Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Appeal n°:	
UPC_CoA_755/2025	UPC_CoA_791/2025
UPC_CoA_757/2025	UPC_CoA_793/2025

ORDER

of the Court of Appeal of the Unified Patent Court
concerning a confidentiality request under R 262A RoP
as of 26 January 2026

HEADNOTE

(i) When deciding on the measures for the protection of confidential information and assessing their proportionality, the Court must take into account the need to ensure the right to an effective remedy and to a fair trial, the legitimate interests of the parties and, where appropriate, of third parties, and any potential harm for either of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures.

(ii) In the event that one of the parties is a legal person, that party should be able to propose a natural person or natural persons who ought to form part of that circle of persons entitled to have access so as to ensure proper representation of that legal person, subject to appropriate judicial control to prevent the objective of the restriction of access to evidence and hearings from being undermined.

(iii) Whether the person proposed by a party may be granted access to the confidential information must be determined on the basis of the relevant circumstances of the case, including the role of that person in the proceedings before this Court, the relevance of the confidential information to the performance of that role and the trustworthiness of the person in keeping the information confidential.

(iv) The fact that a person is an employee of a party is, as a general rule, not sufficient to deny access to that person. The exclusion of employees would severely restrict a party's freedom to choose who will represent it in the proceedings. Furthermore, an employee of a party will often be better positioned to present the party's view, provide and review relevant information and instruct the representatives than persons external to the party's organization. Consequently, access for a party's employee will often be essential to ensure compliance with the right of that party to an effective remedy and to a fair trial. The interest of the party in having full access for, at least, one of its employees therefore, as a general rule, outweighs the interests of the applicant, even if imposing an 'External Eyes Only' regime would be preferable from the perspective of safeguarding confidentiality.

(v) Furthermore, where the confidential information concerns a licence agreement between a party and a third party, the potential harm for this third party resulting from allowing access to one or more employees of the other party to the proceedings, may be mitigated by requiring said employee(s) to refrain from involvement in patent licensing negotiations with the third party for a certain period. Such a bar prevents said employee(s) from using such confidential information in these negotiations, whether intentionally or not. It thereby facilitates compliance with the confidentiality regime and provides all parties with a greater degree of legal certainty, as the involvement of the employee(s) in negotiations is

easier to establish than the employee's use - advertent or otherwise - of the confidential information in such negotiations.

(vi) Nothing in the UPC Agreement nor in the Rules of Procedure provides for the liability of the UPC representative of a party in the event of a breach of a duty of confidentiality ordered by the Court under R. 262A RoP. Rather, in the event of a breach of the confidentiality obligation ordered by the Court, a penalty payment may be imposed on a party to the proceedings.

(vii) Although it is the party that may be sanctioned for non-compliance with the confidentiality obligation ordered by the Court through the imposition of a penalty payment, and not the party's legal representative in its own – whether professional or personal - capacity, it does not release said representative from its rights and obligations under the UPC Agreement and the Rules of Procedure. Said obligations include the requirements to comply with the code of conduct adopted pursuant to R. 290.2 RoP as well as the requirements of the proper administration of justice, failing which the Court may exclude said representative from the proceedings by way or order under the conditions set forth under R. 291.1 RoP.

KEYWORDS

Appeal; application for the protection of confidential information, R 262A RoP; legal team, internal support staff.

APPELLANT (CLAIMANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE) IN APPEAL PROCEEDINGS COA_755/2025 AND COA_757/2025 AND RESPONDENT IN APPEAL PROCEEDINGS COA 791/2025 AND COA 793/2025

Sun Patent Trust, 437 Madison Avenue, 35th Floor, 10022 New York, United States of America
(hereinafter "**SUN PATENT**")
represented by

- Sabine Agé, attorney-at-law, and other representatives of HOYNG ROKH MONEGIER (in UPC_CoA_755/2025),
- Caroline Levesque, attorney-at-law, and other representatives of HOYNG ROKH MONEGIER (in UPC_CoA_757/2025)

RESPONDENTS (DEFENDANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE) IN APPEAL PROCEEDINGS COA_755/2025 AND COA_757/2025 AND APPELLANTS IN APPEAL PROCEEDINGS COA 791/2025 AND COA 793/2025

