



**UPC\_CFI\_440/2023**  
**Order of the Court of First Instance**  
**of the Unified Patent Jurisdiction, handed down on 06/05/2024**

APPLICANT :

(INTERVENING PARTY)

**Photon Wave Co, Ltd.**  
52, Jugyang 1763 beon-gil,  
Wonsam-myeon, Cheoin-gu,  
Yongin-si, Gyeonggi-do, 17166  
Republic of Korea

represented by Dorothea Hofer

DEFENDANT TO THE ACTION: (PLAINTIFF

IN THE MAIN ACTION)

**Seoul Viosys Co, Ltd**  
65-16, Sandan-ro 163beon-gil,  
Danwon-gu - 15429 - Ansan-si,  
Gyeonggi-do - Republic of Korea

Represented by Pauline Debré

OTHER PARTIES INVOLVED :

(DEFENDANT IN THE MAIN PROCEEDINGS)

**Laser Components**  
Hirschhausen 45B Route des Gardes  
92190 Meudon  
France

SASRepresented by Helge von

PATENT IN SUIT

*Patent number*

*Owner*

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**EP3404726**

Seoul Viosys Co, Ltd

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## DECISION-MAKING JUDGES

Chairman and Judge-Rapporteur: **Camille Lignières**

Legally qualified judge: **Carine Gillet**

Legally qualified judge: **Peter Tochtermann**

LANGUAGE OF PROCEDURE: French

## ORDER

**Headnotes :** The intervener may not develop claims contrary to those of the party it supports and may not independently develop claims and procedural methods distinct from those offered to the party it supports. Consequently, an intervener who has not filed a counterclaim for invalidity within the time limit set for the party it is supporting cannot claim an extension of time to file an independent claim.

Even though the European patent at issue was granted in English, the plaintiff, a Korean company, chose to bring its action in French, which respects the rights of the defendant, a French company established in France. Neither the nationality of the representative of one of the parties, nor the nationality of the intervening company, constitute serious grounds for proposing a change in the language of the proceedings for reasons of convenience or fairness.

**Keywords :** Intervention, R. 313 RoP, rejection of the intervener's independent applications, R. 9 RoP, rejection of the extension of procedural time limits, R. 322 RoP, rejection of the application for a change of language.

## PROCEDURE AND REQUESTS

On 05 December 2023, SEOUL VIOSYS brought an infringement action before the Paris Local Division, against LASER COMPONENTS, relating to European patent EP3404726.

Following an order dated February 12, 2024, the Judge-Rapporteur declared admissible LASER COMPONENTS' application to intervene against its supplier PHOTON WAVE. LASER COMPONENTS filed its statement of defence on March 18, 2024, contesting, among other measures, the materiality of the infringement.

On 18 March 2024, PHOTON WAVE filed a statement of case seeking a declaration that its intervention was admissible, and a statement in intervention, making the following claims:

1. dismiss the infringement action,
2. order the plaintiff to pay the costs of the proceedings in a decision on costs pursuant to art. 69 AJUB, R. 118.5 RdP,
3. declare the judgment on costs provisionally enforceable, where appropriate against the provision of security,
4. rule that, in the context of intervention, the intervener may raise independently of the defendant the defendant's motions, all the grounds of attack and defence in support of the defendant which the defendant herself could or could have raised, by

In particular, the intervener may bring an independent counterclaim for a declaration of invalidity,

5. in the event that it is authorised to bring a counterclaim for a declaration of invalidity independently of the defendant, to grant the intervener a period of two months in which to bring a counterclaim for a declaration of invalidity,

6. in the event that the intervener is not entitled to bring a counterclaim for a declaration of invalidity independently of the defendant, rule that :

(i) the intervener is considered a party with all the rights of a party,

(ii) the intervener is therefore entitled to bring a counterclaim for a declaration of invalidity in accordance with Article 33(4) 2nd sentence of the Unified Patent Jurisdiction Agreement 2013/C 175/01 before the Paris Local Division of the Unified Patent Jurisdiction,

7. grant a two-month extension to the deadline for the intervention brief,

8. determine English as the language of the procedure.

The intervener also requests, on the basis of Rules R. 24(h) and R. 104 RoP, that :

-set the value of the infringement action at 250,000 euros,

-require TESCAN LAB to explain the facts on which it bases its interpretation of the characteristics of the claim, in the light of the measurements,

-change the procedure language.

In response, SEOUL VIOSYS, invited to produce its written observations by 23 April 2024 at the latest, pursuant to the preliminary order of 09 April 2024, requests in its written observations of 22 April 2024 the rejection of the claims relating to :

- a challenge to the value of the share on the grounds that no evidence is provided in support of the challenge,

- to the TESCAN laboratory for lack of explanation and legal basis,

- the change of language, arguing that French and English are foreign languages for the intervening Korean company, that the parties can refer to the patent specification in English and that the retention of the French language is not significantly unfavourable, that this change of language would entail costs for the applicant in translating its statement of claim and all the documents already filed in support, that the requested change of language is therefore not justified.

In addition, SEOUL VIOSYS requests that the Judge-Rapporteur order the production of the witness statement to which LASER COMPONENTS and the intervener refer in their respective pleadings and that the date of production of this document constitutes the starting point of the time limit for producing its statement in response to the statements in defence and in intervention.

## **REASONS FOR THE DECISION**

As a preliminary matter, the panel considers that points 1 to 3, mentioned by PHOTON WAVE in its statement in intervention, concerning the rejection of the infringement, the payment of the costs of the proceedings and the granting of provisional execution, should be examined at a later date in the context of the decision on the merits.

