



Reference no.:
UPC_CoA_363/2025
APL_19133/2025

DECISION
of the Court of Appeal of the Unified Patent Court
issued on 12 July 2025
concerning an application for a decision by default (R. 355 RoP)

HEADNOTES

- (i) R. 355.2 RoP only applies when a decision by default is sought “against the defendant of the claim”. It does not apply when a decision by default is requested by the defendant against the claimant because the claimant failed to take a step within the time limit foreseen in the RoP or set by the Court or it failed to appear at an oral hearing pursuant to R. 355.1(a) and (b) RoP.
- (ii) The rationale underlying R. 355.2 RoP is that a decision by default against the defendant by which the Court orders the remedy sought by the claimant or the counter-claimant does not only require that the Court finds that the conditions mentioned in R. 355.1 (a) or (b) RoP are met but also finds that the conditions, that the order of the remedy sought presupposes, are met based on the facts that are put forward by the claimant which justify the claims, providing the procedural conduct of the defendant does not preclude to give such decision. In contrast, a decision by default against the claimant by which the Court rejects the remedy sought by the claimant only requires a finding by the Court that the conditions mentioned in R. 355.1(a) or (b) RoP are met and a balance of the interests of the parties.
- (iii) When exercising its discretion, the Court shall ensure that proceedings are organized on the basis of the principles of fairness and equity (RoP, preamble para. 2) in the most efficient and effective manner (RoP, preamble para. 4) and must consider the balance of interest of the parties.
- (iv) The effectiveness of security for costs ordered under R. 158 RoP is ensured by the power granted to the Court under R. 158.5 RoP to give a decision by default if the party bound to provide a security for costs fails to do so. It is only under exceptional circumstances that the Court may derogate from this general rule and the reference to the status quo of the action may not justify such a derogation.
- (v) The principle of fairness and equity is further reflected in the RoP to the benefit of the party against whom a decision by default has been given since that party, once a decision by default has been given, may lodge an Application to set aside that decision within one month of service of the decision (R. 356 RoP).

KEYWORDS

Decision by default (R. 355 RoP), security for costs (R. 158 RoP)

APPLICANT AND APPELLANT (DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE CFI)

Microsoft Corporation, One Microsoft Way, 98052-6399 Redmond, USA (hereinafter "**Microsoft**"),

represented by Prof. Tilmann Müller-Stoy, attorney at law, Bardehle Pagenberg, Partnerschaft mbB
Patentanwälte Rechtsanwälte

RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE CFI)

Suinno Mobile & AI Technologies Licensing Oy, PO Box 346, 00131 Helsinki, Finland (hereinafter "**Suinno**"),

represented by Petri Eskola, attorney at law, Backström & Co

PATENT AT ISSUE

EP 2 671 173

DECIDING JUDGES

Panel 1a

Klaus Grabinski, Presiding judge

Peter Blok, legally qualified judge

Emmanuel Gougé, legally qualified judge and judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDER OF THE CFI

- Order of the CFI of the Unified Patent Court, Central division Paris seat, dated 2 April 2025
- Reference numbers:
ORD_68708/2024
App_61657/2024, ACT_18406/2024_UPC_CFI_164/2024
App_61782/2024, CC_43155/2024, UPC_CFI_433/2024
App_61784/2024, App_52826/2024 CC_43155/2024, UPC_CFI_433/2024 (Application to amend a patent)

DATE OF THE HEARING

17 June 2025

FACTS AND REQUESTS OF THE PARTIES

1. On 9 April 2024, Suinno filed an infringement action on the basis of the patent at issue against Microsoft before the Paris Seat of the Central Division (hereafter referred to as the "Central Division" or "CFI", ACT_18406/2024_UPC_CFI_164/2024).

Security for costs (R. 158 RoP)

2. On 25 July 2024, Microsoft filed a request for security for costs pursuant to R. 158 RoP in parallel to its Statement of defence and Counterclaim for revocation of the patent at issue.
3. On 27 September 2024, the Central Division granted the request and ordered Suinno to provide a security for costs to Microsoft in the amount of € 300,000 within one month of service of its order (ORD_45914/2024) and informed Suinno that, pursuant to R. 158.4 RoP, if it failed to provide the security within the time stated, a decision by default may be given in accordance with R. 355 RoP (Order of 1 October 2024, ORD_54096/2024).
4. Suinno lodged an appeal against the order ORD_45914/2024 (APL_55849/2024_UPC_CoA_596/2024), requesting the amount of the security for costs to be reviewed. The Court of Appeal rejected the appeal.