1) **Vivo Mobile Communication Co., Ltd.**, No. 1, Vivo Road, Chang'an Town, Dongguan City, Guangdong 523866, China
2) **Vivo Tech GmbH**, Speditionstrasse 21, 40221 Düsseldorf, Germany
3) **Vivo Mobile Communication Iberia SL**, Calle Orense 58, Planta 12 C, 28020 Madrid, Spain
(hereinafter jointly "**VIVO**")
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INTERVENER IN THE APPEAL PROCEEDINGS COA 755/2025 AND COA 757/2025

APPLE Inc., One Apple Park Way, Cupertino, CA 95014, United States
(hereinafter "**APPLE**")
represented by Oscar Lamme, attorney-at-law, and other representatives of Simmons & Simmons LLP

PATENTS AT ISSUE

EP 3 852 468 (in UPC_CoA_755/2025)
EP 3 407 524 (in UPC_CoA_757/2025)

PANEL AND DECIDING JUDGES

Panel 1a
Klaus Grabinski, Presiding judge and President of the Court of Appeal,
Emmanuel Gougé, legally qualified judge and judge-rapporteur,
Peter Blok, legally qualified judge.

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDERS OF THE COURT OF FIRST INSTANCE

- In appeal proceedings CoA_755/2025:

  Order of the Court of First Instance of the Unified Patent Court, Paris Local Division, dated 31 July 2025
  Reference numbers:
  UPC_CFI_361/2025
  ACT_18933/2025
  App_18978/2025
  ORD_33179/2025

- In appeal proceedings CoA_757/2025:

  Order of the Court of First Instance of the Unified Patent Court, Paris Local Division, dated 31 July 2025
  Reference numbers:
  UPC_CFI_362/2025
  ACT_18934/2025
  App_18982/2025
  ORD_33183/2025

- In appeal proceedings CoA_791/2025:

  Order of the Court of First Instance of the Unified Patent Court, Paris Local Division, dated 31 July 2025
  Reference numbers:
  UPC_CFI_361/2025
  ACT_18933/2025
  App_18978/2025
  ORD_33179/2025

- In appeal proceedings CoA_793/2025:

Order of the Court of First Instance of the Unified Patent Court, Paris Local Division, dated 31 July 2025
Reference numbers:
UPC_CFI_362/2025
ACT_18934/2025
App_18982/2025
ORD_33183/2025

HEARING DATE
26 November 2025

FACTS AND REQUESTS OF THE PARTIES

The first instance proceedings

1. On 18 April 2025 SUN PATENT brought two infringement actions against VIVO before the Court of First Instance, Paris Local Division (hereafter "Paris LD") (ACT_18933/2025 UPC_CFI_361/2025 and ACT_18934/2025 UPC_CFI_362/2025), seeking inter alia a determination of the terms of a fair, reasonable and non-discriminatory (hereafter "FRAND") licence between the parties in the field of 4G+ technologies.

2. As part of its argumentation on the determination of FRAND terms of the licence, SUN PATENT refers to a comparable licences analysis (see expert opinion of 18 April 2025, HRM Exhibit 9.3) to which a copy of the relevant licence agreements is attached. It refers more specifically to six licence agreements which would be the "most relevant agreements for assessing the FRAND royalty rate" (SoC, para. 359), as well as to other comparable agreements, such as the licence agreement entered into between [redacted] and SUN PATENT (HRM Exhibit 9.3.2.58).

3. On the same day SUN PATENT filed two identical applications for protection of confidential information under R. 262A RoP (App_18978/2025 UPC_CFI_361/2025 and App_18982/2025 UPC_CFI_362/2025), arguing that said confidential information constitute trade secrets which can only be shared with VIVO under restricted conditions and requesting inter alia that the access to the unredacted version of the statement of claim and relevant exhibits containing confidential information classified as highly confidential information (hereafter "HCI") shall be restricted to VIVO's legal representatives, including their legal team, and external experts as well as, under certain conditions, to no more than three employees of VIVO to be named by VIVO. SUN PATENT subsequently limited its request for confidentiality, pursuant to R. 263 RoP, with regard to the list of individuals having access to the HCI, requesting the Court to exclude VIVO's employees from having access to the HCI and to limit the confidentiality regime to an "External Eyes Only" (hereafter "EEO") regime, that is granting access to defendants' external experts and outside counsels only (SUN PATENT further application for confidentiality filed on 13 June 2025).

