rules of Procedure or the Court for a cause which, despite all due care having been taken by the party, was outside its control and the non-observance of this time limit has had the direct consequences of causing the party to lose a right or means of redress, re-establish the right or means of redress.
20. R. 320 RoP therefore concerns situations in which a party loses a (substantive) right because of missing a time limit. R. 320 RoP is therefore relevant – as the Court of Appeal has already stated in its Decision UPC_CoA_618/2024, 6 June 2025, Hanshow v. VusionGroup – if a time limit is missed that relates either

to completely new proceedings or to applications made after the conclusion of proceedings, such as the initiation of appeal proceedings, new proceedings on the merits, applications for the assessment of damages, challenges to decisions declaring appeals inadmissible or objections to default judgments.

21. Failure to meet a time period for submitting a written statement in ongoing proceedings does not result in a loss of rights in the sense mentioned above. The extension of a deadline for submitting a written statement in ongoing proceedings is therefore governed by R. 9.3 (a) RoP.
22. In a case such as the present one, it cannot therefore be assumed that the requirements of R. 320 RoP have been circumvented by means of R. 9.3 (a) RoP.

b)

23. The discretionary decision of the Local Division based on R. 9.3 (a) RoP is not manifestly incorrect.
24. The Local Division's assumption that a retroactive extension of the time limit is also possible if the necessary request has only been submitted after the time period has expired is not obviously wrong.
25. According to R. 9.3 (a) RoP, on a reasoned request by a party the Court may extend, even retrospectively, a time period referred to in the Rules of Procedure or imposed by the Court.
26. R. 9.3 (a) RoP requires a request to be submitted. However, the provision does not specify a particular time limit for submitting the request, nor does it state that the request must be submitted within the current timeline of the party who is requesting. The wording of the provision therefore also leaves room for the interpretation applied by the Local Division.
27. The following considerations also support the view that even after a deadline has been missed, request for an extension of the timeline can be submitted and the time period can be extended retroactively.
28. R. 9.3 (a) RoP expressly allows for the retroactive extension of a time period. It seems doubtful that this possibility is mentioned solely to allow the Court to issue an order after the timeline has expired. Since there are no (specific) time limits for the Court and/or fixed deadlines for issuing orders to that effect in connection with the extension of timelines for submitting written pleadings during proceedings, no special permission is required to issue an order after the expiry of a deadline set for a party. If R. 9.3 (a) RoP were to be understood only in the manner described above, this provision would merely repeat what is already self-evident regarding the Court.
29. Furthermore, the regulatory content of R. 9.1 RoP must be considered. According to this provision, the Court may, on its own motion or upon request, at any stage of the proceedings, request the parties to take certain steps, answer questions or provide clarification. The Court can therefore issue procedural orders even without a request from a party. This does not depend on any current time periods for the parties. Consequently, the Court can also, on its own motion, request a party that has missed a deadline to submit further submissions, etc. It is therefore not immediately apparent why the Court should be prevented from extending a missed time period retrospectively simply because the request was made after the time period had expired.
30. The Defendants argument that if a party was allowed to file the extension request after the time limit has already expired, would reduce the use of time limits to absurdity cannot be accepted. The time

periods referred to in the Rules of Procedure and those set by the Court must be observed and are not at the disposal of the parties. Nor are they placed at the disposal of a party by a request for an extension of time made by a party after a timeline has been missed. Rather, it is solely for the Court to decide on this request and to organise or determine the proceedings, including the applicable time periods. The principle of legal certainty is not jeopardised by the provision for such discretionary decisions.

c)

31. The Local Division did not exceed its discretionary powers. It took all circumstances into account in its discretionary decision. The Local Division did not base its decision on false facts; it merely assessed the facts differently than the Defendants consider to be correct.
32. The fact that the Local Division considered it sufficient that the submission of the incorrect reply was based on human error is not objectionable given the circumstances of the present case. This cannot be considered a manifestly error.

2)

33. The other requirements for a review of the discretionary decision are also not apparent in the present case.
34. In view of the Decision of the Court of Appeal, UPC_CoA_618/2024, 6 June 2025, Hanshow v. VusionGroup, it is incorrect that the 'hierarchy' of R. 320 RoP and R. 9.3 (a) RoP still needs to be clarified by the Court of Appeal.
35. The order of the Local Division Hamburg cited by the Defendants also does not give rise to a review. Although this order states that if a time period referred to in the Rules of Procedure or set by the Court has been missed, only a request according to R. 320 RoP can be made as R. 9.3 (a) RoP is not applicable in this situation, it must be taken into account that the order of the Local Division Hamburg was based on the failure to meet the time period pursuant to R. 151 RoP, i.e. time period that is covered by R. 320 RoP.
36. In the impugned Order, the Local Division extended the deadline for the Defendant's response to the Applicant's Reply, which has been submitted on 20 February. The Defendants therefore have or had the opportunity to comment on this Reply. As originally ordered, they have or had two weeks to submit their comments. Their right to be heard is thus preserved.
37. Finally, it should be noted that allowing an Appeal would entail hearing the Applicant and an oral hearing by the Court of Appeal, including proper preparation. This requires some time. This could not be completed by the deadline for comments granted to the Defendants by the Local Division. This was also because the Court fee required for the review request was not received by the Court until 2 March. A decision by the Court of Appeal could nevertheless possibly be issued before the oral hearing before the Local Division. However, it would interfere with the schedule for the proper preparation of the oral hearing before the Local Division. This does not seem appropriate in view of the issue at hand.

ORDER

The request for discretionary review is dismissed.

Issued on 10 March 2026

Ulrike Voß, standing judge