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UPC allows intervention by Licensee

**Seoul Viosys Co., Ltd. v. expert klein GmbH, expert e-Commerce GmbH
(UPC_CFI_363/2023)**

Order of 22 April 2024 (ORD_5343/2024)[1]

Seoul Viosys sued expert klein GmbH and expert e-Commerce GmbH for infringement of EP3926698 at the Düsseldorf Local Division, and expert klein GmbH counterclaimed for invalidity of the patent. The local division decided to hear the infringement action and invalidity counterclaim together.

Seoul Semiconductor Co., Ltd. is a (non-exclusive) licensee under the patent, and filed a request to intervene in the proceedings. This request was supported by the claimant and opposed by the defendants.

The Court noted that Rule 313.1 RoP requires the intervener to have a legal interest in the result of the action before the UPC. It considered that a licensee necessarily has a direct and present interest in the outcome of the invalidity counterclaim, because if the counterclaim is successful, the patent in dispute will be declared invalid retroactively, so the licensee would lose their preferential position compared to non-licensees.

Moreover, the Court considered that the intervention should not be permitted only in respect of the counterclaim. Once the Court has decided to hear the infringement action and invalidity counterclaim together, both will be decided based on a uniform interpretation of the patent. The infringement action and the invalidity counterclaim are therefore closely linked in terms of content. Any change in the claim interpretation directly influences not only the question of infringement, but also the assessment of the validity of the patent. Accordingly, the intervener can only effectively pursue its interest in preventing the invalidity of the patent in dispute if joins the legal dispute as a whole.

The Court therefore declined to decide the legal issue of whether a (non-exclusive) licensee would be entitled to intervene in an infringement action in isolation.

Accordingly the Court allowed the intervention and set a deadline for the intervener to submit a statement in intervention (Rule 315 RoP).

[1] <https://www.unified-patent-court.org/en/node/709>