



Central Division
Paris Seat

ORDER
of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
issued on 3 March 2025
in the infringement action No. ACT_18406/2024
UPC_CFI_164/2024

HEADNOTES: 1. Should the Court determine that a party's representative is unable to validly represent said party and grant the latter a period within which to appoint a new representative, it may require that such appointment be accompanied by a statement of ratification by the new representative of the actions undertaken by the representative lacking valid representative powers.

KEYWORDS: representatives.

CLAIMANT, DEFENDANT IN COUNTERCLAIM:

Suinno Mobile & AI Technologies Licensing Oy - Fabianinkatu 21 - 00130 - Helsinki - FI
represented by [REDACTED]

DEFENDANT, CLAIMANT IN COUNTERCLAIM:

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

PATENT AT ISSUE:

European patent n° EP 2 671 173

PANEL:

Panel 2
Paolo Catalozzi Presiding judge and judge-rapporteur

Tatyana Zhilova
Wiem Samoud

Legally qualified judge
Technically qualified judge

DECIDING JUDGE:

This order is issued by the panel.

SUMMARY OF FACTS:

1. Following the order issued by the Court of Appeal on 11 February 2025 regarding the appeal of the order of 16 September 2024, ORD_41174/2024, issued by this Court of First Instance in the current main proceedings, the judge-rapporteur requested the parties to provide written submissions on the issue of the inability of ■■■■■■■■■■■■ appointed as claimant's representative, to serve as a representative of that legal person.
2. The claimant requested the Court to allow ■■■■■■■■■■ to continue representing the claimant in the proceedings and, only in auxiliary, to provide an order instructing the claimant to correct the representation configuration so, that the representation is sufficiently independent for the area of patent law.
3. The defendant requested that: i) the claimant's infringement action, registered as No. ACT_18406/2024, is rejected as being manifestly inadmissible pursuant to Rule 361 'RoP'; ii) a decision by default is issued against claimant, revoking the patent at issue in its entirety, in the proceedings registered as CC_43155/2024 UPC_CFI_433/2024; iii) the claimant shall bear all legal costs and other expenses incurred by defendant; iv) leave to appeal is granted in case the application pursuant to Rule 361 'RoP' is rejected.

GROUND FOR THE ORDER

Representation of the claimant by ■■■■■■■■■■

4. By the aforementioned order of 11 February 2025, the Court of Appeal rejected the appeal filed by the Suinno Mobile & AI Technologies Licensing Oy against the order of this Court declaring their application for confidentiality protection, stating that "No corporate representative of a legal person or any other natural person who has extensive administrative and financial powers within the legal person, whether as a result of holding a high-level management or administrative position or holding a significant amount of shares in the legal person, may serve as a representative of that legal person, regardless of whether said corporate representative of the legal person or natural person is qualified to act as a UPC representative in accordance with Art. 48(1) or (2) UPCA". Hence, they agreed with the impugned order that ■■■■■■■■■■ enjoyed extensive administrative and financial powers within Suinno Mobile & AI Technologies Licensing Oy and, as such, he was not in the position to represent the company.
5. The Court of Appeal's order further stated that it is for the Court of First Instance to decide as to whether ■■■■■■■■■■ can represent Suinno Mobile & AI Technologies Licensing Oy in the

pending infringement proceedings and that when deciding this issue, the interpretation of the rules concerning the representation of a party set out in the order issued by the Court of Appeal on 8 February 2024, UPC_CoA_404/2023, App_584498/2023, para 10 et seq., may be considered.

6. The Court of Appeal's statements, when evaluated in light of the underlying arguments, lead to the rejection of the claimant's request to allow ■■■■■■■■■■ to continue representing the claimant in the proceedings. This request stems from a fundamental disagreement with the principle established by the Court of Appeal.
7. The claimant further argues that lack of independence is alleged without any basis, as ■■■■■■■■■■ does not own shares or equity in claimant directly, but the documentation filed is insufficient to overcome the evidentiary findings already acquired in the proceedings regarding ■■■■■■■■■■ extensive administrative and financial powers within the company, as previously ascertained by this Court, in order of 16 September 2024, and the Court of Appeal, in order of 11 February 2025.

Lack of a valid representation and consequences.