### **1- Compulsory distraint and counterclaim for invalidity of the patent (points 4, 5, 6, 7)**

According to rule 315.4 of the Rules of Procedure, "*an intervener shall be treated as a party unless the court decides otherwise*". As such, the intervener has the rights attaching to party status and participates in the proceedings, subject nevertheless, in accordance with rule 313.2 of the Rules of Procedure, to the intervention being "*made in whole or in part in support of a claim*", which means that the intervener may not develop claims contrary to the party he supports and may not

to develop claims independently and in accordance with procedural arrangements that are distinct from those offered to the party it is supporting.

According to rules 23 RoP and 25.1 RoP, the defendant has three months to file a statement of defence and to file a counterclaim for invalidity.

Pursuant to Rule 9.2 RoP, the court or tribunal may disregard any diligence, evidence or argument that has not been completed or submitted within a time limit set by the Rules of Procedure.

In accordance with Rule 9.3(a) of the Rules of Procedure, the court or tribunal may, on a reasoned application by a party, extend, even retroactively, a time limit referred to in the Rules of Procedure.

In the present case, PHOTON WAVE is intervening in support of LASER COMPONENTS, which had a period of three months in which to enter a statement of defence and, if appropriate, to file a counterclaim for invalidity of the patent. The intervener may not adopt a procedural position different from that of the defendant in the main proceedings.

LASER COMPONENTS filed a statement of defence, within the aforementioned time limit, on 18 March 2024, without filing a counterclaim for invalidity of the patent.

PHOTON WAVE did not file a counterclaim for a declaration of invalidity within the same time period expiring on March 18, 2024, to which it was subject, as indicated above. PHOTON WAVE cannot therefore claim to be entitled to file such a counterclaim, when it did not act diligently within the time limit and when it does not invoke any serious grounds justifying the granting of additional time.

The subsequent application for a two-month extension of the time limit for filing a counterclaim for a declaration of invalidity must be dismissed.

## 2-On the request for a change of language (point 8)

PHOTON WAVE is requesting a change of language, so that the proceedings will henceforth be conducted in English, without however specifying the applicable procedural rule, stating that the defendant, a French company, has itself made such a request and maintaining that its employees understand documents in English, whereas those in French must be translated, with the risk of error, loss of information and loss of time and money.

In view of the grounds of convenience and fairness invoked by PHOTON WAVE in its statement in intervention, the application must be considered to be based on Article 49(4) of the AJUB and Rule 322 RoP.

The plaintiff, who has chosen to act in French before the Paris Local Division in one of the two possible languages before that division, has indicated that it opposes the proposal to change the language of the proceedings to English, as requested by the intervener in its brief.

In this case, therefore, there is no agreement between the parties on the requested change of language.

The Judge-Rapporteur, after consulting the Board, has already indicated by order of 27 February 2024, at the request of LASER COMPONENTS, the reasons for his rejection of a proposal to the parties to change the language of proceedings. Even though the European patent at issue was granted in English, the plaintiff, a Korean company, chose to bring its action in French, which respects the rights of the defendant, a French company established in France.

However, neither the nationality of the representative of one of the parties, nor the nationality of the intervening company, constitute serious grounds for proposing a change in the language of the proceedings for reasons of convenience or fairness.

Consequently, the conditions laid down by rule 322 RoP are not met in this case for a change in the language chosen by the applicant to be decided.

### 3- Determination of the value of the dispute and explanations concerning the report drawn up by TESCOAN ANALYTICS

These matters are not dealt with in the written procedure but in the pre-trial procedure, where they will be dealt with, where appropriate, in accordance with Rule 104(b) and (i).

### 4- Postponement of the starting date of the time limit for replying

Pursuant to Rule 24(j) RoP, to which Rule 13.2 RoP, the defendant in the infringement action must provide, simultaneously with the filing of his statement of defence, a copy of each of the documents referred to in the statement of defence in order to "*enable the defendant to prepare a defence on the basis of all the arguments put forward in the statement of claim and all the annexes in support of his arguments*" and to ensure "*that the fundamental principles of justice and fairness, which must be ensured having regard to the legitimate interests of both parties (see Preamble 5 of the Rules of Procedure), are properly respected*". (JUB Court of Appeal, 13 October 2023, UPC\_CoA\_320/2023).

Furthermore, requests to produce evidence are governed by rules 190 et seq. of the Rules of Procedure. In the present case, the statement that is the subject of the application was drawn up in order to demonstrate the facts; the probative value of that statement will be assessed subsequently and, since the defendants only communicated an extract from the witness statement when they served their statement of case, there is no reason to enjoin them from communicating the document in its entirety from now on. Consequently, there is no reason to extend the time-limit for SEOUL VIOSYS's reply.

### **DECISION**

Declares that PHOTON WAVE has not filed a statement of invalidity of the patent within the prescribed time limit,

Rejects PHOTON WAVE's request for an extension of the time limit for filing a statement of invalidity of the patent,

Rejects PHOTON WAVE's request for a change of language, Rejects SEOUL

VIOSYS's request for an extension of the time limit for replying,

Resolves that the determination of the value of the dispute and the explanations relating to the report drawn up by TESCOAN ANALYTICS will be dealt with in the course of the pre-trial proceedings,

Resolves that the claims relating to the rejection of the infringement, the payment of the costs of the proceedings and the granting of provisional execution will be dealt with as part of the judgment on the merits.

Declares that this order may be appealed in accordance with the provisions of rule 220.2 of the Rules of Procedure.

**Rendered in Paris on 6 May 2024.**

Camille Lignières, Chairman and Judge-Rapporteur

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GARROS

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Details of the order :

Order n° ORD\_18404/2024 in ACTION N°: ACT\_588685/2023 UPC n° :  
UPC\_CFI\_440/2023

Type of action: Infringement action