4. On 31 July 2025, the Paris LD restricted the access to information categorised as confidential and highly confidential to specific persons, including three employees of VIVO (impugned orders, ORD_33179/2025 and ORD_33183/2025).

5. The Paris LD granted leave to appeal (Order of 11 August 2025, ORD_34319/2025).

SUN PATENT v VIVO appeal proceedings (CoA_755/2025 and CoA_757/2025)

6. On 16 August 2025 SUN PATENT lodged an appeal against the impugned orders, requesting that the unredacted version of the Statement of claim and relevant exhibits containing the HCI shall not be accessible to VIVO's employees or, in the alternative, and as amended during the oral hearing, that access to said HCI shall be granted to three named VIVO's employees, namely [redacted] who shall not participate in or advise upon any licensing negotiations with the counterparties to the disclosed licence agreements or related agreements for a certain period of time. It also requests that the measures to preserve HCI apply to all HCI disclosed in the course of the appeal proceedings.

7. In summary SUN PATENT argues that R. 262A.6 RoP should be interpreted by reference to Art. 42 UPCA on proportionality and fairness as well as to Art. 47 of the Charter of Fundamental Rights of the European Union which do not make it mandatory that parties must have access to all evidence. It further raises that EEO regimes are widely practiced in several jurisdictions and that, should VIVO's employees have access to confidential information, it would lead to a risk of market distortion vis-à-vis the counterparties to the licence agreements containing confidential information.

8. On 17 August 2025, SUN PATENT filed an application for suspensive effect under R. 223 RoP which was rejected by the Court of Appeal (Order of 25 August 2025).

9. On 1st September 2025 APPLE filed an application to intervene pursuant to R. 313 RoP, requesting the impugned orders to be set aside and that an attorney's eyes only (hereafter "AEO") or EEO confidentiality regime should apply to APPLE's confidential information, or in the alternative, a stricter confidentiality regime by imposing measures such as a licensing bar.

10. APPLE was admitted as an intervener in the appeal proceedings in support of SUN PATENT's appeal and requests to the extent that confidential information of APPLE is concerned (CoA Order of 23 September 2025). APPLE filed its Statement in Intervention on 17 October 2025, as modified by request for clarification of material errors filed on 21 October 2025, on which SUN PATENT and VIVO commented.

11. In its Statement in Intervention APPLE requests that the Court of Appeal set aside the impugned orders and, in summary, order an AEO confidentiality regime, exclude VIVO's employees who have already been given access to the APPLE Confidential Information from being involved in licensing negotiation with SUN PATENT, in patent licensing or litigation in any relevant field of technology against APPLE for a period of five years after the final judgment, alternatively grant access to external experts under an EEO confidentiality regime, as well as other requirements relating inter alia to the number of persons having access, the residence of such persons, the stage of the proceedings at which access is granted, the use of virtual data rooms and the fines for breach of the confidentiality obligations.

12. SUN PATENT requests APPLE's Application to be dismissed to the extent it asks that access to APPLE confidential information is granted only after a finding that at least one patent in suit is valid and infringed, or, in the alternative, to apply a temporary AEO or EEO regime.

13. VIVO request APPLE's application to be dismissed. In summary VIVO argue that APPLE's requests are inadmissible since they exceed the scope of the appeal, that the Court of Appeal, under Art. 76 UPCA, is bound by the relief sought by SUN PATENT and that APPLE's request goes beyond SUN PATENT request. They further argue that APPLE's requests are unfounded as AEO and EEO regimes are not permissible in UPC proceedings, that an AEO/EEO regime that excludes all party personnel does not meet the minimum standard set forth under the 2016/943 EU Trade Secret Directive, and that an AEO/EEO regime would be disproportionate.

VIVO v SUN PATENT appeal proceedings (CoA_791/2025 and CoA_793/2025)

14. On 1st September VIVO also lodged an appeal against the impugned orders. VIVO request the Court of Appeal inter alia to reverse the order to the extent it included non-highly confidential information in the restricted use of confidential information, to include internal support staff and external experts in the group of persons authorized, on VIVO's side, to have access to confidential information, and to exclude VIVO's attorney's liability in the event of a culpable breach by team members or, in the alternative, to hold that VIVO should be liable for any such breach, rather than its representative.

