



Procedural order
of the Court of First Instance of the Unified Patent Court local division
Düsseldorf
issued on 26 June 2024
concerning EP 3 490 258 B1

Guiding principle:

1. The legal interest required for the admissibility of the intervention is given if the intervener has a direct and present interest in the issuance of the Order or decision requested by the supported party.
2. Such a legal interest can be affirmed if the patent in dispute was contributed to a patent pool by the plaintiff, the intervener was entrusted with the performance of the plaintiff's FRAND obligations and with the licensing of the portfolio including the patent in dispute and the defendant invokes that the other party did not fulfil its FRAND obligations due to alleged inadequacies of the intervener's licence offers.

Keywords:

Intervention; FRAND; pool administrator; legal interest; inadequacies of licence offers

Plaintiff:

Dolby International AB, represented by its EMEA Finance Director Susan Way, 77 Sir John Rogerson's Quay, Block C, Grand Canal Docklands, Dublin, D02 VK60, Ireland,

represented by: Attorney Dr Volkmar Henke, Attorney Dr Tilman Müller,
Bardehle Pagenberg Partnerschaft mbB, Bohnenstraße 4, 20457
Hamburg,

Patent attorney Dr Georg Anetsberger, patent attorney Dr
Johannes Möller, Bardehle Pagenberg Partnerschaft mbB,
Prinzregenten- platz 7, 81675 Munich,

electronic

Zustelladresse:henk

e@bardehle.de intervener:

Access Advance LLC, represented by its CEO Peter Moller, 100 Cambridge Street Suite 21400,
Boston, MA 02114

represented by: Attorney Dr Volkmar Henke, Attorney Dr Tilman Müller,
Bardehle Pagenberg Partnerschaft mbB, Bohnenstraße 4, 20457
Hamburg,

Patent attorney Dr Georg Anetsberger, patent attorney Dr
Johannes Möller, Bardehle Pagenberg Partnerschaft mbB,
Prinzregenten- platz 7, 81675 Munich,

electronic Zustelladresse:mueller@bardehle.de

defendant :

1. **HP Deutschland GmbH**, represented by its managing directors, Mr Adrian Müller and Mr Peter Kleiner, Herrenberger Straße 140, 71034 Böblingen, Germany,
2. **HP Inc.**, represented by its managing directors, 1501 Page Mill Road, Palo Alto, California 94304, U.S.A,
3. **HP International SARL**, represented by its managing directors, Route du Nant-d'Avril 150, 1217 Meyrin, Switzerland,
4. **HP Austria GmbH**, represented by its managing directors, Technologiestrassen 5, 1120 Vienna, Austria,
5. **HP France SAS**, represented by its Managing Directors, Meudon Campus Bât. 1, 14 Rue de la Verrerie, 92190 Meudon, France,
6. **HP Belgium SPRL**, represented by its Managing Directors, Hermeslaan 1a, B-1831 Diegem (H.P. Inc.), Belgium,

7. **HP Inc Danmark ApS**, represented by its managing directors, Engholm Parkvej 8, 3433 Allerød, Denmark,
8. **HP Finland Oy**, represented by its managing directors, Piispankalliontie, 02200, Espoo, Finland,
9. **HP Italy S.r.l.**, represented by its Managing Directors, Via Carlo Donat Cattin, 5 - 20063 Cernusco sul Naviglio (MI),
10. **Hewlett-Packard Nederland BV**, represented by its managing directors, Startbaan 16, 1187 XR Amstelveen, The Netherlands,
11. **HP PPS Sverige AB**, represented by its managing directors, Gustav III:s Boulevard 30, 169 73 Solna, Sweden,
12. **HPCP - Computing and Printing Portugal, Unipessoal, Lda**, represented by its directors, Building D. Sancho I, Quinta da Fonte, Porto Salvo, 2770-071 Paço de Arcos, Lisbon, Oeiras, Portugal,
13. **Hewlett-Packard d.o.o.**, represented by its managing directors, Tivolska cesta 48, 1000 Ljub- ljana, Slovenia,
14. **Hewlett-Packard Luxembourg SCA**, represented by its Managing Directors, Vegacenter, 75 Parc d'Activités, Capellen, L-8308 Capellen, Luxembourg,
15. **HP Inc Bulgaria EOOD**, represented by its Managing Directors, Mladost Region, Business Park Sofia, Building 10, Sofia 1766, Bulgaria,

Defendants 1) to 15) represented by: Dr Frank-Erich Hufnagel, lawyer

lawyer Dr Nina Bayerl, lawyer Dr Stephan Dorn,
lawyer Dr Sabrina Biedermann, lawyer Eva Acker,
lawyer Vanessa Werlin, Freshfields Bruckhaus
Deringer Rechtsanwälte Steuerberater PartG mbB,
Feldmühleplatz 1, 40545 Düsseldorf,

electronic

Zustelladresse:eva.acker@freshfields.com

STREITPATENT:

European Patent No. EP 3 490 258 B1

ADJUDICATING BODY/CHAMBER:

Judges of the Düsseldorf local division:

This Order was issued by presiding judge Thomas as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: R. 314 VerfO - Order relating to an application to intervene

BRIEF DESCRIPTION OF THE FACTS:

The plaintiff is suing the defendants for infringement of the European bundle patent EP 3 490 258. It has contributed its HEVC-essential patent portfolio, including the patent in dispute, to a patent pool managed by Access Advance LLC (hereinafter: Access Advance).

At the same time as filing the statement of defence, the defendants filed an application for the protection of confidential information (R. 262A VerfO). In an Order dated 6 May 2024, the Düsseldorf local division granted the plaintiff's legal representatives named in the proceedings to date access to the unredacted version of the document and attachments classified by the defendants as confidential, obliged them to maintain confidentiality and gave them the opportunity to comment on the application for protection of confidential information.

