



UPC Court of Appeal  
UPC\_CoA\_883/2025  
UPC\_CoA\_892/2025

**DECISION**  
**of the Court of Appeal of the Unified Patent Court**  
**issued on 24 February 2026**  
**concerning an Application for rehearing (R. 245 RoP)**

HEADNOTES

Requests for a rehearing based on a fundamental procedural defect pursuant to Art. 81(1)(b) UPCA and R. 247(e and d) RoP (fundamental procedural defect)

KEYWORDS

Rehearing (Art. 81(1) UPCA; R. 245 RoP); fundamental procedural defect

APPLICANT AND APPELLANT (DEFENDANT IN THE R. 158 RoP APPLICATION AND CLAIMANT IN THE MAIN INFRINGEMENT ACTION BEFORE THE COURT OF FIRST INSTANCE)

**Suinno Mobile & AI Technologies Licensing Oy**, Helsinki, Finland  
(hereinafter "Suinno")

represented by Petri Eskola, attorney at law, Backström & Co Attorneys, Helsinki, Finland

RESPONDENT (APPLICANT IN THE R. 158 RoP APPLICATION AND DEFENDANT IN THE MAIN INFRINGEMENT ACTION BEFORE THE COURT OF FIRST INSTANCE)

**Microsoft Corporation**, Redmond, USA  
(hereinafter: "Microsoft")

represented by Prof. Dr. Tilman Müller-Stoy, attorney at law, Bardehle Pagenberg, Munich, Germany

PATENT AT ISSUE

EP 2 671 173

LANGUAGE OF THE PROCEEDINGS

English

## PANEL AND DECIDING JUDGES

Panel 2

Rian Kalden, presiding judge

Ingeborg Simonsson, legally qualified judge and judge-rapporteur

Patricia Rombach, legally qualified judge

## ORDER AND DECISION UNDER REVIEW

Order of the Court of Appeal of the Unified Patent Court dated 12 July 2025, UPC\_CoA\_596/2025

Decision of the Court of Appeal of the Unified Patent Court dated 12 July 2025, UPC\_CoA\_363/2025

## SUMMARY OF FACTS AND PROCEDURAL HISTORY

1. Suinno lodged an infringement action based on the patent at issue against Microsoft with the Paris Central Division.
2. On 27 September 2024 the Central Division ordered Suinno to provide a security for costs to Microsoft in the amount of € 300,000 within one month of service of its order. On 1 October 2024, the judge-rapporteur informed Suinno that, pursuant to R. 158.4 RoP, if it failed to provide the security within the time stated, a decision by default may be given in accordance with R. 355 RoP.
3. Suinno appealed the security order, requesting that the amount of the security for costs be reduced from € 300,000 to € 100,000 (UPC\_CoA\_596/2025).
4. Meanwhile, when Suinno did not provide the security, Microsoft turned to the Central Division and requested a decision by default pursuant to R. 355 and R. 158.5 RoP. This request was rejected by the Central Division.
5. The order rejecting the request for a default decision was appealed by Microsoft (UPC\_CoA\_363/2025).
6. The oral hearings for the two appeals were held together on 17 June 2025, and the respective decision and order were issued by the Court of Appeal on 12 July 2025.
7. As regards the CFI security order, the Court of Appeal rejected the appeal (Order under review) and as regards the CFI order rejecting the request for a default decision, the Court of Appeal set aside the Central Division's order, gave a decision by default against Suinno, dismissed the infringement action and ordered Suinno to pay the costs of the first instance and appeal proceedings regarding the infringement action (the Decision under review).
8. Proceedings for a cost decision were initiated by Microsoft before the Central Division on 7 August 2025, UPC\_CFI\_724/2025. A final order was issued on 6 November 2025. Suinno applied for leave to appeal the order and applied for suspensive effect. The Application for suspensive effect was dismissed by order of the Standing judge on 24 November 2025 and leave to appeal was denied by order of 24 December 2025 (UPC\_CoA\_911/2025).

#### PARTIES' SUBMISSIONS AND REQUESTS

9. Suinno submits that the Court of Appeal reached the Order and Decision under review by means of procedural defects fundamental and intolerable to the legal system, and that these defects produced the outcome. It contends that the decision was made without deciding on a request relevant to that decision, or that a breach of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) has occurred.
10. Suinno requests that the Court of Appeal set aside the Order and Decision under review, allow rehearing and re-open the infringement proceedings in the main action pursuant to R. 245.2(a) and R.247 (d and e) RoP. In addition, Suinno requests that the Court of Appeal "grant suspensive effect to APP 34440/2025 for a cost decision pursuant to R. 252".
11. Microsoft is defending the Order and Decision under review and requests that the Court of Appeal reject the Application for rehearing and order Suinno to bear the costs of the proceedings.