15. SUN PATENT requests VIVO's appeal to be dismissed.

GROUNDS FOR THE ORDER

I- SUN PATENT's Appeals CoA_755/2025 and CoA_757/2025

Admissibility of APPLE's Application

16. Pursuant to R. 313.2 RoP, an Application to intervene shall be admissible only if it is made in support, in whole or in part, of a claim, order or remedy sought by one of the parties and is made before the closure of the written procedure unless the Court of First Instance or Court of Appeal orders otherwise.

17. APPLE was admitted as an intervener in the appeal proceedings to the extent it is in support of SUN PATENT's appeal and requests and to the extent that confidential information of APPLE is concerned (CoA Order of 23 September 2025).

18. In its Statement in Intervention filed on 17 October 2025 APPLE has however filed a number of requests which go beyond the scope defined by the Court and beyond the mere support of SUN PATENT' requests.

19. APPLE's requests, to the extent that they do not support SUN PATENT's appeal and requests, shall thus be dismissed as inadmissible and the scope of the appeals CoA_755/2025 and UPC_CoA_757/2025 shall remain defined by SUN PATENT's requests.

EEO regime and principles for establishing a confidentiality club

20. The Trade Secrets Directive (Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, OJ L 157, 15 June 2016, p. 1, hereinafter referred to as "Trade Secrets Directive" or "TSD") concerns only the unlawful acquisition, use or disclosure of trade secrets and does not provide for measures to protect the confidentiality of trade secrets in other types of court proceedings (Art. 1(1) TSD and CJEU, decision of 7 September 2021, C-927/19, para 97). The Directive's provision on the preservation of confidentiality of trade secrets in the course of legal proceedings (Art. 9 TSD) is therefore not directly applicable to the patent law proceedings before this Court.

21. However, as is apparent from the identical wording of parts of R. 262A RoP and Art. 9 TSD and the legislative history of the Rules of Procedure, the provisions of the Directive have inspired the legislature when drafting R. 262A RoP. Therefore, when interpreting R. 262A RoP, the Court of Appeal will use principles similar to the principles underlying the Trade Secrets Directive.

22. The protection of confidential information in proceedings before the UPC is governed by Art. 58 UPCA and R. 262A RoP. The Court may allow an application for such an order considering in particular whether the grounds relied upon by the applicant significantly outweigh the interest of the other party to have full access to the information (R. 262A.5 RoP).

23. When deciding on the measures for the protection of confidential information and assessing their proportionality, the Court must take into account the need to ensure the right to an effective remedy and to a fair trial, the legitimate interests of the parties and, where appropriate, of third parties, and any potential harm for either of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures (cf. Art. 9(3) TSD).

24. Concerning the persons which shall have access to confidential information, R. 262A.6 RoP - which reflects TSD Art. 9.2 last paragraph - provides that the number of persons referred to in R. 262A.1 RoP shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings.

25. In the event that one of the parties is a legal person, that party should be able to propose a natural person or natural persons who ought to form part of that circle of persons entitled to have access so as to ensure proper representation of that legal person, subject to appropriate judicial control to prevent the objective of the restriction of access to evidence and hearings from being undermined (cf. recital 25 TSD).

26. Whether the person proposed by a party may be granted access to the confidential information must be determined on the basis of the relevant circumstances of the case, including the role of that person in the proceedings before this Court, the relevance of the confidential information to the performance of that role

and the trustworthiness of the person in keeping the information confidential (UPC_CoA_621/2024, order of 13 February 2025, point 12, Daedalus v. Xiaomi).

27. The fact that a person is an employee of a party is, as a general rule, not sufficient to deny access to that person. The exclusion of employees would severely restrict a party's freedom to choose who will represent it in the proceedings. Furthermore, an employee of a party will often be better positioned to present the party's view, provide and review relevant information and instruct the representatives than persons external to the party's organization. Consequently, access for a party's employee will often be essential to ensure compliance with the right of that party to an effective remedy and to a fair trial. The interest of the party in having full access for, at least, one of its employees therefore, as a general rule, outweighs the interests of the applicant, even if imposing a EEO regime would be preferable from the perspective of safeguarding confidentiality.

28. Furthermore, where the confidential information concerns a licence agreement between a party and a third party, the potential harm for this third party resulting from allowing access to one or more employees of the other party to the proceedings, may be mitigated by requiring said employee(s) to refrain from involvement in patent licensing negotiations with the third party for a certain period. Such a bar prevents said employee(s) from using such confidential information in these negotiations, whether intentionally or not. It thereby facilitates compliance with the confidentiality regime and provides all parties with a greater degree of legal certainty, as the involvement of the employee(s) in negotiations is easier to establish than the employee's use – inadvertent or otherwise – of the confidential information in such negotiations.