Decision by default

5. On 19 November 2024, in the absence of payment of the security for costs by Suinno, Microsoft filed a request for a decision by default pursuant to R. 355 and R. 158.5 RoP, requesting the Central Division to issue a decision by default against Suinno in the infringement action (ACT_18406/2024, UPC_CFI_164/2024), in the counterclaim for revocation of the patent at issue (CC_43155/2024, UPC_CFI_433/2024) and in the application to amend the patent at issue (App_52826/2024, CC_43155/2024, UPC_CFI_433/2024) (hereafter together referred to as the “main action”).
6. On 2 April 2025, the Central Division rejected the application (impugned order, ORD_68708/2024). It considered that, pursuant to R. 355.2 RoP, the written pleadings submitted at the time of the default did not permit a sufficiently confident assessment regarding the challenged validity of the patent and the absence of its infringement.
7. On 10 April 2025, Microsoft filed a request to grant leave to appeal under R. 220.2 RoP (App_17541/2025 UPC_CFI_164/2024) which was rejected by the Central Division in its order of 23 April 2025 (ORD_19543/2025).
8. On 22 April 2025, Microsoft filed an application for discretionary review of the impugned order (APL_19133/2025_UPC_CoA_363/2025) under R. 220.3 RoP concerning the Application App_61657/2024 (the request for a decision by default in the infringement action ACT_18406/2024), requesting that the order be set aside, a decision by default be issued against Suinno, the infringement action be dismissed, and Suinno be ordered to bear the costs and expenses.
9. Microsoft argues inter alia that
 - the Central Division applied wrongly the provisions of R. 355.2 RoP which wording provides for a decision by default against the defendant and not against the claimant;
 - the Central Division was wrong in finding that a decision by default against the claimant may and shall not be given where the default occurs at an initial stage of the proceedings and the claimant has not fully illustrated and proven its claim;
 - the application of R. 355.2 RoP to a decision by default against the claimant renders R. 158 RoP and R. 355 RoP void of any scope of application and not issuing a decision by default entails the consequence that the main proceedings are continued as if the order pursuant to R. 158 RoP and

Suinno not paying the security for costs did not exist.

10. In its Response of 30 April 2025, Suinno rejected Microsoft arguments, requesting the Court of Appeal to deny the request for review, and filed auxiliary requests in the event the request for discretionary request is allowed, requesting that the patent at issue is “found valid and infringed by Default Decision”.
11. Suinno argues inter alia that
 - a decision by default is taken based on the status quo of the action, it can go against either party based on what the status quo of the action is at the time of the decision;
 - under R. 355 RoP, the defaulting party may succeed “if status quo so warrants”;
 - although the security for cost is “meaningful” in the event Microsoft prevails in the action, Microsoft is bound to fail, there is thus no justification for a security for costs.

GROUNDS

12. The appeal is admissible and well-founded.
13. The review of the impugned order is limited to the application for a decision by default relating to the infringement action in relation to which Suinno was ordered to provide a security for costs of € 300.000 within the one-month period set by the Central Division.
14. Pursuant to R. 158.5 RoP, if a party fails to provide adequate security, the Court may give a decision by default under R. 355 RoP.
15. Under R. 355.1 RoP, a decision by default may be given where the Rules so provide if a party fails to take a step within the time limit foreseen in the Rules or set by the Court (R. 355.1(a) RoP), or where the party which was duly summoned fails to appear at an oral hearing (R. 355.1(b) RoP). In exercising its discretion under R. 355.1 RoP, the Court shall thus assess whether the party is in default. If so, and subject to the assessment of the balance of interests between the parties, a decision by default may be given without examination of the merits of the action.
16. A decision by default against the defendant of the claim or counterclaim, however, may only be given where the facts put forward by the claimant justify the remedy sought and the procedural conduct of the defendant does not preclude to give such decision (R. 355.2 RoP).
17. As explicitly stated in there, R. 355.2 RoP only applies when a decision by default is sought “against the defendant of the claim”. It does not apply when a decision by default is requested by the defendant against the claimant because the claimant failed to take a step within the time limit foreseen in the RoP or set by the Court or it failed to appear at an oral hearing pursuant to R. 355.1(a) and (b) RoP.
18. The rationale underlying R. 355.2 RoP is that a decision by default against the defendant by which the Court orders the remedy sought by the claimant or the counter-claimant does not only require that the Court finds that the conditions mentioned in R. 355.1 (a) or (b) RoP are met but also finds that the conditions, that the order of the remedy sought presupposes, are met based on the facts that are put forward by the claimant which justify the claims, providing the procedural conduct of the defendant does not preclude to give such decision. In contrast, a decision by default against the claimant by which the Court rejects the remedy sought by the claimant only requires a finding by the Court that the

