

EIP



Court of Appeal Clarifies UPC rules on decisions by default

Suinno Mobile & AI Technologies Licensing Oy v Microsoft Corporation
UPC_CoA_363/2025

Decision of 12 July 2025 ORD_32844/2025[1]

The UPC Court of Appeal has corrected a lower court's misunderstanding of the requirements for a decision by default, and has ended Suinno's litigation against Microsoft.

Background

Suinno asserted EP2671173 against Microsoft at the Paris Central Division of the UPC. The case has already generated a number of decisions. Microsoft objected that Suinno's UPC representative did not possess the requisite independence, being also Suinno's managing director and main shareholder. This resulted in the Court of Appeal clarifying the circumstances in which an employee cannot act before the UPC in respect of their employer.[2]

In addition, Microsoft sought security for costs against Suinno. This was ordered in the amount of €300,000,[3] but was not paid by Suinno.

Decision by default

Microsoft therefore sought a decision by default under Rule 355, which specifies that a decision by default may be given against a party which fails to take a step within the set time limit, where this is provided by the Rules of Procedure – in this case Rule 158(5) provides for a decision by default if the ordered security is not paid.

The Paris Central Division declined to grant a decision by default, referring to Rule 355(2), which requires that the facts put forward by the applicant must justify the remedy sought. In other words, the Court should satisfy itself that the non-defaulting party is entitled to the relief that it requests. While on its terms Rule 355(2) relates to the claimant, the Paris Central Division considered that this was applicable equally to the situation where it is the defendant seeking a decision by default. The Court considered that evidentiary findings acquired in the proceedings at the time of the default did not allow for a sufficiently confident assessment of the merits of the claims put forward by the non-defaulting party.

The Paris Central Division declined to grant Microsoft leave to appeal its order, and so Microsoft filed an application for discretionary review at the Court of Appeal under Rule 220.3.

Appeal

The Court of Appeal stated that the appeal was admissible and well-founded. The Court of Appeal considered that the Paris Central Division had erred in its interpretation of Rule 355(2), and stated that the rule does indeed, as its wording suggests, only apply where it is the claimant seeking the decision by default. By contrast, a decision by default can be issued against a defaulting claimant without examination of the merits. This understanding derives not only from the wording of the rule, but also from a consideration of the underlying rationale.

If the defendant defaults, the Court is still obliged to examine whether the claimant is entitled to the remedies that it seeks. If however it is the claimant who defaults, the Court can reject the claimant's case without examining the substantive case.

Outcome

Therefore the Court of Appeal granted the decision by default against Suinno and dismissed the infringement action. This would appear to conclude this eventful litigation.

[1] <https://www.unifiedpatentcourt.org/en/node/136361>

[2] https://eip.com/us/latest/article/independence_of_representatives

p3

[3] <https://www.unifiedpatentcourt.org/en/node/1150> ; Suinno's appeal was rejected
<https://www.unifiedpatentcourt.org/en/node/1177>