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Apple Intervenes in Confidentiality Appeals: UPC Court of Appeal Allows Intervention in Ericsson and Sun Patent Trust Cases

Apple (Intervener) in Ericsson v. AsusTek and Apple (Intervener) in Sun Patent Trust v. Vivo

UPC_CoA_631/2025[1], UPC_CoA_632/2025[2], UPC_CoA_755/2025[3], and UPC_CoA_757/2025[4] – Orders of 23 September 2025

In a cluster of orders issued on the same day, the UPC Court of Appeal allowed Apple to intervene in four different ongoing appeals related to applications for protection of confidential information.

Third parties may intervene in an ongoing UPC action if they have a “legal interest in the result” of the action. An application to intervene is 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 (Rule 313 of the Rules of Procedure).

Two of the appeals stem from confidentiality applications in ongoing infringement actions brought by Ericsson against ASUSTeK and Arvato. Ericsson requested an “external eyes only” confidentiality regime for license agreements, and related information, between Ericsson and third parties including Apple. The proposed “external eyes only” confidentiality regime would restrict access to the material in question to one expert from each defendant and the defendants’ outside counsel. The defendants agreed in

principle to the protection of confidential information, but not to the strict “external eyes only” regime. The Court of First Instance (Milan LD) allowed the applications for protection of confidential information but rejected the “external eyes only” regime. Ericsson appealed insofar as the orders reject the “external eyes only” regime.

The other two appeals arise from confidentiality application in ongoing infringement actions brought by Sun Patent Trust against the smartphone maker Vivo. Similarly, Sun Patent Trust sought to restrict access to confidential information, including license agreements between Sun Patent Trust and Apple, under an “external eyes only” regime. In these cases too, the Court of First Instance (this time the Paris LD) allowed the applications for protection of confidential information but rejected the “external eyes only” regime, allowing three employees of Vivo access to the unredacted confidential information. Sun Patent Trust appealed.

Apple argues that its agreements with Ericsson and Sun Patent Trust contain highly sensitive business information, including materials relating to the formation and performance of the agreements, and that disclosure to Asus or Vivo’s employees could lead to Apple’s commercial detriment and an undue advantage for Asus or Vivo.

ASUSTeK argued inter alia that the Rules of Procedure provide a basis for intervention only if the applicant has a legal interest in the final outcome of the action and that a legal interest in a “side question” such as a confidentiality regime is not sufficient. The Court of Appeal dismissed this argument, noting that R. 313.2 RoP provides that an application to intervene shall be admissible if it is made in support, in whole or in part, of a claim, order or remedy sought by one of the parties.

Vivo argued inter alia that Apple has no legal interest in the outcome of the appeals because Vivo’s employees have already had access the contest confidential material under the terms of the confidentiality order from the Court of First Instance. The Court of Appeal also dismissed this argument, noting that if Court of Appeal decides to impose an external eyes only confidentiality regime, the employees of Vivo will no longer have access and will not be allowed to use the unredacted version of the statement of claims and relevant exhibits, or any further submissions and exhibits containing such confidential information, whether for the purpose of these court proceedings or any other purpose.

The outcome of the appeals remains to be seen. For the time being, it seems the UPC Court of Appeal is taking a straightforward approach to the question of third party interventions. The Court’s reasoning can be easily extended to other procedural issues in which a third party has a legal interest.

[1] <https://www.unifiedpatentcourt.org/en/node/139127>

[2] <https://www.unifiedpatentcourt.org/en/node/139128>

[3] <https://www.unifiedpatentcourt.org/en/node/139124>

[4] <https://www.unifiedpatentcourt.org/en/node/139125>