29. This assessment is not altered by APPLE's reference to Art. 9 TSD, with which Art. 262A RoP, as already mentioned, is in line. APPLE uses the reference mainly to argue that the TSD does not rule out an EEO regime. Even if the directive were applicable and this interpretation were correct, it does not follow that this Court must impose an EEO regime in the present case.

30. While the Court must apply Union law in its entirety, including EU competition law, and shall respect its primacy (Art. 20 UPCA) as well as ensure that the rules, procedures and remedies provided for in the UPCA and the UPCS do not distort competition (Art. 42.2 UPCA), SUN PATENT and APPLE have not demonstrated that disclosing information under a confidentiality regime that allows the information to be used by employees of a party only in the context of proceedings before this Court will result in violations of EU law or will have any anti-competitive effects. Even if use of the information in violation of the confidentiality regime had anti-competitive effects, this does not mean that imposing the regime conflicts with EU competition law.

The confidentiality club and the access to HCI by VIVO's employees in the present case

31. SUN PATENT and APPLE have not demonstrated that, in the present case, the three VIVO's designated employees are not necessary to ensure an effective remedy and a fair trial under R. 262A.6 RoP. They do not deny that the three named employees of VIVO play an essential role in the proceedings, including the debate on SUN PATENT's request for the determination of FRAND terms of the licence. VIVO have also demonstrated that access to the HCI by the three designated VIVO's employees is necessary to perform that role. Such access is necessary, since the confidential information concerns licence agreements which SUN PATENT

wishes to rely on in support of its arguments relating to the determination of FRAND terms licence requirements and which the parties do not dispute to be a core aspect of the case.

32. APPLE's contention that aggregate data, for example by way of an external report without full disclosure of the HCI, would be sufficient is ill-founded. Even if the debate on the FRAND licence requirements were to focus on aggregate data, VIVO's designated employees must be in a position to review and, where necessary, challenge the information on which the aggregate data is based.

33. Furthermore, SUN PATENT and APPLE did not raise any substantiated concerns concerning the trustworthiness of VIVO's employees in keeping the information confidential.

Licensing bar

34. However, the fact that VIVO's employees cannot unlearn information that they have become aware of when they were given access to HCI necessitates additional measures.

35. It is not disputed between the parties that the three VIVO's employees to whom access to HCI has been granted by the Paris LD have been or may be directly involved in licensing negotiations with counterparties to licence agreements disclosed by SUN PATENT in the present proceedings, which is likely to create an informational asymmetry between the negotiating parties, VIVO having access to commercially valuable information which it would otherwise not have access to.

36. The mere fact that the three VIVO's employees are bound by a confidentiality undertaking cannot per se exclude the risk that said employees, in the course of negotiations with the counterparties to the licence agreements listed under HRM Exhibit 9.3, may use – inadvertent or otherwise – the HCI as said information, once learned, cannot be unlearned.

37. It is thus not disproportionate, in order to ensure the rights of the parties to the legal proceedings to an effective remedy and to a fair trial, to provide for a licensing bar limited to the extent necessary, namely to provide that the three designated VIVO's employees shall not participate in or advise upon any licensing negotiations with the counterparties listed under Exhibit HRM 9.3 to the disclosed licence agreements or related agreements for a certain period, save with the relevant counterparty's consent.

38. The interest of SUN PATENT to exclude the risk that VIVO's three employees in the course of negotiations with the counterparties to the licence agreements listed under HRM Exhibit 9.3 may, even inadvertently, use the HCI and thus gain an unjustified advantage by a licensing bar outweighs the interest of VIVO in being able to use these three employees in negotiations with these counterparties, even if, as argued by VIVO, they are because of their skills, experience and know-how the only employees who can currently be used by VIVO for that purpose. VIVO had the possibility, although they choose not to do so, to limit the number of employees authorized to access the HCI to less than three, eg [redacted] to whom both VIVO and SUN PATENT agreed to grant access to all confidential information (see impugned order, p. 12, para 4), so that they could have maintained some of their key licensing employees out of the confidentiality regime and licensing bar while ensuring their access to the HCI.

