

UPC_CFI_361/2025
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 26/08/2025

concerning R. 9.1 and R. 9.3 (a) RoP

APPLICANTS

- 1) Vivo Mobile Communication Iberia SL
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- 2) Vivo Tech GmbH
Speditionstrasse 21
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- 3) Vivo Mobile Communication Co., Ltd.
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Represented by
Dr Georg Andreas Rauh

RESPONDENT

- 1) Sun Patent Trust
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Represented by
Sabine Agé

PATENT AT ISSUE

Patent no.

Proprietor

EP3852468

Sun Patent Trust

DECIDING JUDGE

Presiding judge &
Judge-rapporteur

Camille Lignières

LANGUAGE OF PROCEEDINGS: English

ORDER

Summary of the facts and proceedings

In the context of an infringement action brought before the present Division on April 18, 2025, SUN PATENT TRUST requested protection for certain information considered confidential under Art. 58 UPCA and R. 262A RoP.

Following a case management meeting on the confidentiality issue with all the representatives, the judge rapporteur issued an order on July 3, 2025, allowing the defendants to provide their comments on the request filed under R 262A by setting a provisional confidentiality circle allowing, in particular, the defendants' representatives and their "legal team" to have access to all the documents in the file "unredacted," and provided that the starting point for the time limits for filing a Preliminary Objection (PO) or the Statement of Defense (SoD) would take effect upon the final order on the confidentiality regime, in these terms: *"The Court's order setting the confidentiality regimes and granting access to the Confidential and Highly Confidential Information shall specify that the proceedings deadlines agreed between the parties, i.e. one month for any Preliminary objection and three months for the Statement of Defense, shall run as of the date of this order."* Moreover, one natural person from the Defendants was allowed to have access to the names of the Claimant's licensees.

The final order establishing a confidentiality circle for access to information classified as confidential was issued by the full panel on July 31, 2025. The claimant challenged the composition of the confidentiality circle for access to information classified as "highly confidential" and appealed on this point. Leave to appeal was granted, and a request for suspensive effects was filed before the Court of Appeal.

It appears from the parties' explanations that SUN PATENT TRUST asked VIVO's representatives not to grant immediate access to the three natural persons mentioned in the order of July 31, provided that they intended to file an appeal, and VIVO voluntarily complied with this request. Against this background, VIVO requested clarification from the Judge rapporteur on the starting point of the time limits for filing a PO (one month R. 19 RoP) and the SoD (three months according to R. 23 RoP).

According to VIVO, the time period did not begin to run because the order of July 31 July 2025 was not voluntarily enforced by the parties and because that order did not expressly mention that it

constituted the starting point for the filing of the PO and the SoD. VIVO submitted an alternative request for extension time under R.9.3 RoP.

According to SUN PATENT TRUST, the starting point should be set at the date of the present order, and alternatively the Claimant requests that: *" the deadline for filing a preliminary objection and the Statement of defence on the claims under A.I., A.III., and B of the Operative Part of the Statement of claim will start at the date of its order; the deadline for responding to Operative Part A.II. of the Claimant's Statement of claim will start at the date of the Court of Appeal decision against the order of 31 July 2025. "*

Grounds

Concerning the request on the starting point of the time limits (runtime of terms for filing PO and SoD) under R. 9.1 RoP

Even though the order of July 31, 2025, did not expressly mention that it constituted the starting point for the time limits, it is clear from reading the order of July 3, 2025, issued following the case management meeting where all the parties agreed on this issue, that the final order defining the confidentiality circle set that starting point.

It should be noted that the defendants' representatives have had access to the entire "unredacted" file since July 3, 2025, and that there is no suspensive effect for an appeal of an order pursuant to R. 220. 2 RoP, unless the Court of Appeal (CoA) decides otherwise at the motivated request of one of the parties under R. 223 RoP.

In the present case, the UPC CoA rejected the request for suspensive effects by two orders (UPC_CoA_759/2025). On 15 August 2025, the Court stated that the request was inadmissible, and, on 25 August 2025, stated that the request was not well-founded.

Consequently, the time limits for filing PO and SoD started to run on July 31, 2025.

Concerning the alternative request for an extension of terms for filing a PO and the SoD (R.9.3 RoP)

The Court notes that the extension of the time limits provided for in R.9.3 RoP must be granted very strictly, given the principle of procedural efficiency and the objective of dealing with cases on the merits within 12 months-period.

Taking into account the principle of the fair trial, the judge rapporteur notes that the appeal against the order of 31 July 2025 relates only to the 'highly confidential' information concerning the FRAND objection that the defendants could raise. It does not relate to issues that can be raised in a preliminary objection, nor to questions concerning the validity of the patent on which the action is based, nor to the acts of reproduction of the claims of that patent alleged against the defendants. However, the Judge rapporteur agrees to take into consideration the agreement between the parties according to which VIVO accepted voluntarily to postpone until today, giving access to the unredacted file to the three natural persons designated in the final confidentiality order upon the request of SUN PATENT TRUST.

Consequently, the judge-rapporteur will grant an extension for filing a Preliminary Objection (PO) and lodging the Statement of Defense (SoD), but strictly limited to three weeks (nearly corresponding to the period between 31 July 2025 to the date of the present order).

Consequently, VIVO shall file a potential PO by 28 September 2025 and their SoD by 28 November 2025.

For these reasons, the judge rapporteur:

- Orders that the deadline for filing a Preliminary Objection and the Statement of Defense starts at the date of the order issued on 31 July 2025,
- Allows an extension of the time period requested by VIVO for three weeks starting from 31 July 2025,
- Invites VIVO to lodge potentially a Preliminary objection by 28 September 2025, and their Statement of Defense by 28 November 2025.
- This order may be reviewed by the panel under R. 333 RoP.

Issued in Paris, on 26 August 2025.

C. LIGNIERES, the Judge-rapporteur

ORDER DETAILS

Order no. ORD_34798/2025 in ACTION NUMBER: ACT_18933/2025

UPC number: UPC_CFI_361/2025

Action type: Infringement Action

Related proceeding no. Application No.: 34711/2025

Application Type: Generic procedural Application (R. 9.1 and R. 9.3(a) RoP)