

PROCEDURAL ORDER
of the Court of Appeal of the Unified Patent Court issued
on 25 August 2025
concerning an application for suspensive effect (R. 223 RoP)

APPLICANT (CLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

Sun Patent Trust, 437 Madison Avenue, 35th Floor, 10022 New York, USA
(hereinafter referred to as “**SUN PATENT**”)

represented by Caroline Levesque, attorney-at-law, HOYNG ROKH MONEGIER, Paris, France, and other representatives from that firm

RESPONDENTS (DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Vivo Mobile Communication Co., Ltd.**, No. 1, Vivo Road, Chang'an Town, Dongguan City, Guangdong 523866, China
2. **Vivo Tech GmbH**, Speditionstrasse 21 40221 Düsseldorf, Germany
3. **Vivo Mobile Communication Iberia SL**, Calle Orense 58, Planta 12 C, 28020 Madrid, Spain
(hereinafter jointly referred to as “**VIVO**”)

all represented by Dr. Georg Andreas Rauh, attorney-at-law, Vossius & Partner, Munich, Germany, and other representatives from that firm

PATENT AT ISSUE

EP 3 407 524

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

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Paris Local Division, 31 July 2025, infringement action ACT_18934/2025
UPC_CFI_362/2025, App_18982/2025 UPC_CFI_362/2025, ORD_33183/2025

LANGUAGE OF THE PROCEEDINGS

English

FACTS, PARTIES REQUESTS AND SUBMISSIONS

1. On 18 April 2025, SUN PATENT an action against VIVO before the Court of First Instance, Paris Local Division (ACT_18934/2025 UPC_CFI_362/2025) for infringement of the patent at issue, claiming inter alia that the terms of a licence to the patent at issue offered by SUN PATENT to VIVO are fair, reasonable and non-discriminatory" ("FRAND").
2. On the same day, SUN PATENT filed an application for protection of confidential information under R. 262A RoP (App_18982/2025 UPC_CFI_362/2025), requesting inter alia that the access to the unredacted version of the statement of claim and relevant exhibits containing confidential information classified as highly confidential information (hereafter "HCI") shall be restricted to certain persons, including VIVO's legal representatives as well as, under certain conditions, no more than three employees of VIVO. SUN PATENT subsequently limited its request for confidentiality, pursuant to R. 263 RoP, with regard to the list of individuals having access to the HCI, requesting the Court to exclude VIVO employees from having access to the HCI and to limit the confidentiality regime to an "External Eyes Only" regime.
3. On 31 July 2025, the Paris Local Division restricted the access to information categorised as confidential and highly confidential to specific persons (impugned order, ORD_33183/2025) including three employees of VIVO.
4. The Local Division granted leave to appeal (order of 11 August 2025, ORD_34317/2025).
5. On 12 August 2025, SUN applied for suspensive effect under R. 223.4 RoP (App_34719/2025 UPC_CoA_740/2025) and VIVO submitted comments on its own motion (App_34758/2025, App_34757/2025) objecting against the application for suspensive effect.
6. In the absence of a Statement of appeal already filed and of the payment of an appeal fee, the Court of Appeal rejected the application as inadmissible (Order of 15 August 2025, ORD_34931/2025).
7. On 16 August 2025 SUN lodged a Statement of appeal under R. 220.2 RoP against the impugned order (PR_APL_34967/2025 UPC_CoA_757/2025)), requesting that the unredacted version of the statement of claim and relevant exhibits containing the HCI shall not be accessible to VIVO's employees or, in the alternative, that access to said HCI shall be granted to no more than three VIVO's employees who shall not participate in or advise upon any licensing negotiations with the counterparties to the disclosed license agreements or related agreements for a certain period.

