EIP

Double/twofold "appropriateness-test" applied by Local Division The Hague in Procedural Order concerning R. 109 RoP

Szymon Spyra v. Amycel LLC (UPC_CFI_195/2024)

Procedural Order delivered on 25 June 2024 (ORD_35405/2024)

In a procedural order from the UPC, the Local Division The Hague has decided on a double/twofolded "appropriateness-test" regarding the request for simultaneous interpretation in the oral hearing, R. 109 RoP.

The Defendant is a Polish private individual. He requested simultaneous interpretation for the oral hearing, claiming that his English would be insufficient to convey all information that he wished to submit. Without interpretation he also believed that following both parties' oral submission by the representatives would be difficult. The Claimant requested the dismissal of said request, stating that the costs of interpretation would become costs of the proceedings within the meaning of R. 150 RoP pursuant to R. 109.5 RoP, if the Application was granted and would put an additional cost-burden on the Claimant even though it would not use the interpretation.

The Judge Rapporteur, who makes this decision according to R. 109.2 RoP, ultimately dismissed the request for simultaneous interpretation pursuant to R. 109.1 RoP but allowed the Defendant an interpreter at his own expense pursuant to R. 109.4 RoP, stating that pursuant to Art. 51 (2) UPCA at the request of one of the parties and to the

extent deemed appropriate, any division of the Court of First Instance and the Court of Appeal shall provide interpretation facilities to assist the parties concerned at oral proceedings.

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However, the Judge Rapporteur clarified that R. 109 RoP includes a double/twofold "appropriateness-test" on (i) whether allowing translations during the oral hearing is appropriate and (ii) whether it is appropriate that the costs of such interpretation become costs of the proceedings.

In the grounds of the procedural order the Judge Rapporteur considered that the active conduct of a hearing in a foreign language demands a more intricate knowledge of the language of proceedings than merely reading written documents and submissions. As such the fundamental right to be heard must be met. Therefore, it is important to allow parties simultaneous interpretation, if such language skills are not present with the parties. The Judge Rapporteur considered the threshold for allowing interpretation pursuant to R. 109.1 RoP as generally low, stating: "Simultaneous interpretation will in general already be appropriate if the language of the proceedings is not a language that is sufficiently familiar to (one of) the parties or to their counsel". Further stating, that the threshold for appropriateness of simultaneous interpretation pursuant to R. 109.4 RoP is even lower, since costs for translations is paid by the party that requested the interpretation.

In a second step the Judge Rapporteur contemplated the question who shall bear the cost and whether the cost for interpretation should become costs of the proceedings under R. 150 RoP. The request was for translation to/from Polish. The Judge Rapporteur considered that Polish is not a language of one of the Contracting Member States and not a designated language of the Local Division where the main action was filed or any other Local Division. Neither was it the language of the patent. The Judge Rapporteur stated that it's not reasonable to expect that the UPC provides translations to all languages, however unrelated to the UPC the language may be. Further considerations by the court were that the Defendant had extended his business outside of Poland to UPC-territory, where he would have to conduct his business in English. In the Judge Rapporteur's consideration, the Defendant has thus deliberately taken the risk to be taken to court over a patent infringement in an UPC Contracting Member State by conducting business in such territory. Ultimately, the Judge Rapporteur rejected the request for the costs of interpretation to become costs of the proceedings.

However, as the Court makes clear, an order pursuant to R. 109.4 RoP does not prevent the Defendant from submitting the costs for interpretation for recovery as costs of the proceedings at a later point pursuant to R. 109.5 RoP, if facts or circumstances mean that

it is unreasonable for the Defendant to bear these costs.

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