



Central Division
Paris Seat

ORDER
of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
issued on 12 December 2024
concerning the generic procedural application No. App_64780/2024
UPC_CFI_164/2024

HEADNOTE:

1. The Court's capacity to grant leave to appeal is as an exception to the general principle according to which orders other than those referred to in Articles 49 (5), 59, 60, 61, 62 or 67 'UPCA' and Rule 97 (5) 'RoP' may only be reviewed together with the appeal against the final decision.
2. In exercising its discretionary power on the request to grant leave to appeal, the Court must consider whether the order involves legal issues which are the subject of different interpretations by the Unified Patent Court judges and whether an appeal on the order would serve a concrete interest of the parties.

KEYWORDS:

Leave to appeal

APPLICANT:

Microsoft Corporation

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

represented by Tilman Müller-Stoy, Bardehle Pagenberg

RESPONDENT:

Suinno Mobile & AI Technologies Licensing Oy

- Fabianinkatu 21, 00130 Helsinki, Finland

represented by [REDACTED]

PATENT AT ISSUE:

European patent n° EP 2 671 173

PANEL:

Panel 2

Paolo Catalozzi Presiding judge and judge-rapporteur

Tatyana Zhilova Legally qualified judge

Wiem Samoud Technically qualified judge

DECIDING JUDGE:

This order has been issued by the panel.

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. On 10 October 2024 the respondent, claimant in the infringement action brought against the respondent before this Central Division, filed, pursuant to Rule 263 of the Rules of Procedure ('RoP'), an application (registered as No. App_55394/2024) for leave "to change claim or to amend case" with regard to the amount of the damages sought which were therein estimated at a reduced sum of 2 mln. euros, requesting also the Court to re-consider fees already paid.
2. By order issued 26 November 2024 (ORD_62739/2024) the panel, having heard the applicant, granted the respondent leave to change the claim reducing the request for damages to € 2 mln. and rejected the request to re-consider the fees already paid.
3. On 6 December 2024 the applicant requested that the panel grants leave to appeal this order, arguing that the leave to appeal would clarify the scope and limits of the Court's powers in interpreting a party's request pursuant to Art. 76 (1) of the Unified Patent Court Agreement ('UPCA') and, subsequently, the admissible scope of an application pursuant to Rule 263 of the Rules of Procedures ('RoP'), as a matter of general procedural importance.

GROUND FOR THE ORDER

4. According to Article 73 (2) (b) 'UPCA' and Rule 220 (2) 'RoP' orders other than those referred to in Articles 49 (5), 59 to 62 and 67 'UPCA' and Rule 97 (5) 'RoP', may be either appealed together with the appeal against the decision or, with the leave of the Court of First Instance, within 15 days of service of the Court's decision to that effect.
5. The Court's capacity to grant leave to appeal must be seen as an exception to the general principal according to which orders may only be reviewed together with the appeal against the final decision and only under the condition that the party adversely affected by the order is also

adversely affected by the final decision. The rationale behind that principle is that such orders have generally a less significant impact on the parties' interests and that it is yet unclear whether it will ultimately prejudice any party, as their relevance to the final decision remains unclear.

6. Against this background, granting leave to appeal serves the purpose of favouring the harmonization of the interpretation of the relevant statutory provisions within the Unified Patent Court by letting the Court of Appeal address the controversial issue.
7. Therefore, in exercising its discretionary power on the request to grant leave to appeal, the panel must consider whether the order involves legal issues which are the subject of different interpretations by the Divisions of the Unified Patent Court (or among the panels of these Divisions) and, as such, need to be decided by the Court of Appeal. In this regard the panel must be guided by the principles set forth in Preamble of the Rules of Procedures and, in particular, by the principles of proportionality and efficiency of the proceedings, which are contrary to procedural actions that do not serve a concrete interest of the parties.
8. The applicant argues that the panel's interpretation of the claim filed by the respondent pursuant to Rule 263 'RoP' is not correct, as the respondent's request in reality is for a reduction of the value of the case.
9. From the aforementioned considerations, the panel notes that the issue raised by the applicant is not the subject of different interpretations by Unified Patent Court judges and, anyway, is not able to affect the final decision on the merits that the Court shall issue.
10. For these reasons the application must be rejected.

ORDER

The panel,

having reviewed the application,

rejects Microsoft Corporation's request to grants leave to appeal the order ORD_62739/2024 issued on 26 November 2024.

Issued on 12 December 2024

The Presiding judge and judge-rapporteur

Paolo Catalozzi

**Paolo
Catalozzi** Firmato digitalmente
da Paolo Catalozzi
Data: 2024.12.12
18:08:35 +01'00'

The legally qualified judge

**Tatyana
Zhilova** Signature
numérique de
Tatyana Zhilova
Date : 2024.12.12
18:04:00 +01'00'

Tatyana Zhilova

The technically qualified judge

Wiem Samoud

**Wiem
SAMOUD** Signature
numérique de
Wiem SAMOUD
Date : 2024.12.12
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ORDER DETAILS

Order no. ORD_65604/2024 in ACTION NUMBER: ACT_18406/2024

UPC number: UPC_CFI_164/2024

Action type: Infringement Action

Related proceeding no. Application No.: 64780/2024

Application Type: Generic procedural Application