39. As to the duration of the licensing bar, a period of two years - which has been requested by SUN PATENT and not disputed by VIVO - from the date of this order, rather than, as requested by SUN PATENT after ceasing to be in possession and/or have access to such agreements, is reasonable in view of preventing the risk of misuse of the HCI by VIVO's employees while limiting the licensing bar on said employees to the minimum necessary in order to efficiently protect the confidentiality of the HCI disclosed to them.

II- VIVO's Appeals CoA_791/2025 and CoA_793/2025

Restriction on the use of confidential information

40. VIVO argue that restricting the use of confidential information - both non-highly and highly confidential information - exclusively to the Court proceedings hinders VIVO to use said information in out-of-court negotiations.

41. During the oral hearing, SUN PATENT agreed that, although confidential information shall not be used or disclosed outside the Court proceedings, said information may be used by VIVO for settlement discussions in respect of these proceedings between the parties.

42. Considering that parties are in agreement and that the role of the Court is to help parties to settle the whole or part of the action (R. 332 (f) RoP), it is decided that confidential information - both non-highly and highly confidential information – may be used by VIVO for settlement discussions in respect of these proceedings between the parties.

Access to VIVO's authorized representatives' legal team, internal support staff and external experts

43. According to VIVO, the impugned orders, to the extent that they restrict access to confidential and highly confidential information to, inter alia, VIVO's representative "and his legal team involved in the present proceedings", entail a lack of clarity as to whether the authorized legal team not only includes UPC representatives working on the case, but all lawyers/patent attorneys chosen by VIVO's authorized representative to work on the case or, alternatively, whether such lawyers/patent attorneys fall under the definition of "internal support staff" which VIVO request to be added in the group of authorized persons on VIVO's side.

44. Pursuant to R. 262A.6 RoP the number of persons to whom access is restricted shall be no greater than necessary in order to ensure compliance with the rights of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings. Whether a particular person may be granted full access under this provision must be determined on the basis of the relevant circumstances of the case, including the role of that person in the proceedings before this Court, the relevance of the confidential information to the performance of that role and the trustworthiness of the person in keeping the information confidential (UPC CoA, order of 12 February 2025, UPC_CoA_621/2024, para 12).

45. In the impugned orders, the Paris LD considered that the concept of "legal team" must be interpreted as follows: "the UPC representatives (lawyers and patent attorneys) chosen to work in the present case, for which they are responsible. The UPC representatives are free to decide whom to involve in handling a case".

As rightly argued by VIVO and not disputed by SUN PATENT, SUN PATENT initial requests (as filed on 18 April 2025 and amended on 13 June 2025) explicitly included the internal support staff of VIVO's representatives in its application for confidentiality measures pursuant to R262A RoP.

46. Against the background of the aforementioned case law, the considerations of the Paris LD in the impugned orders and SUN PATENT's requests, the term "legal team" in the operative part of the impugned order must be given the understanding that apart from the UPC representatives involved in the proceedings other than the named representative Dr. Georg Rauh, it also and only encompasses internal support staff of the firm to which the respective UPC representative belongs and who were involved by this UPC representative to work on the case, provided that the UPC named representative bears the responsibility that each member of the legal team is bound by the provisions of the confidentiality order.

47. VIVO's requests concerning the access of external experts to confidential and highly confidential information shall be dismissed insofar as the Paris LD already ordered the access to confidential information - including HCI- to external expert listed in its orders (Paris LD procedural orders of 24 September 2025, CFI_361/2025 and CFI 362/2025).

Representative's liability for breaches by team members

48. Part V of the operative part of the impugned orders (hereafter "part V") shall be revoked for the following reasons.

49. SUN PATENT in its initial application requested that in the event of breaches of the confidentiality by any individual who has access to confidential and highly confidential information, "the court may impose a penalty payment upon each of the Defendants for each violation" (R. 262A RoP Application for confidentiality filed on 18 April 2025 as amended on 13 June 2025). No mention was made of the liability of VIVO's representative in the event of a culpable breach. Part V of the operative part of the impugned orders is therefore contrary to Art. 76 UPCA, which provides that the Court shall decide in accordance with the requests submitted by the parties and shall not award more than is requested.

50. In addition, as rightly argued by VIVO, nothing in the UPC Agreement nor in the Rules of Procedure provides for the liability of the UPC representative of a party in the event of a breach of a duty of confidentiality ordered by the Court under R. 262A RoP. Rather, in the event of a breach of the confidentiality obligation ordered by the Court, a penalty payment may be imposed on a party to the proceedings, as the Paris LD did under para IV of the operative part of the impugned orders.

