

UPC\_CFI\_362/2025  
Preliminary Order  
of the Court of First Instance of the Unified Patent Court  
delivered on 13/10/2025

*concerning the runtime and Preliminary Objection*

APPLICANTS

- 1) Vivo Mobile Communication Iberia SL  
Calle Orense 58, Planta 12 C  
28020 - Madrid – ES
- 2) Vivo Tech GmbH  
Speditionstrasse 21  
40221 - Düsseldorf – DE
- 3) Vivo Mobile Communication Co., Ltd.  
No. 1, Vivo Road, Chang'an Town  
523866 - Dongguan City, Guangdong - CN

Represented by  
Dr Georg Andreas Rauh

RESPONDENT

- 1) Sun Patent Trust  
437 Madison Avenue,  
35th Floor - 10022 - New York - US

Represented by  
Caroline Levesque

## PATENT AT ISSUE

| <i>Patent no.</i> | <i>Proprietor</i> |
|-------------------|-------------------|
| EP3407524         | SUN PATENT TRUST  |

## DECIDING JUDGE

|                                       |                   |
|---------------------------------------|-------------------|
| Presiding judge &<br>Judge-rapporteur | Camille Lignières |
|---------------------------------------|-------------------|

LANGUAGE OF PROCEEDINGS: English

## ORDER

### Summary of the facts and proceedings

On 18 April 2025, SUN PATENT brought before the present Division an infringement action against VIVO.

On 26 August 2025, the judge rapporteur granted an extension of time under R. 9.3 RoP, ordering that the Statement of Defence (SoD) be filed by 28 November 2025.

On 29 September 2025, VIVO filed a Preliminary Objection (PO) arguing primarily that the UPC lacks jurisdiction, claiming that only a FRAND defence can be dealt with by the UPC, but that in this case, SUN PATENT requested a ruling on this issue as the main claim.

In the Preliminary Objection, VIVO asks the judge-rapporteur to rule first, by preliminary decision, on an extension of the time limit for filing its SoD pending the PO's decision becoming final (including a possible appeal), or a time limit of two months from the date of the PO's decision, or from the date of the service of the CFI's decision.

VIVO mainly contends that this is the first time that the UPC will have to rule on its jurisdiction, while the FRAND issue is the subject of a main application and not a defence.

In an email dated 1 October 2025 addressed to the registry and copied to all parties, SUN PATENT objects to any extension by preliminary order, in particular by arguing that no exceptional circumstances justify such an extension of the deadlines in that, as VIVO said, this FRAND issue will in any event be dealt with as a defence in this case.

### Grounds

Rule 19.6 RoP states that when a Preliminary Objection is filed, this should not affect the deadline for filing the Statement of Defence, unless the Judge rapporteur decides otherwise.

In the present litigation concerning a SEP patent, the defendants have been ready to address the FRAND issue since their representatives became aware of this case. As SUN PATENT rightly argued, VIVO would have raised a FRAND defence anyway. So, the judge rapporteur considers that there are no exceptional circumstances that could derogate from the principle of procedural efficiency, according to which the filing of a Preliminary Objection should not slow down the pace of the main proceedings.

SUN PATENT's written comments in response to the Preliminary Objection are expected by 21 October 2025.

The decision on the Preliminary Objection will be rendered in the week beginning 27 October, and the Statement of Defence is expected on 28 November 2025, as initially decided by procedural order of 26 August 2025.

For these reasons, the judge rapporteur:

- Denies the request to postpone the filing of the Statement of Defence under R. 19.6 RoP,
- This order may be reviewed by the panel under R. 333 RoP.

Issued in Paris, on 13 October 2025.

*C. LIGNIERES, the Judge-rapporteur*

#### ORDER DETAILS

UPC number: UPC\_CFI\_362/2025

Action type: Infringement Action

Preliminary Order issued on 13 October 2025 related to the Preliminary Objection