#### REASONS FOR THE DECISION

12. The Applications for rehearing are not allowable, because the requirements set forth in Art. 81(1) of the Agreement on a Unified Patent Court (UPCA) and R. 247 Rules of Procedure (RoP) have not been complied with. In relation to the Order and Decision under review, the existence of a fundamental procedural defect has not been established.
13. When considering whether a fundamental procedural defect exists, the following has to be taken into account, insofar as relevant here (see UPC\_CoA\_405/2024, decision of 19 June 2025, *Alexion vs Amgen*, and UPC\_CoA\_402/2024, decision of 19 June 2025, *Alexion vs Samsung*).
  - The legislator has explicitly chosen that decisions by the Court of Appeal are to be final. A further appeal from these decisions is not foreseen in the UPCA or RoP.
  - Art. 81(1) UPCA offers the possibility to request a rehearing after a final decision when, in short, it is based on an act which has been held to constitute a criminal offence, or in the event of a fundamental procedural defect. These circumstances must not have been known or, in case of a fundamental procedural defect, if known, already objected to during the proceedings leading to the decision or on appeal (R. 248 RoP), except where such objection could not have been raised during the proceedings before the Court of First Instance or the Court of Appeal.
  - The literal wording of Art. 81(1) UPCA makes clear that a rehearing may *exceptionally* be granted only if the decision suffers from one of these serious deficiencies. A rehearing is thus not a regular appeal proceeding, but an extraordinary legal remedy. Only *fundamental* procedural defects can be the basis for a rehearing.
  - It is therefore not intended that mere errors of any kind can be a ground for an application for rehearing. In order to qualify as a ground for rehearing, a procedural defect must be so fundamental that it is intolerable for the legal system and overriding the principle that proceedings which have led to a final decision should not be re-opened in the interest of legal certainty.
  - Furthermore, a defect may only be considered fundamental if it can be established that without

the defect the same decision would not have been taken (see judgment of 3 July 2014 in Kamino International Logistics and Datema Hellmann Worldwide Logistics, C-129/13 and C130/13, EU:C:2014:2041, paragraph 79 and the case-law cited). It is for the applicant to show this.

- It is for the parties to bring forward arguments that they consider relevant and wish to be considered. The assessment of arguments presented by the parties and the conclusions drawn therefrom, cannot as such be subject to review in an application for rehearing. From the above it follows that this is even so if such an assessment could be considered to be incorrect, as long as the error does not constitute a *fundamental* defect as meant in Art. 81(1) UPCA.
- The same applies to evidence. It is for the parties to bring forward all the evidence required to sufficiently substantiate their arguments. The Court shall evaluate the evidence presented by the parties freely and independently (Art. 76(3) UPCA).
- A decision of the Court shall contain the grounds for the decision and a statement of the facts and arguments on which the Court bases its decision (R. 350 RoP). The Court must consider all arguments brought forward by the parties, but it is, however, not required to explicitly and exhaustively address in its order or decision each and every argument advanced by a party in detail. The Court may disregard arguments that are irrelevant or obviously flawed or dismiss an argument implicitly, e.g. when its dismissal follows from the further considerations of the Court.
- The right to be heard is reflected in Art. 76(2) UPCA, which provides that decisions on the merits may only be based on grounds, facts and evidence, which were submitted by the parties or introduced into the procedure by an order of the Court and on which the parties have had an opportunity to present their comments.

14. In view of the above principles, the Court of Appeal concludes that the Order and Decision under review do not suffer from a fundamental procedural defect in the sense of Art. 81(1) UPCA. What Suinno has brought forward in its Applications is not sufficient to conclude that the Court of Appeal made an error, let alone one that must be considered a flaw of such a serious nature that it would constitute a fundamental error without which the same decision or order would not have been taken.

15. According to R. 248.1 RoP, an Application for rehearing based on the ground of a fundamental procedural defect is only admissible where an objection in respect of the procedural defect was raised during the proceedings before the Court of First Instance or the Court of Appeal and dismissed by the Court, except where such objection could not have been raised during the proceedings before the Court of First Instance or the Court of Appeal.

