



Central Division
Paris Seat

ORDER
of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
issued on 2 April 2025
concerning the generic procedural applications Nos. App_61657/2024,
61782/2024 and 61784/2024
UPC_CFI_164/2024

HEADNOTES: 1. In a situation in which a party fails to take a procedural step in the stated timeline and the Rules of Procedure provide that a decision by default may be given the Court is not obligated to issue such a decision but retains discretionary power even where the default is evident and there are no justifying elements.

2. In addressing an application for a decision by default, the Court may consider relevant that the evidentiary findings acquired in the proceedings at the time of the default does not allow for a sufficiently confident assessment of the merits of the claims put forward by the non-defaulting party.

KEYWORDS: decision by default.

APPLICANT:

Microsoft Corporation - One Microsoft Way - 98052-6399 - Redmond - US
represented by Tilman Müller-Stoy and Nadine Westermeyer, Bardehle Pagenberg

RESPONDENT:

Suinno Mobile & AI Technologies Licensing Oy - Fabianinkatu 21 - 00130 - Helsinki - FI
represented by Petri Eskola, Backström & Co

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 is issued by the panel

SUMMARY OF FACTS AND PARTIES' REQUESTS:

1. On 19 November 2024 the applicant, defendant in the infringement action lodged by the respondent and counterclaimant for revocation, requested the Court to issue a decision by default against the claimant, dismissing the infringement action and the application to amend the patent and revoking the patent at issue in its entirety with effect for all Contracting States of the Unified Patent Court Agreement in which it is or has been validated. The applicant argues that the claimant failed to provide the security for costs within the time limit specified by the Court and that, regarding the counterclaim for revocation, the facts put forward justify the remedy sought.
2. On 20 January 2025 the respondent submitted its comments and did not oppose taking a decision by default to the extent that it is against the applicant, confirming validity of the patent and declaring the alleged infringement, as well as ordering the payment of "invoice 1331" for the amount of euro 2,000,000.00.

GROUND FOR THE DECISION

3. Pursuant to Rule 355 (1) of the Rules of Procedure ('RoP') a decision by default against a party may be given where the said Rules so provide if a party fails to take a step within the time limit foreseen in these Rules or set by the Court; or, without prejudice to Rules 116 and 117, where the party which was duly summoned fails to appear at an oral hearing.
4. With particular regard to the position of the defendant in respect of a claim or a counterclaim, Rule 355 (2) and (3) 'RoP' state that a decision by default may be given only where the facts put forward by the claimant justify the remedy sought and the procedural conduct of the defendant does not preclude the Court from giving such a decision, and where the time limits for the defence to the claim or counterclaim have expired, thus establishing that the service of the claim or counterclaim was effected in sufficient time to enable the defendant to enter a defence.
5. In the case at hand, the respondent did not comply with the order issued by this panel to provide security for costs within the stated time limit and, according to Rule 158 (5) 'RoP', this permits the Court to issue a decision by default.

6. Given these circumstances, the Court is not obligated to issue a decision by default: a textual examination of the relevant provisions clearly demonstrates that the Court has the discretion, and it is not obliged, to issue such a decision (see CD Paris, decision issued on 16 September 2024, UPC_CFI_412/2023; LD Munich, decision issued on 11 October 2024, UPC_CFI_193/2024). This implies that the Court retains discretionary power to issue a decision by default even in cases where the default is evident and there are no justifying elements, such as a defect in notification or the existence of a cause extraneous to the defaulting party that prevented them from undertaking the missing procedural action.
7. In particular, the Court considers that in exercising this discretionary power, the circumstance that the evidentiary findings acquired in the proceedings at the time of the default allow for a sufficiently confident assessment of the merits of the claims put forward by the non-defaulting party is relevant. In this regard, the requirement provided for in Rule 355 (2) 'RoP', according to which the facts put forward by the applicant must justify the remedy sought, should be understood to mean that this requirement is also relevant where the decision by default is sought against the applicant, and not solely against the defendant.
8. The fact that this requirement is expressly provided with reference to a request for a decision by default by the claimant, and not explicitly for a request against the claimant, does not exclude the possibility that the circumstance expressed in that requirement may guide the exercise of the Court's discretionary powers. This is explained by the fact that the claimant's default may easily lead to the dismissal of the claim where the default occurs at an initial stage of the proceedings and the claimant has not fully illustrated and proven its claim. In such a case, not issuing a decision by default could lead to an unacceptable consequence – contrary to the principle of the fair conduct of proceedings and the efficiency thereof – by effectively reinstating the claimant's time limits or otherwise remedying the effects of the default.
9. Against this background, the Court is of the opinion that issuing the decision by default requested by the applicant is not appropriate because the written pleadings submitted at the time of the default do not permit a sufficiently confident assessment regarding the contested validity of the patent and the absence of its infringement. Rather, it appears useful, also to achieve the objectives expressed in the Unified Patent Court Agreement to strengthen legal certainty and strike a fair balance between the interests of right holders and other parties by proceeding with a more in-depth examination of the claims at the oral hearing.

ORDER

The panel,

rejects the application filed by Microsoft Corporation for a decision by default.

Issued on 2 April 2025.

The Presiding judge and judge-rapporteur

Paolo Catalozzi

The legally qualified judge

Tatyana Zhilova

The technically qualified judge

Wiem Samoud

ORDER DETAILS

Order no. ORD_68708/2024 in ACTION NUMBER: ACT_18406/2024

UPC number: UPC_CFI_164/2024

Action type: Infringement Action

Related proceeding no. Application No.: 61657/2024

Application Type: Generic procedural Application