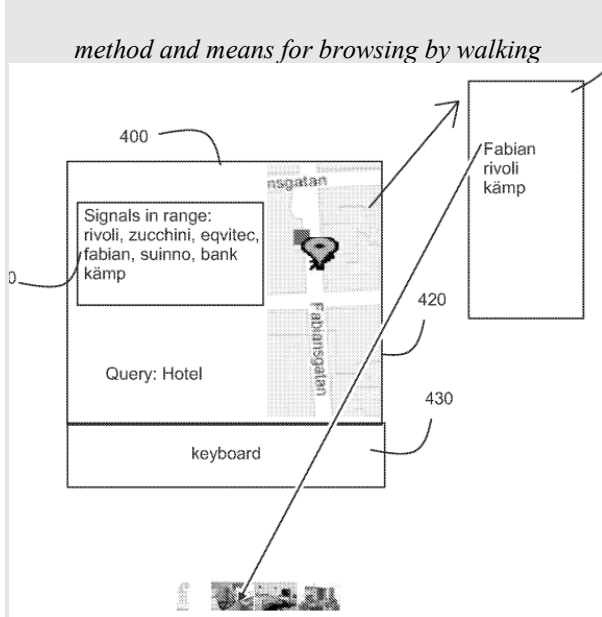


UPC Court of Appeal, 23 December 2024, Microsoft v Suinno - II



PATENT LAW – PROCEDURAL LAW

A unconditional limitation of the damages claimed

- shall be regarded as an unconditional limitation of the claim (R 263.3 RoP)

The determination of the value of the action (at the time of filing the action)

- will be the responsibility of the judge-rapporteur during the interim procedure (R 22, 104 and 370.6 RoP)

In doing so, the judge-rapporteur shall take into account the value as assessed by the parties, pursuant to [R 22 RoP](#), and his assessment of the value shall reflect “the objective interest pursued by the filing party at the time of filing the action” ([R 370.6 RoP](#)).

Source: [Unified Patent Court](#)

UPC Court of Appeal, 23 December 2024

(Gougé)

UPC_CoA_826/2024

APL_67135/2024

ORDER

of the Court of Appeal of the Unified Patent Court issued on 23 December 2024 concerning an application for a discretionary review ([Rule 220.3 RoP](#))

HEADNOTES:

An unconditional application to reduce the amount of damages claimed shall be considered as an unconditional application under [R 263.3 RoP](#).

The determination of the value of the action will be the responsibility of the judge-rapporteur during the interim procedure, pursuant to [R 22](#), [104](#) and [370.6 RoP](#).

KEYWORDS: [R 263 RoP](#), leave to change claim.

APPLICANT AND DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Microsoft Corporation, Washington, US
represented by Prof. Tilmann Müller-Stoy and Nadine Westermeyer, attorneys at law, Bardehle Pagenberg, Partnerschaft mbB Patentanwälte Rechtsanwälte

RESPONDENT AND CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Suinno Mobile & AI Technologies Licensing Oy, Helsinki, Finland

represented by Mikko Kalervo Väänänen, European Patent Attorney

PATENT IN SUIT

[EP 2 671 173](#)

LANGUAGE OF THE CASE

English

DECIDING JUDGE

Emmanuel Gougé, Legally qualified judge and Standing judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

□ **Order of the Court of First Instance of the Unified Patent Court, Central division Paris, dated 16 September 2024** ([editor: dated 26 November 2024](#))

□ Reference numbers: App_ 42138/2024
ORD_43015/2024 ACT_18406/2024
UPC_CFI_164/2024

SUMMARY OF THE FACTS

1. On 26 November the Central Division (Paris seat) granted Suinno leave to change its claim reducing the request for damages in the infringement action against Microsoft, pursuant to [R 263 RoP](#), and rejected Suinno’s request to re-consider the fees already paid. It did not grant leave to appeal (ORD_62739/2024, hereafter the “impugned order”).

2. On 12 December, Microsoft’s request to grant leave to appeal was rejected by the Central Division (Order ORD_65604/2024).

3. On 19 December 2024 Microsoft filed a [R 220.3 RoP](#) request for discretionary review.

APPLICANT’S REQUESTS AND SUBMISSIONS

4. Microsoft requests the impugned order to be reviewed pursuant to [R. 220.3 RoP](#) and to be set aside, as far as leave to change the claim or amend the case is granted, and the Application (UPC_CFI_164/2024, App_55394/2024) filed by Suinno under [R. 263 RoP](#) to be rejected.

5. In summary, and as far as relevant, Microsoft argues the following.

6. Suinno filed an application to amend the value in litigation which does not fall within the scope of R 263 RoP. By referring to the “value of the case” as well as the “value of the Action”, Suinno actually requests a change of claim regarding the value of the case and not of the claim on damages, so that the CFI has exceeded the limits of Suinno’s requests.

7. Microsoft further argues that the requirements set out under R 263 RoP are not met and that an application to amend the value in litigation does not fall within the

scope of R 263 RoP, so that the application is inadmissible and unfounded.

8. Furthermore, a reduction of the value of the action would discriminate Microsoft and compromise its interests and right of defence. It would contradict fairness and would be disproportionate to allow Suinno to change the value of the action.

REASONS

9. The request for discretionary review must be dismissed. 1

10. Microsoft has failed to demonstrate that a review of the impugned order is necessary to ensure a consistent application and interpretation of the RoP or any other objective of the discretionary review procedure.

11. A party may at any stage of the proceedings apply to the Court for leave to change its claim or to amend its case, including adding a counterclaim. Any such application shall explain why such change or amendment was not included in the original pleading (R 263.1 RoP). Furthermore, leave to limit a claim in an action unconditionally shall always be granted (R 263.3 RoP).

12. In its application filed on 10 October 2024 with the CFI, Suinno claimed a reasoned limitation of the damages sought which, as rightly pointed out by the CFI, shall be regarded as a limitation of the claim filed unconditionally under **R 263.3 RoP**.

13. Microsoft has failed to demonstrate that the application filed by Suinno would not meet the requirements set out under **R 263 RoP** and that it would not address the amount of the damages sought but rather the value in dispute. The arguments raised by Microsoft before the Court of Appeal in relation to its exhibit BP 01 does not change it. The impugned order does not exceed the limits of Suinno's requests.

14. The **impugned order** does not adversely affect Microsoft and does not require further clarification of the scope and limits of the court's powers. The determination of the value of the action will be the responsibility of the judge-rapporteur during the interim procedure, pursuant to **R 22, 104** and **370.6 RoP**, as already explained by the CFI (impugned order, paragraph 6). In doing so, the judge-rapporteur shall take into account the value as assessed by the parties, pursuant to **R 22 RoP**, and his assessment of the value shall reflect "the objective interest pursued by the filing party at the time of filing the action" (**R 370.6 RoP**).

15. It follows that Microsoft's interests and right of defense are sufficiently protected. The impugned order, which is not manifestly wrong, has neither contradicted fairness nor the principle of proportionality.

ORDER

The request for discretionary review is rejected.

This order is issued on 23 December 2024.

Emmanuel Gougé Legally qualified judge and standing judge
