



Central Division
Paris Seat

ORDER

of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
issued on 26 June 2024
concerning the application RoP262A No. App_19084/2024
lodged in the infringement proceedings UPC_CFI_164/2024

HEADNOTES:

KEYWORDS:

REFERENCE CODE ECLI:

APPLICANT:

Suinno Mobile & AI Technologies Licensing Oy - Fabianinkatu 21, 00130 Helsinki, Finland.
represented by Mikko Kalervo Väänänen

RESPONDENT:

Microsoft Corporation - One Microsoft Way, Redmond Washington 98052-6399, USA
represented by Nadine Westermeyer, Bardehle Pagenberg

PATENT AT ISSUE:

European patent n° EP 2 671 173

PANEL:

Panel 2

DECIDING JUDGE:

This order has been issued by the presiding judge and judge-rapporteur Paolo Catalozzi

SUMMARY OF FACTS AND PARTIES' REQUESTS:

1. On 9 April the applicant, claimant in the infringement action brought against the defendant before this Central Division of the Unified Patent Court (registered as No. ACT_18406/2024 UPC_CFI_164/2022), requested that the 'Agreement A & B' submitted as evidence in the main proceedings be kept secret from the defendant and the public, as they comprise business secrets of licensees [REDACTED] [REDACTED] [REDACTED]
2. On 22 May 2024 the defendant, asked for written comments, requested the application to be dismissed.

GROUNDS FOR THE ORDER

Admissibility of the application.

3. The defendant's objection of inadmissibility of the application raised on the grounds of a violation of Rule 290 (2) of the Rules of Procedures ('RoP') in relation to the non-compliance with the code of conduct by the plaintiff's representative should be examined preliminarily.
4. The defendant argues that [REDACTED] [REDACTED] [REDACTED] plaintiff's representative, is also: the named inventor of the patent-in-suit; the original applicant of the application underlying the patent-in-suit; - the Managing Director of the first assignee of the patent-in-suit, Suinno Oy; the managing Director of the subsequent assignee of the patent-in-suit and Plaintiff in the present proceedings. It would follow that [REDACTED] [REDACTED] could not be considered as an independent counsellor and, as such, would not be complying with Article 2.4.1. of the Code of Conduct for representatives, adopted by the Administrative Committee of the Unified Patent Court, which prescribes that quality.
5. The objection is unfounded.
6. The defendant bases its argument on Rule 290 (2) 'RoP' according to which 'Representatives who appear before the Court shall strictly comply with any code of conduct adopted for such representatives by the Administrative Committee' and to Article 2.4.1. of the Code of Conduct for Representatives, adopted by the Administrative Committee on 8 February 2023, according to which 'A representative shall act towards the Court as an independent counsellor by serving the interests of his or her Clients in an unbiased manner without regard to his or her personal feelings or interests'.
7. The obligation to act as an independent counsellor is imposed by the aforementioned provision of the code of conduct in order to protect the effectiveness of the party's right to defence in court, even in relation to the possibility of situations that may give rise to conflicts of interest or, in any event, to disloyal representation.

8. The lack of independence must therefore be assessed not in an absolute sense, but with reference to the possible harm to the interests of the party on whose behalf the professional acts.
9. It follows that the mere fact that ██████████ also carries out active administrative tasks on behalf of the represented party and that he may be directly interested in the outcome of the case is not decisive in order to consider that the representative is not independent for the purposes of interest here.
10. In any case, it can be observed that given the instrumental nature of the obligation of independence to protect the party's right to an effective defence in court, its possible violation cannot be asserted by the counterparty, which has no interest in such a finding, but only by the party for whose benefit such an obligation is placed.
11. Finally, while it is true that the Court may exclude a lawyer from the proceedings when he or she uses his or her rights for purposes other than those for which they were granted, there is no evidence to support such conduct.

Protection of confidential information.

12. Article 58 of the Unified Patent Agreement and Rule 262A 'RoP' allows that, upon a reasoned request by a party, certain information contained in its pleadings or the collection and use of evidence in proceedings may be restricted or prohibited or that access to such information or evidence be restricted to specific persons.
13. Restricting access to specific persons or prohibiting access to such information aims at efficiently protect the confidential information, even from opposing party. This is also regulated at European Union level in certain types of court cases [see Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure; Communication from the Commission Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law 2020/C 242/01].
14. When addressing the request for protection of confidential information the Court must balance the opposing interests. Confidentiality of information is important for businesses, while open access is crucial for presenting a proper defence. The Court may grant the request if the reasons provided by the applicant significantly outweigh the opposing party's interest in having full access to the information [see paragraph (5) of Rule 262A].
15. In the current case, the applicant argues that the two agreements in question contain 'business secrets' related to licenses granted to ██████████ ██████████ ██████████. The respondent does not explicitly contest this claim and, anyway, there is no evidence suggesting this is incorrect.
16. As a business secrets, the information in question is to be considered as confidential information for which Article 58 'UPCA' and Rule 262A 'RoP' provide that the judge may order prohibit or restrict of access.
17. The respondent argues that restricting this information to specific persons is unnecessary because it has been already disclosed by the applicant in Exhibit B (which is not included in the application) and in past negotiations occurred between the parties in 2021. Additionally, the

defendant points out that in the statement of claim the plaintiff expressed interest in stipulating a license agreement with the defendant at effective license rates already accepted by [REDACTED]

18. The respondent's claim of disclosure of the relevant information in other documents submitted by the applicant into proceedings lacks sufficient evidence. Similarly, there is no proof that this information was shared during past negotiations.
19. Furthermore, the applicant's desire to offer the respondent a licensee at rates already accepted by [REDACTED] does not imply a willingness to share the relevant information.
20. Therefore, the applicant's interest in keeping secret, contained in the two agreements, even from the opposing party, is undeniable.
21. Conversely, the respondent has not demonstrated any specific interest in accessing these documents or the information they contain.
22. It follows that the application should be granted and access to the agreements in question should be restricted to Microsoft attorneys and Microsoft directors who have a legitimate need to access this information.
23. This measure appears to be proportionate and suitable to guarantee the protection of confidential information and the right to a fair trial and a proper defence.

ORDER

The judge-rapporteur,

pursuant to Article 58 'UPCA' and Rule 262A 'RoP',

orders that the access to Agreements A & B is restricted to Microsoft attorneys and Microsoft directors who have a legitimate need to access these Agreements for the purposes of the current proceedings.

Issued on 26 June 2024.

The Presiding judge and judge-rapporteur

Paolo Catalozzi

Paolo Catalozzi  Firmato digitalmente da Paolo
Catalozzi
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ORDER DETAILS

Order no. ORD_27206/2024 in ACTION NUMBER: ACT_18406/2024

UPC number: UPC_CFI_164/2024

Action type: Infringement Action

Related proceeding no. Application No.: 19084/2024

Application Type: APPLICATION_ROP262A