

**EIP**

# Application for a preliminary injunction refused

**Barco NV v Yealink Network Technology Co. Ltd. & Ors. (UPC\_CFI\_582/2024)**

**Order of 21 March 2025 (ORD\_68979/2024)[1]**

Barco is a company operating in the entertainment, enterprise and healthcare technology sectors which develops and markets audiovisual equipment for use in meeting rooms and the like. It is the proprietor of EP 3 732 827; titled Method and System for Making Functional Devices Available to Participants of Meetings. Unitary effect for this Patent was requested on 2 July 2024 and registered on 23 August 2024.

Yealink is a well-known provider of video conferencing and collaboration solutions, headquartered in China. It develops and markets various devices including the “Meeting Bar”, “RoomCast” and “WPP 30” which, when implemented in certain meeting room configurations with one another, are alleged to infringe Barco’s unitary patent in contracting member states where it is in force.

By its application, Barco primarily sought a preliminary injunction against Yealink to restrict the allegedly infringing acts in respect of the Yealink product configurations, or “set ups”, identified. There was some additional wrangling between the parties over the competence of the LD Brussels to hear the dispute, with Yealink arguing that LD The Hague should hear the dispute and seeking to undermine the basis on which Barco had brought the claim in Belgium. The Court considered the application of Rule 19.1(b) and Art. 33(1) UPCA (relating to the competence of First Instance UPC divisions) in comparison with the requirements of the Brussels I Regulation.

Noting the UPC’s “internal (territorial) competence” and that the question of which

division is competent is “a matter of the internal organisation of the UPC”, as well as the fact that the unitary patent differs in its territoriality from traditional EP patents (and other national rights such as copyrights and national trademarks), the Court found that the LD Brussels was competent to hear the dispute. There was sufficient evidence presented by Barco that the relevant Yealink devices were ordered from and delivered to Belgium and that Yealink was “actively promoting and offering [those devices] to end-customers in Belgium via their website and their Benelux Account Manager.”

However, in respect of the “provisional measures” sought by Barco, in particular the preliminary injunction mentioned above, the Court responded less favourably. The Court notes that such requests should only be granted in “exceptional circumstances”, considering a balance between the rights of both parties. The applicant should provide “reasonable evidence” that it is entitled to bring proceedings and that the patent in suit is valid and being infringed, or that such infringement is imminent. The applicant must also convince the Court that the balance of interests weighs in its favour.

Additionally, and crucially for Barco in the present case, the applicant must act expeditiously in bringing its application for interim relief. Delay or hesitation in making the application, once the applicant has become aware of the alleged infringement and gathered the necessary evidence, will be counted against the applicant. The specific date at which the applicant becomes aware of the alleged infringement is therefore essential for the Court to assess whether the applicant has acted with sufficient urgency.

It is also worth noting that the Court clarified the level of evidence that should be provided to support an applicant’s claims to entitlement, validity and infringement, in line with Rule 221.2, which specifies “reasonable evidence to satisfy the Court with a sufficient degree of certainty”. The Court held that “a sufficient degree of certainty” means convincing the Court on the balance of probabilities, or that the relevant fact is “at least more likely than not”.

In the present case, Barco did not provide a specific date on which it says it became aware of the alleged infringement but argued that it could not have initiated proceedings prior to 23 August 2024 (when the unitary effect was registered” and that the commencement of proceedings by Barco on 2 October 2024 demonstrated sufficient promptness and diligence in seeking to enforce its rights. The Court disagreed with this however, on the basis of Arts. 3(c) and 32(1)(a) or (c) which together confer on the Court jurisdiction to hear infringement actions and actions for provisional measures (including injunctions) in respect of European patents such as patent EP 3 732 827. It was therefore held to be 12 June 2024, being the date of publication and mention of the grant of the EP patent, that was the relevant date for assessing urgency in the present case. The Court

explained that in cases such as this, where unitary effect is registered later and may lead to additional relief being sought, the applicant has sufficient means to amend its claims under Rule 263. In other words, the applicant should not wait until its unitary patent has been registered if it has the relevant knowledge to proceed on the basis of its pre-existing EP patent.

In the present case, given that Barco had known about Yealink's sales of the accused devices for some time before 12 June 2024 and could therefore have taken preparatory steps even before this date, the Court held that 15 July 2024 would have been a reasonable date by which to have made the present application. Barco's application was not made until some two and a half months after this date. This led the Court to its finding of a lack of urgency on the part of Barco and ultimately to dismiss Barco's application for provisional measures, including its sought-after preliminary injunction. The Court also ordered Barco to pay Yealink's reasonable and proportionate costs up to a ceiling of €112,000.

This decision goes to show how important it is for a party seeking an interim injunction at the UPC to ensure it acts promptly once it becomes aware of infringing activity. It must also make sure it satisfies all of the requirements of Rule 211, which are "cumulative"; that is to say, the absence of just one will be sufficient grounds for the Court to reject the application. This approach is justified given the exceptional nature of the relief sought and acts to balance the rights of the applicant with the impact such a measure will have on a respondent.

[1] <https://www.unified-patent-court.org/en/node/75010>