The plaintiff did not fundamentally oppose the defendant's request for protection of secrets. However, it has stated that it can only be granted insofar as Access Advance, as pool administrator, is also included in the group of authorised and obligated recipients, insofar as the correspondence between the defendants and Access Advance and the discussion of the respective (pool) offers is concerned.

The defendants have objected to such inclusion of Access Advance in the group of authorised parties on the grounds that the prerequisite for granting such access is the participation of the person concerned in the proceedings. On this basis, there should only be no fundamental objections to access by persons belonging to Access Advance if Access Advance is involved in the proceedings, for example as an intervener or party.

After the defendants raised no objections to granting certain employees named by the plaintiff access to the information classified by the defendants as confidential, the Düsseldorf local division provisionally extended the group of employees entitled to access to these employees in an Order dated 19 June 2024. Following a corresponding application by the plaintiff, the Düsseldorf Local Chamber initially postponed the decision on access authorisation for employees of Access Advance.

In a document dated 20 June 2024, Access Advance LLC then filed an application to intervene. None of the parties objected to the intervention.

APPLICATIONS BY THE PARTIES:

The intervener claims that the Court should

the co-operation of the Access Advance LLC in the litigation ACT_590145/2023,
UPC_CFI_457/2024 on the side of the plaintiff.

REASONS FOR THE ORDER:

The intervener's application to intervene is admissible.

1.

According to R. 314.2 VerfO, such an application must be submitted before the written procedure is concluded.

The intervener has complied with this requirement. It filed its application before filing the Reply in the infringement proceedings.

2.

The intervener has a legal interest in the outcome of the proceedings, R. 313.1 VerfO.

a)

Such a legal interest exists if the intervener has a direct and present interest in the issuance of the Order or decision requested by the supported party. An interest merely relating to the grounds for the action is not sufficient. A distinction must be made between potential interveners who have a direct interest in the decision on the specific application of the supported party and those who can only demonstrate an indirect interest in the outcome of the legal dispute. If the position of the intervener is merely similar to that of one of the parties, this is not sufficient for a legal interest (UPC_CoA_404/2024, Order of 10 January 2024, App_584498/2023, para. 10; UPC_CFI_363/2023, Order of 22 April 2024, ORD_5343/2024).

b)

Based on these principles, the intervener has a sufficient legal interest in the outcome of the legal dispute.

The intervener manages the patent pool to which the plaintiff has contributed the patent in suit. It was entrusted by the plaintiff with the licensing of the patent in suit and the entire HEVC portfolio of the plaintiff. In this function, the intervener also takes care of the plaintiff's FRAND obligations and has been in talks with the defendant's group for some time about concluding a pool licence. The defendants claim that the other party has not fulfilled its FRAND obligations and justify the FRAND objection raised by them, among other things, with what they consider to be inadequacies in the intervener's licence offers. The intervener therefore has a legal interest in the FRAND objection ultimately (also) raised against it being rejected.

ORDER:

1. The co-operation of the Access Advance LLC in the litigation ACT_590145/2023, UPC_CFI_457/2024 on the side of the plaintiff.
2. The parties to the proceedings are hereby informed of the admissibility of the application to intervene.
3. The intervener has the opportunity to submit a statement in intervention by **9 July 2024**.
4. Since the intervener is represented by the same authorised representatives as the plaintiff, the following applies in the interest of effective proceedings:

- a) The intervener is authorised to submit any statement in intervention pursuant to section 3 via the plaintiffs' representatives in the CMS.
- b) The plaintiffs' representatives are instructed to forward the parties' previous statements to the intervener, insofar as they do not contain any confidential information.

If there is a redacted and an unredacted version of certain documents and attachments, only the redacted version shall be forwarded to the intervener.

Until a final decision on the defendant's application for secrecy protection, the plaintiff's legal representatives and the plaintiff's employees, who have already been granted access to the information classified as confidential by the defendant by Order of 19 June 2024, are also obliged to keep the information contained in the unredacted versions of the aforementioned documents secret from the intervener. In this respect, the previous provisional confidentiality orders apply accordingly.

In the event of culpable violation of this Order, the court may impose a penalty payment to be determined according to the circumstances of the individual case for each case of violation.

The decision on the extension of access authorisation to employees of the intervener will be made as part of the final Order concerning the defendant's application for secrecy protection.

- c) After the lawyers of the law firm Bardehle Pagenberg submitted a document dated
Since the parties have agreed to forward their submissions to the intervener on 25 June 2024, the local division assumes that the intervener will waive (additional) service by the Registry of the Unified Patent Court (R. 315.2 VerFO). Should the intervener nevertheless insist on such service, it is instructed to inform the Registry of the Düsseldorf local division of this within a period of 3 days from receipt of this procedural order.
- d) In the absence of any indication to the contrary from the plaintiff and/or the intervener in the further course of the proceedings, the local division assumes until further notice that the documents of the parties and all Orders and decisions of the court will also be forwarded to the intervener by the plaintiff's authorised representatives. These are therefore deemed to have been received by the intervener upon receipt by the plaintiff's authorised representatives.
- e) The intervener is ordered to upload any documents to the CMS via the plaintiff's authorised representative.

ORDER DETAILS:

ORD_37232/2024 concerning the main file reference ACT_590145/2024

UPC number: UPC_CFI_457/2023

Type of proceedings: Action for infringement and action for annulment

Issued in Düsseldorf on 26 June 2024

NAMES AND SIGNATURES

Presiding judge Thomas

Ronny
Thomas

A red digital signature scribble is positioned over the name 'Ronny Thomas'.

Digitally signed by Ronny
Thomas Date: 2024.06.26
08:22:47 +02'00'