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## Can the UPC's Court of Appeal hear appeals on infringement and validity at the same time?

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Yes, the UPC's Court of Appeal may hear appeals against separate decisions on the merits in infringement proceedings and in validity proceedings together (Rule 220.3 of the draft Rules of Procedure of the UPC).

## What if the infringement proceedings and the validity proceedings were held in different languages?

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In case of bifurcation at first instance, the language of proceedings before the local or regional division may not be the same as the language of proceedings before the central division. The language of proceedings before the Court of Appeal will however be the language of proceedings of the main action, namely the infringement action heard by the local or regional division. In such a case, the judge-rapporteur may order the appellant to lodge translations into the language of the proceedings before the Court of Appeal of written pleadings and other documents lodged by the parties before the Court of First Instance and decisions or orders of the Court of First Instance (Rule 232.1 of the draft Rules of Procedure of the UPC).

## Will the Court of Appeal hear the entire case afresh or will it just review the earlier decision to confirm that the law was correctly applied?

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The appeal will neither be a complete rehearing of the first instance case nor will it be strictly limited to points of law. An appeal may be based on points of law and matters of fact (Article 73.3 of the UPC Agreement).

## Will it be possible to introduce new facts and arguments on appeal?

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A new fact or new evidence may only be introduced at the appeal stage if a party could not reasonably have been expected to submit it during proceedings at first instance (Article 73.4 of the UPC Agreement). The UPC's Rules of Procedure shall lay down further details relating to new facts and evidence. In Rule 222.2 of the draft Rules of Procedure of the UPC, it is provided that requests, facts and evidence which have not been submitted by a party during proceedings at first Instance may be disregarded by the Court of Appeal; when exercising this discretion, the Court of Appeal shall in particular take into account

- whether a party seeking to lodge new submissions is able to justify that the new submissions could not reasonably have been made during proceedings before the Court of First Instance,
- whether the new submissions are highly relevant for the decision on the appeal,
- the position of the other party regarding the lodging of the new submissions.

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