8. On 17 August 2025, filed an application for suspensive effect under R. 223 RoP (App_34971/2025 UPC_CoA_758/2025).
9. SUN PATENT requests that the appeal (APL_34967/2025 UPC_CoA_757/2025) shall have suspensive effect to the extent that the impugned order has granted access to the HCI to three of VIVO's employees and that such a suspensive effect will remain until the issuance of a final decision by the Court of Appeal on the appeal against the impugned order.
10. SUN PATENT argues inter alia that an appeal would become pointless if the HCI was disclosed to the VIVO's designated employees and that a suspensive effect is thus necessary to safeguard SUN PATENT's rights to be heard and to a fair trial.
11. VIVO requests the Court to reject the application as inadmissible under R. 223.5 RoP, according to which there shall be no suspensive effect for an appeal of an order pursuant to R. 220.2 RoP or, alternatively, as unfounded, arguing inter alia that the enforcement of the impugned order does not raise a risk of manifestly disproportionate and irreparable consequences.

GROUND FOR THE ORDER

12. SUN PATENT's Application for suspensive effect is admissible but not well founded.

Admissibility

13. Under Art. 74 UPCA an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties.
14. Although R.223.5 RoP provides that there shall be no suspensive effect for an order pursuant to (amongst other) R.220.2 RoP, the Court of Appeal considers that this does not preclude that an application for suspensive effect is lodged – and if justified, granted – for such orders based on the prevalence of Art. 74 UPCA (CoA order of 19 June 2024, UPC_CoA_301/2024, ICPillar v. ARM, para 4).

No ground for suspensive effect

15. The application is not well founded and shall be rejected for the following reasons.
16. Although suspensive effect may not be excluded from the outset, the Court of Appeal can grant the application only if the circumstances of the case justify an exception to the principle that the appeal has no suspensive effect. An exception to the principle that an appeal has no suspensive effect may apply if the appealed order or decision is manifestly erroneous, or if the appeal becomes devoid of purpose in the absence of suspensive effect (CoA 3 July 2025, UPC_CoA_435/2025, APL_23408/2025, NUC v WARMCOOK; CoA 19 June 2024, UPC_CoA_301/2024 APL_33746/2024 App_35055/2024 - ICPillar vs. ARM).

17. In its application for suspensive effect, SUN PATENT argues that, should the HCI be disclosed to VIVO's designated employees, an appeal would become pointless and that its interests in maintaining the status quo exceptionally outweighs the interest of VIVO.
18. SUN PATENT has however failed to establish that the appeal would become devoid of purpose in the event the HCI is disclosed to the three VIVO's designated employees.
19. The issue at stake in relation to the HCI is not only the access to said information but the conditions and the extent under which said information may be used by the three VIVO's designated employees.
20. Under the impugned order, all persons authorized to have access to the HCI, including the three VIVO's designated employees, are bound by a duty not to use or disclose said information for any other purpose than the court proceedings and any culpable breach of the impugned order may be sanctioned by a penalty payment imposed by the Court (impugned order, p. 14, operative part, III and IV). SUN PATENT did not show, based on previous behaviour, that there is a risk that the three VIVO employees will, in breach of their duty, disclose the HCI.
21. In the event the Court of Appeal, in the pending appeal, decided to revoke the impugned order insofar as it held that the HCI shall be accessible to the three VIVO's designated employees, said employees would no longer have access to, and would not be allowed to use the unredacted version of the statement of claims and relevant exhibits disclosing the HCI, as well as any further exchange of submissions and exhibits containing HCI, whether for the purpose of these court proceedings or any other purpose.
22. Also, should the Court of Appeal decide to follow SUN PATENT's alternative request that VIVO's designated employees shall not be involved in licensing negotiations with designated counterparties for a certain period, the appeal proceedings would address SUN PATENT's concern as to the access to the HCI and the conditions under which VIVO's designated employees may use said information.
23. It follows that the appeal will not become devoid of purpose as a result of not granting the application for suspensive effect.
24. SUN PATENT has not further demonstrated any other facts or circumstances that could justify granting suspensive effect. Even if the disclosure of the HCI to the three employees would to some extent undermine the purpose of the appeal, SUN PATENT has not shown that its interests in excluding the three employees from the confidentiality club pending the appeal outweigh VIVO's interests in granting them immediate access, given the current deadlines for VIVO to file its written submissions and the relevance of the HCI to these submissions.

PROCEDURAL ORDER

The Court of Appeal rejects the application for suspensive effect.

This order was issued on 25 August 2025.

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

Emmanuel Gougé, legally qualified judge and judge-rapporteur

Peter Blok, legally qualified judge