



Appeal n°:

UPC_CoA_755/2025

UPC_CoA_757/2025

APL_34965/2025

APL_34967/2025

ORDER

**of the Court of Appeal of the Unified Patent Court
concerning a R. 9.3 RoP request for stay of proceedings/term extension
issued on 31 October 2025**

HEADNOTES

- Although, under R. 21.2 RoP, a stay may be granted under exceptional circumstances, this is under the condition that an appeal against a decision or an order on a preliminary objection under R. 21.1 RoP has already been lodged, not by anticipation or speculation of such an appeal.
- A strict application of R. 21 RoP follows from the systematics of the Rules of Procedure which, under subsection 2 (R. 19 to 21 RoP), provide for specific provisions concerning the “Procedure when the defendant raises a preliminary objection” which may differ from general provisions, such as the ones applicable to the stay of proceedings under Part 5, Chapter 4 (R. 295 to 298 RoP).
- R. 295 RoP refers to the “Court”, which implies that it applies both to the Court of First instance and to the Court of Appeal. As a general rule, it is not for the Court of Appeal to decide on the stay of proceedings pending before the CFI, unless exceptional circumstances so require. This is because the CFI is better informed of all the relevant circumstances of the case pending before it and because the CFI has a margin of discretion in managing the case.

KEYWORDS

Stay of proceedings, extension of terms; R. 21, 295 RoP

APPLICANTS (RESPONDENTS IN THE APPEAL, DEFENDANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

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- 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 “**VIVO**”)
represented by Georg Rauh, attorney-at-law, VOSSIUS

APPELLANT (CLAIMANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Sun Patent Trust, 437 Madison Avenue, 35th Floor, 10022 New York, United States of America
(hereinafter “**SUN PATENT**”)

represented by

- Sabine Agé, attorney-at-law, and other representatives of HOYNG ROKH MONEGIER (in APL_34965/2025, App_35938/2025)
- Caroline Levesque, attorney-at-law, and other representatives of HOYNG ROKH MONEGIER (in APL_34967/2025, App_35936/2025)

INTERVENER IN THE PROCEEDINGS BEFORE THE COURT OF APPEAL

APPLE Inc., One Apple Park Way Cupertino, CA 95014, United States
(hereinafter “**APPLE**”)

represented by Oscar Lamme, attorney-at-law, and other representatives of Simmons & Simmons LLP

PATENTS AT ISSUE

EP 3 852 468 (in UPC_CoA_755/2025)

EP 3 407 524 (in UPC_CoA_757/2025)

PANEL AND 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 ORDERS OF THE COURT OF FIRST INSTANCE

- In appeal proceedings CoA_755/2025:

Order of the Court of First Instance of the Unified Patent Court, Paris Local Division, dated
31 July 2025

Reference numbers:

UPC_CFI_361/2025
ACT_18933/2025
App_18978/2025
ORD_33179/2025

- In appeal proceedings CoA_757/2025:

Order of the Court of First Instance of the Unified Patent Court, Paris Local Division, dated
31 July 2025

Reference numbers:

UPC_CFI_362/2025
ACT_18934/2025

FACTS AND REQUESTS OF THE PARTIES

The first instance proceedings

1. On 18 April 2025 SUN PATENT brought an infringement action against VIVO before the Court of First Instance, Paris Local Division (hereafter “Paris LD”) (ACT_18933/2025 UPC_CFI_361/2025), seeking, inter alia, a determination of the terms of a FRAND license between the parties. According to the runtime of terms, VIVO is due to file its Statement of Defense (hereafter “SoD”) and Counterclaim for revocation (hereafter “CfR”) by 28 November 2025.
2. On the same day SUN PATENT filed an application for confidential information under R. 262A RoP (App_18978/2025 UPC_CFI_361/2025) which was partially granted (impugned order, Paris LD, 31 July 2025, ORD_33179/2025). An appeal was lodged by SUN PATENT (UPC CoA 755/2025 and 757/2025) for which the oral hearing is scheduled on 26 November 2025.
3. On 29 September 2025, VIVO filed a preliminary objection (hereafter “PO”) under R. 19 RoP, arguing that the Court lacks jurisdiction to decide on SUN PATENT’s request for a FRAND rate determination and requested, in the same filing, that the terms for filing its SoD and CfR shall be stayed until the decision on the PO has become final, or, in the alternative, until a decision by the CFI on the PO has been rendered, and set a new term of two months for filing the SoD and CfR starting from the day of service of such final decision, including a potential appeal, in the alternative service of the decision by the CFI, has been effected.
4. In a preliminary order of 13 October 2025, the judge-rapporteur denied the request to postpone the filing of the SoD under R. 19.6 RoP, which was confirmed by the Panel following a Panel review application filed by VIVO pursuant to R. 333 RoP (Paris LD Order of 28 October 2025).
5. On 30 October 2025, the Paris LD rejected the PO.