#### *The Order under review*

16. In relation to the Order under review Suinno is essentially arguing that it is evident from what has subsequently been presented in the procedure for a cost decision (in 2025, after the default decision, as explained in paragraph 8 above) that Microsoft already from July 2024 took steps to request an excessive security for costs from Suinno, exaggerate its own costs and overspend, and that this led to an inadequate security being ordered. According to Suinno, this is, if not literal, then at least comparable, to a breach of Art 6 ECHR and R. 247(e) RoP. This is also against the principles laid down in Art. 42.2 UPCA.

17. To the extent that this can be understood as an argument that Suinno could not have raised this objection during the proceedings before the Court of First Instance or the Court of Appeal, it fails. Both the first and second instance orders for provision of security were preceded by written submissions from both parties, and there was an oral hearing before the Court of Appeal. Suinno itself contends that it “objected, very strongly, in resistance to both the CFI and the Court of Appeal for the clearly baseless and excessive security”. This is confirmed when the file is consulted. Suinno’s assertions were already brought forward prior to and assessed in the Order under review.
18. Moreover, in the Order under review, the Court of Appeal addressed Suinno’s arguments that the security for costs would amount to a barrier to justice or a limitation of its fundamental right to an effective remedy and a fair trial (paragraphs 31-32). In addition, the Court of Appeal reminds that Suinno did not appeal against the obligation to provide security as such, but against the amount ordered. As already made clear by this Court, there is no risk towards access to justice and of a breach of the right to a fair trial which could arise from the grant of a security for costs (CoA Order of 26 August 2024, ORD\_ 45561/2024, CoA 328/2024, Ballinno B.V., v Kinexon, paragraph 35 with references).
19. Insofar as Suinno argues that it is a microenterprise with scarce financial resources, it suffices to say that it was precisely Suinno’s financial situation that was brought forward by Microsoft as the reason for requesting security for costs. Suinno had the opportunity to address its financial status at two instances and to ask the Court to draw conclusions from it, but chose to bring forward other arguments against the application.
20. In addition, Suinno asserts that it had an alternative request of “100k€ +/- tens of thousands of security” that was left undecided in the order under review. This is a misunderstanding from Suinno’s side. As set out in the grounds of the Order under review (paragraph 18), the appeal was about the amount of the security for costs that Suinno had been ordered to pay. In paragraphs 23-27 the Court of Appeal assessed the quantum of security within the range of € 100,00 and € 300,000, but found no reason to deviate from the amount set by the Court of First Instance.

#### *The Decision under review*

21. In relation to the Decision under review, Suinno asserts without success that R. 355 RoP stipulates that a default decision “may” be given, although the Court of Appeal decided that the default decision “must” be given. This is an incorrect reading of the Decision under review. In response to Suinno’s argument that a default decision should only be given if the status quo of the action warranted it, and that Microsoft was bound to fail, the Court stated (paragraph 24), *inter alia* that the effectiveness of security for costs ordered under R. 158 RoP is ensured by the power granted to the Court under R. 158.5 RoP to give a decision by default if the party bound to provide a security for costs fails to do so. It is only under exceptional circumstances that the Court may derogate from this general rule and the reference to the status quo of the action may not justify such a derogation. Suinno had not put forward any other reasons why no decision by default should be given under R. 158.5 and R. 355.1(a) RoP.

22. Insofar as Suinno meant to argue that its non-compliance with the security for costs order was justified by the fact that the amount of security was unreasonably high and therefore its non-compliance did not warrant a decision by default, it fails. A party that does not agree with an order obliging it to provide a security for costs under R. 158 RoP shall use the remedies open to it pursuant to the RoP. Unless and until decided otherwise, court orders must be complied with and non-compliance may lead to a decision by default.
23. Suinno in essence does not agree with the conclusions drawn by the Court of Appeal from the arguments and evidence before it. However, a mere disagreement with the reasoning and considerations by the Court of Appeal and the outcome of the case is not a ground for a rehearing.
24. It follows that the Applications for rehearing must be rejected as not allowable.
25. Pursuant to R. 252 RoP the lodging of an Application for rehearing shall not have suspensive effect unless the Court of Appeal decides otherwise. Given that the Applications for rehearing are rejected as not allowable, the request for suspensive effect must be rejected as well.
26. As the unsuccessful party, Suinno shall bear the costs of the rehearing procedure, as requested by Microsoft. These costs shall be included in the costs of the appeal procedures.

#### DECISION

The Court of Appeal

- rejects the Applications for rehearing as not allowable;
- rejects the application for suspensive effect; and
- orders Suinno to bear Microsoft's cost of the rehearing proceedings.

Issued on 24 February 2026

Rian Kalden, presiding judge

Ingeborg Simonsson, legally qualified judge and judge-rapporteur

Patricia Rombach, legally qualified judge