



UPC Court of Appeal
UPC_CoA_423/2025
APL_22327/2025
UPC_CoA_424/2025
APL_22355/2025

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 14 May 2025
concerning a request for discretionary review and an application for suspensive effect

APPLICANTS (AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Hisense Gorenje Germany GmbH**, Garching, Germany
2. **Hisense Europe Holding GmbH**, Vienna, Austria
(hereinafter for both 'Hisense')
1-2 represented by attorney-at-law Stephan Dorn, Freshfields PartG mbH, Düsseldorf, Germany
3. **TCL Deutschland GmbH & Co. KG.**, Munich, Germany
4. **TCL Deutschland Verwaltungs GmbH**, Munich, Germany
5. **TCL Operations Polska Sp. z.o.o.**, Zyrardów, Poland
6. **TCL Belgium, SA**, Molenbeck-Saint-Jean, Belgium
(hereinafter for 3-6 'TCL')
7. **LG Electronics Deutschland GmbH**, Eschborn, Germany
8. **LG Electronics European Shared Service Center B.V.**, Amstelveen, the Netherlands
9. **LG Electronics European Holding B.V.**, Amstelveen, the Netherlands
(hereinafter for 7-9 'LG')
3-9 represented by attorney-at-law Felix Rödiger, Bird & Bird LLP, Düsseldorf, Germany, and other representatives from that firm

RESPONDENT (AND CLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

Corning Incorporated, New York, USA
(hereinafter 'Corning')
represented by attorney-at-law Dr. Marcus Grosch, Quinn Emanuel Urquhart & Sullivan, LLP, Mannheim, Germany

PATENT AT ISSUE

EP 3 296 274

LANGUAGE OF THE PROCEEDINGS

English

DECIDING JUDGE

This order was issued by Patricia Rombach, Standing judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Date: 8 May 2025, Mannheim Local Division,
- ORD_20609/2025, App_19795/2025, UPC_CFI_819/2024 concerning application for panel review of the order of the judge-rapporteur, 9 April 2025, ORD_17357/2025, App_17158/2025, in the main proceedings ACT_66848/2024

POINT AT ISSUE

Request for separation of proceedings (R. 303.2 RoP)

SUMMARY OF FACTS

1. Corning brought an infringement action against Hisense, TCL and LG before the Mannheim Local Division. All defendants were at first represented by the same representative.
2. Hisense, TCL and LG lodged a request for separation of proceedings. To support the request Hisense, TCL and LG submitted that they would have to disclose sensitive supply chain information in order to defend themselves against Corning's allegations. Exchange of such confidential information amongst the competing groups of companies had to be restricted so as to avoid potential conflicts with EU competition law. This would call for a separation of proceedings.
3. In the order of 9 April 2025, the judge-rapporteur of the panel of the CFI rejected the request for separation of the proceedings and ordered that Hisense, TCL and LG submit one Statement of defence in one brief by uploading it to the CMS.
4. The judge-rapporteur held that the potential conflicts being addressed in the application stem solely from the fact that Hisense, TCL and LG decided to be represented by identical counsel. It is the obligation of the representative to organize the proceedings of his groups of clients internally in a way to avoid such potential conflicts. Whether or not the Defendants' groups find it necessary or at least helpful to enter into an internal understanding that the information shared in the course of the proceedings may not be used outside the proceedings or if they decide not to share such information in the first place is solely up to the internal decision of the parties. It is not for the court to guarantee for a specific scheme. The RoP does not foresee to split up the Statement of defence into multiple briefs. The representative may exchange with each group of clients individualized versions of the Statement of defence where only the parts relevant to the client remain confidential as he will not be obliged to share details concerning one client with the other clients.
5. On 6 May 2025 the CFI was informed that another attorney-at-law from a different law firm will act as representative for Hisense (App_21555/2025).
6. The panel rejected the application for panel review against this order. It confirmed the order of the judge-rapporteur for the reasons set out in the impugned order. Leave to appeal was not granted.
7. Hisense, TCL and LG subsequently made a request for discretionary review under R. 220.3 RoP.

REQUESTS OF THE PARTIES

8. In summary and to the extent relevant to the decision of the standing-judge, Hisense, TCL and LG request that the Court of Appeal:
 - allow the appeal and order suspensive effect of this request for discretionary review,
 - stay the infringement proceedings until a decision on the request for discretionary review is handed down,
 - in case of leave for appeal being granted, review the judge-rapporteur's and the panel's orders and order that the infringement proceeding be separated pursuant to R. 303.2 RoP.