51. Although it is the party that may be sanctioned for non-compliance with the confidentiality obligation ordered by the Court, through the imposition of a penalty payment, and not the party's legal representative in its own – whether professional or personal - capacity, it does not release said representative from its obligation to ensure that that each member of the legal team is bound by the provisions of the confidentiality order (see above para 46). It also does not release him or her from its rights and obligations under the UPC Agreement and the Rules of Procedure. Said obligations include the requirements to comply with the code of conduct adopted pursuant to R. 290.2 RoP as well as the requirements of the proper administration of

justice, failing which the Court may exclude said representative from the proceedings by way or order under the conditions set forth under R. 291.1 RoP.

ORDER

I. **Appeals CoA_755/2025 and CoA_757/2025**

(i) The impugned orders (ORD_33179/2025 and ORD_33183/2025) are set aside to the extent that a licensing bar on the three designated VIVO's employes has been rejected;

(ii) access to the information classified as Highly Confidential Information (HCI) shall be restricted to the following VIVO's employees only:

- [redacted]
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each of whom shall not participate in or advise upon any licensing negotiations with the counterparties to the disclosed licence agreements listed under Exhibit HRM 9.3 or related agreements (or any related material submitted in the proceedings) for a period of two years from the date of this order, save with the relevant counterparty's consent;

(iii) this obligation of confidentiality shall continue to apply after the termination of these proceedings;

(iv) the impugned orders are upheld in all other respects;

(v) APPLE's further requests are rejected as inadmissible.

II. **Appeals CoA_791/2025 and CoA_793/2025**

(i) The parts of the sentences under Para I-2 and II-2 of the operative part of the impugned orders (ORD_33179/2025 and ORD_33183/2025) which read "and his legal team involved in the present proceedings" are set aside and replaced as follows by this order which includes the internal support staff in the group of persons authorized to have access to confidential and highly confidential information:

I-2. Access to the "confidential information" shall be restricted to the following persons only on the VIVO side:

- (…),
- and his legal team, meaning UPC representatives involved in the proceedings other than the named representative and the internal support staff involved by the named representative or any other of the involved UPC representatives provided the named UPC representative imposes the confidentiality obligations set out by the Paris LD (order of 31 July 2025, UPC_CFI_361/2025 and UPC_CFI_362/2025) on such staff,

- (…).

II-2. Access to the “highly confidential information” shall be restricted to the following persons only on the VIVO side:

- (…),
- and his legal team, meaning UPC representatives involved in the proceedings other than the named representative and the internal support staff involved by the named representative or any other of the involved UPC representatives provided the named UPC representative imposes the confidentiality obligations set out by the Paris LD (order of 31 July 2025, UPC_CFI_361/2025 and UPC_CFI_362/2025) on such staff ,
- (…).

(ii) Para III of the operative part of the impugned orders (ORD_33179/2025 and ORD_33183/2025) is set aside and replaced by this order which includes the possibility to use the confidential information for settlement purposes:

III. The information classified as confidential in paragraphs I and II shall not be used or disclosed outside of these court proceedings, save for settlement discussions in respect of these proceedings between the parties, and except to the extent that it has verifiably come to the knowledge of the receiving party outside of these proceedings, provided that the receiving party has obtained it on a non-confidential basis from a source other than the Claimants, and provided that such source is not bound by a confidentiality agreement or other obligation of secrecy vis-à-vis the Claimants.

(iii) Part V of the operative part of the impugned orders (ORD_33179/2025 and ORD_33183/2025) is set aside;

(iv) Subject to this order under appeals CoA_755/2025 and CoA_757/2025, the impugned orders are upheld in all other respects.

This order was issued on 26 January 2026.

KLAUS STEFAN MARTIN Grabinski

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Klaus Grabinski, presiding judge and President of the Court of Appeal,

EMMANUEL, LUCIEN, RENÉ GOUGÉ

Signé numériquement par EMMANUEL, LUCIEN, RENÉ GOUGÉ
Date : 2026.01.26 17:05:08 +01'00'

Emmanuel Gougé, legally qualified judge and judge-rapporteur,

Peter Hendrik Blok

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Peter Blok, legally qualified judge.