conditions mentioned in R. 355.1(a) or (b) RoP are met and a balance of the interests of the parties.

19. As the CFI misunderstood the meaning of R. 355.2 RoP when exercising its discretion under R. 355.1 RoP, its decision not to issue a decision by default cannot hold and must be revoked.
20. Pursuant to Art. 75(1) UPCA, cases shall only be referred back to the CFI in exceptional cases and no circumstances are apparent in this case that would justify the assumption of an exceptional case to be referred back to the CFI. It is thus for the Court of Appeal to take a decision upon the request of Microsoft to give a decision by default against Suinno under R. 355.1 RoP.
21. On 1 October 2024, the Central Division expressly notified Suinno that, pursuant to R. 158.4 RoP, if it failed to provide the security within the time stated, a decision by default may be given in accordance with R. 355 RoP (ORD_54096/2024).
22. It is undisputed between the parties that Suinno has not provided the security for costs, whether all or part of it, within the one-month period, while a decision by default may be given against a party where the Rules of Procedure so provide if a party fails to take a step within the time limit set by the Court (R. 355.1(a) RoP).
23. When exercising its discretion, the Court shall ensure that proceedings are organized on the basis of the principles of fairness and equity (RoP, preamble para. 2) in the most efficient and effective manner (RoP, preamble para. 4) and must consider the balance of interest of the parties.
24. The effectiveness of security for costs ordered under R. 158 RoP is ensured by the power granted to the Court under RoP 158.5 RoP to give a decision by default if the party bound to provide a security for costs fails to do so. It is only under exceptional circumstances that the Court may derogate from this general rule and the reference to the status quo of the action may not justify such a derogation. Suinno has not put forward any other reasons why no decision by default should be given under R. 158.5 and R. 355.1(a) RoP.
25. It should also be reminded that the principle of fairness and equity is further reflected in the Rules of Procedure to the benefit of the party against whom a decision by default has been given since that party, once a decision by default has been given, may lodge an Application to set aside that decision within one month of service of the decision (R. 356 RoP).
26. Finally, and to the extent it is admissible, the argument raised during the oral hearing by Suinno, based on Article 37 (“Decision by default”) of the Statute of the UPC (hereafter the “Statute”), according to which a decision by default would be limited to situations of failure to file written submissions in defence or to appear at the oral hearing, does not hold. The reference to a failure to file written submissions in defence or to appear at the oral hearing made under Art. 37 of the Statute is not exhaustive and does not limit the power of the Court to give decisions by default in all situations provided for under the Rules of Procedure.

Costs

27. Since this decision closes the infringement action (ACT_18406/2024_UPC_CFI_164/2024), the Court of Appeal shall decide on the costs.
28. As the unsuccessful party, Suinno should be held to pay the costs of the first instance and appeal

proceedings regarding the infringement action according to Art. 69 (1) UPCA, including the present proceedings and the appeals APL_55849/2024_UPC_CoA_596/2024 and APL_53716/2024 UPC_CoA_563/2024.

DECISION

The Court of Appeal

- I. revokes the impugned order;
- II. gives a decision by default against Suinno;
- III. dismisses the infringement action (ACT_18406/2024_UPC_CFI_164/2024);
- IV. orders Suinno to pay the costs of the first instance and appeal proceedings regarding the infringement action.

This order was issued on 12 July 2025.

Klaus Grabinski
President of the Court of Appeal
In his absence, signed on his behalf

Emmanuel Gougé
Legally qualified judge and judge-rapporteur

Peter Blok
Legally qualified judge