The appeal proceedings

6. On 27 October 2025, VIVO filed a request under 9.3 RoP requesting the Court of Appeal to
 - (a) stay the CFI proceedings (UPC_CFI_361/2025 and UPC_CFI_263/2025) pending the appeal proceedings (CoA_755/2025, CoA_757/2025) concerning the impugned orders (ORD_33179/2025 and ORD_33183/2025) pursuant to R. 295 (c) (ii) RoP mutatis mutandis and/or R. 21.2 RoP mutatis mutandis,
 - (b) in the alternative, set a new term of two months for filing the Statement of Defense (“SoD”) as well as the Counterclaim for Revocation (“CfR”) starting from the day of service of the decision in the appeal proceedings (CoA_755/2025, CoA_757/2025) concerning the confidentiality order issued by the Local Division Paris (ORD_33179/2025 and ORD_33183/2025).
7. According to VIVO, the main reason for this stay/term extension request is the uncertainty that the unprecedented jurisdictional challenge of an active FRAND determination request creates for VIVO’s proper defence strategy. VIVO submits that the procedural constellation in this case is exceptional to the extent that

the ability of VIVO to prepare and file their SoD and CfR depends on the outcome of two directly interrelated matters that remain unresolved, namely (i) the pending PO challenging the UPC's jurisdiction to adjudicate Claimant's active FRAND rate determination claim and (ii) the pending confidentiality appeal concerning the order of 31 July 2025 (CoA_755/2025, CoA_757/2025).

8. VIVO argues that, under R. 21.1 and 295 (c) (ii) RoP, the Court may stay proceedings if the CFI disposed of a PO and that even though the request arises in a context where the PO is still pending before the CFI, the logic underpinning R. 295 (c) (ii) RoP supports the application of the stay *mutatis mutandis*, given the novel and interdependent issues at hand.

GROUND FOR THE ORDER

Appeal against decision or order on a Preliminary objection (R. 21 RoP)

9. R. 21.2 RoP provides for the conditions under which, following an appeal lodged against the decision or order of the judge-rapporteur in accordance with R. 21.1 RoP, the first instance proceedings may be stayed: if such an appeal is lodged, proceedings at first instance may be stayed by the judge-rapporteur or the Court of Appeal on a reasoned request by a party (R. 21.2 RoP).
10. The appeal pending before the Court of Appeal is not an appeal against a decision or an order on a preliminary objection under R. 21.1 RoP. R. 21.2 RoP is therefore not applicable.
11. Contrary to VIVO's submissions, R. 21.2 RoP may not, due to alleged exceptional circumstances, apply *mutatis mutandis* in the present case. Although this Court has held that, under R. 21.2 RoP, a stay may be granted under exceptional circumstances (ORD_37317/2024, CoA_227/2024, *Mala v Nokia*, para. 9), this is under the condition that an appeal against a decision or an order on a preliminary objection under R. 21.1 RoP has already been lodged, not by anticipation or speculation of such an appeal.
12. A strict application of R. 21 RoP also follows from the systematics of the Rules of Procedure which, under subsection 2 (R. 19 to 21 RoP), provide for specific provisions concerning the "Procedure when the defendant raises a preliminary objection" which may differ from general provisions, such as the ones applicable to the stay of proceedings under Part 5, Chapter 4 (R. 295 to 298 RoP).

Stay of proceedings (R. 295 RoP) and extension of time limits (R. 9.3 RoP)

13. R. 295 RoP provides for several situations (a) to (m) in which the Court may exercise its discretion in deciding to stay proceedings. R. 295 RoP refers to the "Court", which implies that it applies both to the Court of First instance (hereafter "CFI") and to the Court of Appeal. As a general rule, it is however not for the Court of Appeal to decide on the stay of proceedings pending before the CFI, unless exceptional circumstances so require. This is because the CFI is better informed of all the relevant circumstances of the case pending before it and because the CFI has a margin of discretion in managing the case.
14. The same applies to the extension of time limits for submissions in the first instance proceedings under R. 9.3 RoP. As a general rule, such extensions must be decided upon firstly by the CFI.

15. VIVO did not demonstrate that in the present case the stay of the first instance proceedings or the extension of time limits must exceptionally be decided firstly by the Court of Appeal. It failed to provide any justification for not filing the application with the CFI.
16. Considering that VIVO requested the Court of Appeal to decide on an expedited basis and considering that the request is rejected, this order is issued without the other parties being heard.

ORDER

The Court of Appeals rejects VIVO's request.

This procedural order was issued on 31 October 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.