UPC – Ericsson v. ASUSTeK Computer / Request for interim relief filed after start of main proceedings

17 Jun 2026

Telefonaktiebolaget Ericsson v. ASUSTeK Computer Inc. and Arvato Netherlands B.V., UPC CFI LD Milan, 17 June 2026, Case no. 1129/2026

On 1 April 2026, Ericsson filed an application for provisional measures after the main proceedings on the merits of the case had commenced. The UPC CFI LD Milan today dismissed Ericsson's application for lack of urgency.

Ericsson relied on all its written defences in the main proceedings and submitted some specific additional facts in support of its application.

These facts relate to:

(i) a delay of the main proceedings,
(ii) the recent outcome of two German national proceedings and
(iii) ASUSTeK's launch of new infringing products

Regarding the delay of the main proceedings, Ericsson pointed out that the oral hearing is scheduled to take place on 24-25 September 2026, more than two years and three months after the commencement of the proceedings.

Further, Ericsson recently discovered that ASUSTeK has been injuncted on two separate but similar cases in Germany and should have stopped its sales there. ASUSTeK was ordered to pay damages in these proceedings, but had not yet made any payment.

Ericsson further explains that on 17 March 2026, ASUSTeK announced the imminent launch of new infringing products.

Ericsson specified that the application was necessary, appropriate and urgent. In particular, the balance of interests between Ericsson's interests in obtaining an injunction and the defendants' interests in being able to continue their activities in the market should be decided in Ericsson's favour.

ASUSTeK argued that the alleged delay to the main proceedings was mainly caused by Ericsson itself.

Secondly, according to ASUSTeK Ericsson's statements on the German cases were inaccurate and misleading. Both judgments were non-final and subject to appeal proceedings before the Munich Higher Regional Court. ASUSTeK furthermore withdrew its products from the German market in compliance with the provisional enforcement of the injunction granted in favour of Nokia.

Thirdly, the launch of new products by the ASUSTeK did not constitute a new situation that revived – or gave rise to – urgency. Launching new

products was a common practice in the consumer electronics industry, and ASUSTeK has consistently launched new products in 2024 and 2025 since the main proceedings commenced.

Fourthly, Ericsson unreasonably delayed filing its application for provisional measures. Ericsson has been aware of all the relevant facts since the commencement of the main proceedings.

LD Milan

The Court notes that an application for an interim measure is considered exceptional in principle and held:

"*In this case, the requirements of urgency and balancing the parties' interests have a more specific meaning. In particular, the applicant must highlight any new or escalating risk that has arisen during the ongoing proceedings and explain why these new facts alter the existing situation to such an extent that a provisional measure is necessary and that it would not be justified to wait for a decision on the merits.*"

The Court further held that applications for provisional measures (including injunctions) can be submitted at any stage of the main proceedings, even towards the end. Since there is no respective legal limitation in R. 206.1 RoP, these requests must insofar be regarded as admissible.

However, when a request for interim relief is filed after the main proceedings on the merits of the case has started, the requirements of urgency and balancing the parties' interests have a more specific meaning. Pursuant to Art. 62 UPCA and R. 206 – 211 RoP, these conditions take on particular significance in the final stage of proceedings on the merits.

In particular, the applicant must highlight any new or escalating risk that has arisen during the ongoing proceedings and explain why these new facts alter the existing situation to such an extent that a provisional measure is necessary and that it would not be justified to wait for a decision on the merits.

In other words and according to these same principles, if the proceedings on the merits have reached the final stages, the Court must assess whether the applicant can be expected to await the final decision on the merits. If so, the Court may dismiss the application for provisional measures.

The applicant must prove that it is not possible to await the final decision on the merits, without being exposed to a serious, unforeseen prejudice that recently arose during the proceedings.

If the patent holder decides to submit an application for interim measures during ongoing proceedings on the merits, the applicant cannot simply rely on a continuation of the defendant's unlawful conduct. Instead, the applicant has a specific burden of proof to demonstrate the existence of new, different and supervening factual circumstances which unequivocally indicate an objective deterioration of the existing situation.

It is not sufficient to substantiate these circumstances merely by demonstrating an increase in financial loss. Once infringement has commenced, temporal aggravation of economic damage during the proceedings – without the injured party having sought urgent relief – is usually inherent, as patent infringement is often continued at least until a final order is issued. In other words, if the applicant chooses to seek protection of its rights within the timeframes specific to the proceedings on the merits, the application for interim relief must be based on

grounds going beyond a temporal aggravation related to the time required to reach a conclusion of the proceedings.

The Court notes that Ericsson tolerated the defendants' conduct for at least 16 months insofar as it had not filed an application for provisional measures during this time.

Regarding the procedural delay the Court observes that all the deadline extensions were granted upon mutual agreement between the parties. Further, Court notes that there is no evidence that ASUSTeK has failed, or will fail, to comply with the German court order. Furthermore, ASUSTeK has consistently launched new products in 2024 and 2025. This annual replacement may be considered a routine commercial activity, often referred to as a 'technology refresh'.

Therefore, the application for provisional measures filed by Ericsson is dismissed for lack of urgency.

A copy of the Order can be read here.

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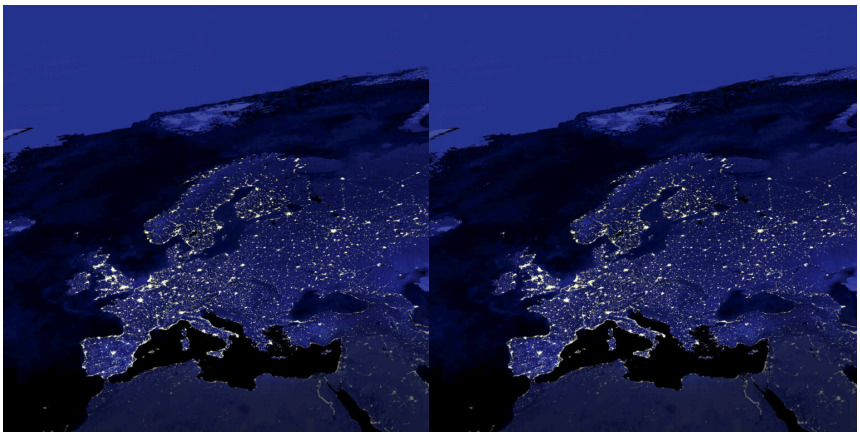

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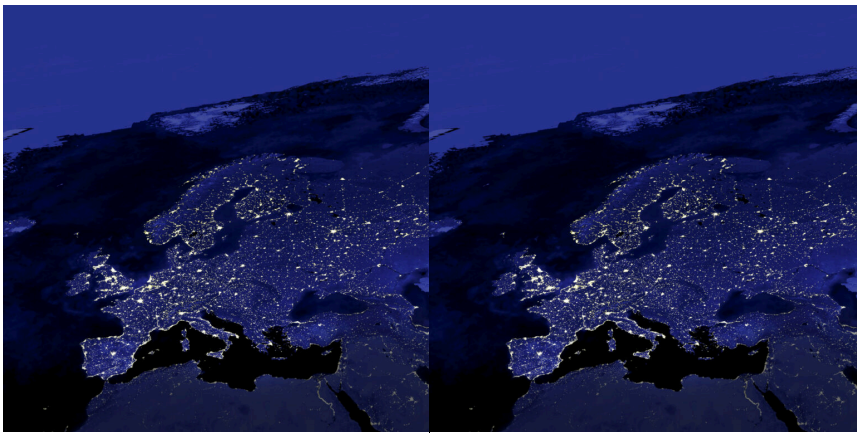

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