



Central Division
Paris Seat

ORDER

of the Court of First Instance of the Unified Patent Court

Central division (Paris seat)

issued on 2 July 2024

concerning the generic procedural application No. App_28103/2024

lodged in the proceedings UPC_CFI_164/2024

HEADNOTES:

1. The violation of the obligation to act as an independent counsellor, imposed by the code of conduct, has to be assessed with reference to the possible harm to the interests of the party on whose behalf the professional acts.
2. The violation of the obligation to act as an independent counsellor cannot be asserted by the opposing party, which has no interest in such a finding, but only by the party for whose benefit such an obligation is placed.
3. The fact that a party's representative also carries out active administration tasks on behalf of the represented party and that he may be directly interested in the outcome of the case is not decisive in order to consider that the representative is not independent for the purposes of the application of Rules 290, 291 and 292 'RoP'.

KEYWORDS:

Party's representation

APPLICANT:

Microsoft Corporation

- One Microsoft Way, Redmond Washington 98052-6399, USA

represented by Nadine Westermeyer, Bardehle Pagenberg

RESPONDENT:

Suinno Mobile & AI Technologies Licensing Oy - Fabianinkatu 21, 00130 Helsinki, Finland.
represented by Mikko Kalervo Väänänen

PATENT AT ISSUE:

European patent n° EP 2 671 173

PANEL:

Panel 2

DECIDING JUDGE:

This order has been issued by the presiding judge and judge-rapporteur Paolo Catalozzi

SUMMARY OF FACTS AND PARTIES' REQUESTS:

1. On 22 May 2024 the applicant, defendant in the infringement action brought by the respondent, filed an application (registered as No. ACT_18406/2024 UPC_CFI_164/2024) requesting that the respondent's action be rejected as being manifestly inadmissible, pursuant to Rule 361 of the Rules or Procedures ('RoP').
2. The request is based on the following grounds: a) the claimant was not duly represented according to Article 48 of the Unified Patent Court Agreement ('UPCA') and Rule 8 (1) 'RoP'; b) the content of the statement of claim was insufficient, as it lacked the requirements provided for by Rule 13 (1) (k) 'RoP'.
3. On 6 June 2024 the respondent, asked for written comments, requested the application to be dismissed.

GROUND FOR THE ORDER

Breach of Code of Conduct for representatives.

4. The applicant argues that the claimant is not duly represented according to Article 48 'UPCA' and Rule 8 (1) 'RoP' because its plaintiff is non-compliance with the code of conduct and for this reason the statement of claim as to be considered as inadmissible.
5. The argument is based on the fact that [REDACTED] plaintiff's representative, is also: the named inventor of the patent-in-suit; the original applicant of the application underlying the patent-in-suit; - the Managing Director of the first assignee of the patent-in-suit, Suinno Oy; the managing Director of the subsequent assignee of the patent-in-suit and Plaintiff in the

present proceedings. It would follow that ■■■■■ could not be considered as an independent counsellor and, as such, would not be complying with Article 2.4.1. of the Code of Conduct for representatives, adopted by the Administrative Committee of the Unified Patent Court, which prescribes that quality.

6. This ground of inadmissibility of statement of claim is unfounded.
7. The applicant relies on Rule 290 (2) 'RoP', according to which 'Representatives who appear before the Court shall strictly comply with any code of conduct adopted for such representatives by the Administrative Committee', and on Article 2.4.1. of the Code of Conduct for Representatives, adopted by the Administrative Committee on 8 February 2023, according to which 'A representative shall act towards the Court as an independent counsellor by serving the interests of his or her Clients in an unbiased manner without regard to his or her personal feelings or interests'.
8. The obligation to act as an independent counsellor is imposed by the aforementioned provision of the code of conduct in order to protect the effectiveness of the party's right to defence in court, even in relation to the possibility of situations that may give rise to conflicts of interest or, in any event, to disloyal representation.
9. The lack of independence must therefore be assessed not in an absolute sense, but with reference to the possible harm to the interests of the party on whose behalf the professional acts.
10. It follows that the mere fact that ■■■■■ also carries out active administration tasks on behalf of the represented party and that he may be directly interested in the outcome of the case is not decisive in order to consider that the representative is not independent for the purposes of interest here.
11. In any case, it can be observed that given the instrumental nature of the obligation of independence to protect the party's right to an effective defence in court, its possible violation cannot be asserted by the opposing party, which has no interest in such a finding, but only by the party for whose benefit such an obligation is placed.
12. Finally, while it is true that the Court may exclude a lawyer from the proceedings when he or she uses his or her rights for purposes other than those for which they were granted, there is no evidence to support such conduct.

Content of the statement of claim.

13. The applicant argues that the statement of claim is insufficiently concrete and specific and, therefore, does not meet the requirements set forth by Rule 13 (1) (k) 'RoP'. In particular, the request for 'an injunction on the importation and sale' of the alleged infringing embodiment would be inappropriate as no action the patent proprietor can prevent any third party from under the 'UPCA'. Furthermore, the request to the Court to 'determine and award past damages with interest, as applicable' would be indefinite as it does not indicate the specific time period during which the alleged claim for damages should have existed.
14. These arguments are not sufficient to demonstrate that the action is manifestly inadmissible.

15. As for the first argument, the relief sought by the claimant is an injunction to the defendant to cease and desist the importation and sales of the alleged infringing embodiment in some specific national markets.
16. Considering the reported content of the requested injunction, this judge-rapporteur is of the opinion that the 'nature' of the order of the remedy sought is clearly indicated and, therefore, the requirement set forth by Rule 13 (1) (k) is met.
17. The same can be said with regard to claimant's request to determine and award past damages with interest. Indeed, in the statement of claim the claimant assumes 'April 2019 and later years in Finland, Germany, and France for the period of infringement'. Therefore, the period of the infringement appears to be determined in a sufficient clear manner.

ORDER

The judge-rapporteur,

rejects the request to declare the revocation action manifestly inadmissible.

Issued on 2 July 2024.

The Presiding judge and judge-rapporteur

Paolo Catalozzi

Paolo Catalozzi

Firmato digitalmente da Paolo
Catalozzi
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ORDER DETAILS

Order no. ORD_33379/2024 in ACTION NUMBER: ACT_18406/2024

UPC number: UPC_CFI_164/2024

Action type: Infringement Action

Related proceeding no. Application No.: 28103/2024

Application Type: Generic procedural Application