



Reference no.:
UPC_CoA_363/2025
APL_19133/2025
App 33712/2025

Order
of the Court of Appeal of the Unified Patent Court
issued on 21 August 2025
concerning a request for rectification (R. 353 RoP)

HEADNOTES

As a general rule, a request to include a R 356.3 RoP notice in a decision by default must be submitted in the proceedings concerning the decision by default.

KEYWORDS

Request for rectification; decision by default; subject matter of the proceedings.

APPLICANT AND DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Microsoft Corporation, One Microsoft Way, 98052-6399 Redmond, USA (hereinafter "**Microsoft**"),
represented by Prof. Tilmann Müller-Stoy, attorney at law, Bardehle Pagenberg, Partnerschaft mbB
Patentanwälte Rechtsanwälte

RESPONDENT AND CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Suinno Mobile & AI Technologies Licensing Oy, PO Box 346, 00131 Helsinki, Finland (hereinafter "**Suinno**"),

represented by Petri Eskola, attorney at law, Backström & Co

PATENT IN SUIT

EP 2 671 173

DECIDING JUDGES

Panel 1a

Klaus Grabinski, presiding judge and President of the Court of Appeal

Emmanuel Gougé, legally qualified judge and judge-rapporteur

Peter Blok, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED DECISION OF THE COURT OF APPEAL

- Decision of the Court of Appeal of 12 July 2025,
ORD_32844/2025 in APL_19133/2025 UPC_CoA_363/2025.

FACTS AND REQUESTS OF THE PARTIES

1. Suinno filed an infringement action against Microsoft before the Court of First Instance (ACT_18406/2024_UPC_CFI_164/2024), following which Microsoft filed a request for security for costs which was granted by the CFI (Order of 27 September 2024, (ORD_45914/2024)).
2. In the absence of payment of the security for costs by Suinno, Microsoft filed a request for a decision by default with the CFI pursuant to R. 355 and R. 158.5 RoP, which included a request to put Suinno on notice that a further decision by default shall be final pursuant to R. 356.3 RoP. The request was rejected and leave to appeal was refused (Paris Central Division, Order of 2 April 2025, ORD_68708/2024).
3. Microsoft filed a request for discretionary review to the Court of Appeal, which was allowed by the standing judge under R. 220.4 RoP. The request did not include a request to put the Claimant on notice pursuant to R. 356.3 RoP. The Court of Appeal, after having heard the parties, revoked the order of the CFI of 2 April 2025 and issued a decision by default against Suinno (decision 12 July 2025, ORD_32844/2025, hereafter the “impugned decision”).
4. On 25 July 2025 Microsoft filed a request under R. 353 RoP against the impugned decision, requesting the Court of Appeal to rectify the decision in that it should be supplemented by a notice according to R. 356.3 RoP (App_33712/2025).
5. Microsoft refers to R. 356.3 RoP, which states that an Application to set aside a decision by default shall not be granted if a party has been put on notice in an earlier decision that a further decision by default shall be final, and argues that such notice should have been included in the impugned decision to exclude the possibility that Suinno will default again and thus prevent or at least delay a legally binding termination of the infringement proceedings and, alternatively, that Suinno should be put on notice that a further decision shall be final in a separate order.
6. In its Response, Suinno requests the Court to reject the application for rectification, arguing inter alia that it was never put on notice that a further decision by default would be final and that such a request was not discussed by the Court or the Parties.

GROUND FOR THE ORDER

7. According to R. 353 RoP, the Court may, by way of order, of its own motion or on application by a party made within one month of service of the decision or order to be rectified, after hearing the parties, rectify clerical mistakes, errors in calculation and obvious slips in the decision or order.

Admissibility

8. The application for rectification is admissible as it was filed by Microsoft within one month of service of the decision against which the application has been filed.

No ground for rectification

9. The application is, however, not well founded for the following reasons.
10. Under Art 76 (1) UPCA the Court shall decide in accordance with the requests submitted by the parties and shall not award more than is requested, thus determining the subject matter to the case. This provision also applies in appeal proceedings.
11. It is reflected in the Rules of Procedure, according to which the subject-matter of the proceedings before the Court of Appeal is constituted by the requests, facts, evidence and arguments submitted by the parties (R. 222.1 RoP), whether in the Statement of appeal (R. 225 (e) RoP), in the Statement of grounds of appeal (R. 226 RoP) or, as in the present case, in the request for a discretionary review (R. 220.3 RoP).
12. In the impugned decision, the Court of Appeal ruled on the basis of the request filed by Microsoft in its Request for discretionary review filed on 22 April 2025, which did not include a request that a further decision by default shall be final and that Suinno be put on notice pursuant to R. 356.3 RoP.
13. The Court of Appeal is bound by the request filed by Microsoft in the appeal proceedings. It was not requested to put Suinno on notice pursuant to R. 356.3 RoP and, consequently, not part of the subject-matter of the proceedings in the appeal APL_19133/2025 UPC_CoA_363/2025.
14. It follows that the request for rectification shall be rejected, as the request made by Microsoft pursuant to R. 353 RoP does not relate to a rectification of clerical mistakes, errors in calculation or obvious slips in the impugned decision.
15. As a general rule, a request to include a R 356.3 RoP notice in a decision by default must be submitted in the proceedings concerning the decision by default. Microsoft failed to present any facts or circumstances which could support an exception to this rule.
16. Microsoft's alternative request to issue the notice in a separate order is, therefore, also not well founded.

ORDER

The application for rectification and the alternative request are dismissed.

This order was issued on 21 August 2025.

Klaus Grabinski
President of the Court of Appeal

Emmanuel Gougé
Legally qualified judge and judge-rapporteur

Peter Blok
Legally qualified judge