8. In the referred Court of Appeal's order of 8 February 2024, it was declared that a member of the public requesting access to the register pursuant to Rule 262 (1) (b) 'RoP' must be represented before the Unified Patent Court. They added that in a situation where the statement of response was lodged by an unrepresented respondent, this written submission shall be disregarded and the party shall be granted a time period to appoint and instruct a representative and that representative, within the same period, the opportunity to lodge the relevant writ.
9. To this panel's understanding, the Court of Appeal's order of 8 February 2024 reflects a dual principle: that the lack of a valid representation of a party renders the written pleadings lodged (and all the judicial activity carried out) by that party void and that this defect does not lead to the declaration of the inadmissibility of the action or the application filed by this party, but requires the Court to grant that party an opportunity to remedy the deficit.
10. This panel adheres to the reported principle, which, as a consequence, leads to disregarding the defendant's requests to the extent that they rely on the ground that the claimant is not admissibly represented.
11. Regarding the fact that the identified defect invalidates all written pleadings and procedural activity carried out in the interest of the party, this panel deems it appropriate to grant the party a deadline to appoint and instruct a new representative who, however, shall be required to ratify the written pleadings submitted by ■■■■■■■■■■ on behalf of the claimant during the course of the current proceedings.
12. This is consistent with the principles of efficiency and expediency of judicial proceedings, upon which the Unified Patent Court regulations are based, avoiding a potential duplication of procedural activity, which would derive in case all the steps taken in the proceedings were ordered to be repeated.

13. Such a solution also respects the principles of fairness and equity, by not allowing either party to derive an undue advantage from having become aware of the other's defence strategy and to adjust its own accordingly in subsequent proceedings with substantially identical content.
14. The claimant invokes the application of the principles expressed by the Advocate General of the Court of Justice of the European Union in cases C-515/17P and C-561/17P. However, it must be premised that the aforementioned conclusions of the Advocate General concern the application of rules on representative requirements that apply solely before the Court of Justice and the European Union Courts (as states by the Court of Appeal, in the mentioned order of 11 February 2025) and thus do not apply to the present case. Furthermore, they are interpreted to mean that the lack of a valid power of representation leads to the inadmissibility of the claim or the appeal, and not, as before the Unified Patent Court, to a remediable irregularity on the part of the party.
15. In any event, it is observed that the principles indicated by the Advocate General consist of the necessity that, in the presence of a defect in valid representation, the party be informed of: any further documents/changes needed to bring the representation into conformity; the reasons why those documents are requested, spelling out any potential doubts that the court may entertain concerning the party's legal representation; the procedural consequences that will follow, if these doubts are not addressed. Such rights of information have been ensured in the present case, where the party was made aware of the reasons for the identified defect and the methods to remedy it, without suffering any procedural prejudice and with a period deemed appropriate. The consequences of a failure to duly appoint a new representative are determined by the relevant procedural provisions.
16. In light of the foregoing, this panel deems it appropriate to grant the claimant a period of 30 days to appoint and instruct a new representative and orders that any deadlines prescribed for the conduct of procedural activities shall be suspended during said period.

ORDER

The panel,

pursuant to Rules 9 and 291 (2) 'RoP',

- declares that ■■■■■■■■■■■■ may not serve as a representative of Suinno Mobile & AI Technologies Licensing Oy in the current infringement action proceedings;
- grants Suinno Mobile & AI Technologies Licensing Oy a period of 30 days to appoint and instruct a new representative, who shall be required, by means of a declaration made within the same timeframe, to ratify the written pleadings submitted by ■■■■■■■■■■■■
- orders that any procedural deadlines shall be suspended during the period granted for the appointment of the new representative.

Issued on 3 March 2025.

The Presiding judge and judge-rapporteur

Paolo Catalozzi

Paolo
Catalozzi

Firmato digitalmente
da Paolo Catalozzi
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The legally qualified judge

Tatyana Zhilova

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The technically qualified judge

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ORDER DETAILS

Order no. ORD_8385/2025 in ACTION NUMBER: ACT_18406/2024

UPC number: UPC_CFI_164/2024

Action type: Infringement Action

Related proceeding no. Not provided Not provided

Not provided Not provided