PARTIES' SUBMISSIONS

9. TCL and LG submit, in summary and insofar as relevant, as follows
 - The panel has violated R. 333.4 RoP by deciding without having considered and dealt with the arguments in the request for panel review.
 - The decision of the Court of Appeal will have a strong impact on the Unified Patent Court's handling of antitrust relevant information and will directly impact all future litigations concerning antitrust obligations.
 - There are no confidentiality agreements that allow the necessary level of confidentiality amongst the Defendants and the Court of First Instance (CFI) has clarified that it will not provide any Court order supporting the necessary level of confidentiality.
 - The CFI has overlooked that this has nothing to do with representation of the Defendants by the same representative. Rather the issue of confidentiality amongst the Defendants continues to exist now that Hisense is only represented by another attorney-at-law.
 - The separation is not of harm to the Claimant's legal position except for procedural consequences of separating the value in dispute and a potentially joined oral hearing for three cases, but these procedural consequences are reasonable, considering and weighing the potential risks of sharing antitrust relevant information.
 - The decision is not in line with the previous practice of the Mannheim Local Division.
 - The confidential information enables a party to identify business strategies and to adapt its own business to the findings of the other parties' strategies, thereby harming competition.
 - Even an access restriction does not fully address the concerns, as usually access to confidential parts of the court file is granted to 3 or 4 individuals of each party.
 - The restriction of use of the disclosed information for the only purposes of the proceedings does not address the concerns either.
 - The fundamental right of the party to be heard is impaired, because the party could, in view of its concerns that the other party obtains access to the confidential and sensitive business information, use it internally for adapting business strategies and restrict its own presentation of facts. Suing independent and unrelated companies which do not cooperate at all but rather act in competition with each other is unprecedented so far. In case such practice is established, claimants could use the imminent impairment of the right to be heard in their favour.

- The request for suspensive effect is well-founded. The time period for the statement of defence lapses on 15 May 2025. As the Defendants share major concerns to file sensitive business information without being able to prevent the other co-defendants from accessing this sensitive information, the Defendants may restrict their presentation of facts and, thereby, irreparably forgo their right to be heard. That is more true, as the judge-rapporteur already indicated that it may not grant confidentiality orders under R. 262A RoP.

GROUNDS FOR THE ORDER

Request for discretionary review

10. The request for discretionary review is admissible but unfounded.
11. The request for discretionary review is directed to the granting of the appeal against the order not to separate the proceedings.
12. The arguments made by Hisense, TCL and LG do not constitute grounds for leave to appeal.
13. It is at the discretion of the court to separate the proceedings. The Court must consider the legitimate interests of both parties and the public interest.
14. In a situation such as the present one, where several unrelated companies are involved in the proceedings, the parties can have a legitimate interest in maintaining confidentiality of business information. Furthermore, the legal proceedings should safeguard mutual uncertainty at least as to the timing, extent and details of any future changes in the conduct of competitors on the market (Art. 101 TFEU, see CJEU, 29 July 2024, C-298/22, para 54).
15. It is true that the separation of the procedures can prevent other defendants from obtaining access to the confidential information. However, separation is not the only option available to the Court. To protect trade secrets, personal data or other confidential information, the Court may order that access to such information be restricted to specific persons (Art. 58 UPCA, R. 262A RoP). Pursuant to R. 262A RoP the number of persons to whom access is restricted 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. Another option is for the parties themselves to conclude a confidentiality agreement.
16. It is true that in case of orders pursuant to R. 262A RoP there remains a risk that individuals of the parties who have access to the data may not respect their confidentiality obligations. However, the risk is largely mitigated by granting full access only to trustworthy individuals (see UPC Court of Appeal, 12 February 2025, APL_58177/2024, UPC_CoA_621/2024, Daedalus vs Xiaomi, para. 12). Therefore, there is no reason for the party to restrict its own presentation of facts to avoid this risk.
17. It follows that, in a situation such as the present, there is nothing fundamentally wrong with the Court's decision not to separate the proceedings. Rather, it is always a question of the circumstances

of the individual case as to how the conflicting interests are to be weighed up. In particular, considerations of procedural economy may be a reason to not separate the proceedings.

18. It follows that there is no misuse of discretionary power in that regard.
19. If the Court decides not to separate the proceedings, it must, as explained above, protect confidential information in accordance with R. 262A RoP, if the defendants make such a request. As there was no such request to decide it cannot be inferred from the reasoning of the judge rapporteur's decision that the CFI is inclined to deny applications under R. 262A RoP.
20. To the extent that the CFI ordered the defendants to submit one Statement of defence, this is not the subject of the request for discretionary review. In this respect, there are no concerns regarding the interests involved. The judge-rapporteur has already made clear in the order of 2 April 2025 (App_8314/2025), to which he referred, that this applies, unless the Rules of Procedures demand otherwise. There is no objection to defendants represented by the same lawyer being required to submit only one Statement of defence. Confidentiality interests can also be protected in this case. If an application is made under R. 262A RoP, both a confidential version and a redacted version of the written Statement must always be lodged. Only authorised individuals will have full access to the confidential version. Obviously, the representative is not prevented from filing different redacted versions of the statement for the different groups of defendants.
21. It is clear that now that Hisense is represented by a different lawyer than TCL and LG, a new situation has arisen, and the respective representatives can each lodge one Statement of defence on behalf of the defendants they represent, if necessary with one or more redacted versions.
22. There is no need for further reasoning (see R. 220. 4 sentence 2 RoP).

Application for suspensive effect

23. With the rejection of the request for discretionary review the application for suspensive effect is devoid of purpose.

ORDER

The request for discretionary review is dismissed.

Issued on 14 May 2025

Patricia Rombach, legally qualified judge and standing judge