

EIP

Intervention by patent pool administrator permitted

NEC Corporation v TCL Communication Technology Holdings Ltd. & Others (UPC_CFI_153/2024)

Order dated 2 October 2024 (ORD_46842/2024)[1]

NEC Corporation (“NEC”) sued seven companies within the TCL group (“TCL”) for infringement of EP 2,863,637 (the “Patent”). TCL counterclaimed for revocation. NEC had contributed the Patent to an HEVC patent pool administered by Access Advance LLC (the “Applicant”). The Applicant is authorised to grant licences under patents within the pool to third parties. The Applicant applied to intervene in the proceedings.

The Applicant has unsuccessfully been trying to negotiate a licence of the pool with TCL. It had entered into a non-disclosure agreement (“NDA”) with TCL covering the negotiations and cannot share details of these with NEC.

In support of the intervention the Applicant argued that it has a genuine legal interest:

1. to support NEC in opposing allegations that the Applicant has not offered a FRAND licence and is in breach of article 102 TFEU; and also
2. that the Court determines the Patent to be valid and infringed.

TCL objected to the application to intervene. NEC had no objection.

Decision

The Munich local division allowed the intervention because it meets the formal requirements of Rule 313.1, 313.2 and 313.4 RoP and the Applicant has a legal interest in

accordance with Rule 313.1.

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The Applicant has a direct and present interest in the outcome because it is entitled to conduct negotiations and agree licences which cover the Patent and to collect and distribute royalties which would be affected if the Patent were found invalid or not infringed.

There is no abuse of process by the application to intervene. Allowing the intervention will not necessarily mean that NEC gets access to the negotiation information covered by the NDA. A separate objection relating to commercially sensitive bilateral discussions between NEC and TCL and that these becoming known to the Applicant would violate article 101 TFEU also failed.

A time limit was set for the Applicant to lodge a statement of intervention.

As an intervenor, the Applicant is to be treated as a party and can see documents on the file. However information that has been designated as confidential in TCL's defence will only be available to the individual employees named by the Applicant to which TCL has not objected. Rule 262A.6 RoP requires that at least one natural person of the party must have access to that confidential information.

As regards information about bilateral discussions between NEC and TCL, the Applicant will not have access to that information until further notice.

The Judge-rapporteur exercised his discretion not to make a reference to the CJEU on questions raised by TCL.

Note - the Applicant was represented by the same legal representatives as NEC. No objection was made to this. NEC had instructed its representatives not to forward any information relating to the bilateral discussions to the Applicant. The Judge-rapporteur's order included that NEC's representatives should forward the parties' previous statements and court orders to the Applicant.

[1] <https://www.unified-patent-court.org/en/node/1160>. Further related orders were also issued in the same matter on 2 October 2024: <https://www.unified-patent-court.org/en/node/1161>; <https://www.unified-patent-court.org/en/node/1194>; <https://www.unified-patent-court.org/en/node/1196>