



Appeal n°:
UPC-COA-0000904/2025
and
UPC-COA-0000905/2025

PROCEDURAL ORDER
of the Court of Appeal of the Unified Patent Court
concerning a request for stay of proceedings (R. 21.2 RoP)
issued on 27 November 2025

APPELLANTS (DEFENDANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

- 1) **Vivo Mobile Communication Co., Ltd.**, No. 1, Vivo Road, Chang'an Town, 523866 Dongguan City, China
- 2) **Vivo Tech GmbH**, Speditionstrasse 21, 40221 Düsseldorf, Germany
- 3) **Vivo Mobile Communication Iberia SL**, Calle Orense 58, Planta 12 C, 28020 Madrid, Spain

(hereinafter jointly “**VIVO**”)

represented by Dr Georg Rauh, attorney-at-law, Vossius & Partner Patentanwälte Rechtsanwälte mbB

RESPONDENT (CLAIMANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Sun Patent Trust, Madison Avenue, 35th Floor, 10022 New York, United States of America

(hereinafter “**SUN PATENT**”)

represented by

- Caroline Levesque attorney-at-law, HOYNG ROKH MONEGIER (in UPC-COA-0000904/2025)
- Sabine Agé, attorney-at-law, HOYNG ROKH MONEGIER (UPC-COA-0000905/2025)

PATENTS AT ISSUE

- EP 3 407 524 (in UPC-COA-0000904/2025)
- EP 3 852 468 (in UPC-COA-0000905/2025)

PANEL AND DECIDING JUDGES

Panel 1a

Klaus Grabinski, Presiding judge and President of the Court of Appeal,
Emmanuel Gougé, legally qualified judge and judge-rapporteur,
Peter Blok, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDERS OF THE COURT OF FIRST INSTANCE

- In appeal proceedings UPC-COA-0000904/2025:

Order of the Court of First Instance of the Unified Patent Court, Paris Local Division,
dated 30 October 2025, on a preliminary objection (R. 19 RoP)

Reference numbers:

UPC_CFI_362/2025

ACT_18934/2025

- In appeal proceedings UPC-COA-0000905/2025:

Order of the Court of First Instance of the Unified Patent Court, Paris Local Division,
dated 30 October 2025, on a preliminary objection (R. 19 RoP)

Reference numbers:

UPC_CFI_361/2025

ACT_18933/2025

FACTS AND REQUESTS OF THE PARTIES

The first instance proceedings

1. On 18 April 2025, SUN PATENT brought two infringement actions against VIVO before the Court of First Instance, Paris Local Division (hereafter "Paris LD") (ACT_18933/2025 UPC_CFI_361/2025, ACT_18934/2025 UPC_CFI_362/2025), seeking, in summary, a declaration that VIVO infringes the patent (request AI), a determination of the terms of a FRAND license between the parties (request AII), and an injunction to restrain Vivo from infringing the patent in the event the defendants do not enter into a licence agreement on such terms as the Court determines (request AIII). According to the runtime of terms, VIVO is due to file its Statement of Defense (hereafter "SoD") and Counterclaim for revocation (hereafter "CfR") by 28 November 2025.
2. On 29 September 2025, VIVO filed preliminary objections (hereafter "PO") under R. 19 RoP, requesting that the Paris LD dismiss the action in its entirety or partly. It argues that the Court lacks jurisdiction to decide on SUN PATENT's request for a FRAND rate determination and

requested, in the same filing, that the terms for filing its SoD and CfR shall be stayed until the decision on the PO has become final, or, in the alternative, until a decision by the CFI on the PO has been rendered, and set a new term of two months for filing the SoD and CfR starting from the day of service of such final decision, including a potential appeal, in the alternative service of the decision by the CFI, has been effected.

3. By the preliminary orders of 13 October 2025, pursuant to R. 19.6 RoP the judge-rapporteur denied the requests to postpone the filing of the SoD, which was confirmed by the Panel following the Panel review applications filed by VIVO pursuant to R. 333 RoP (Paris LD Orders of 28 October 2025).
4. On 30 October 2025, by the impugned orders, the Paris LD held that VIVO's main request to dismiss the action in its entirety must be rejected, since the UPC in any event has jurisdiction to hear the main infringement request, including the request for an injunction. In addition, it observed that both parties anticipate that VIVO will raise a FRAND defence. Consequently, all facts and arguments relevant to the determination of FRAND terms will have to be debated by VIVO anyhow. It therefore considered it appropriate to rule on the admissibility of request All in the main proceedings. The operative part of the impugned orders reads as follows:
 - *The preliminary objection raised by VIVO is entirely rejected, specifying that the admissibility of claim A.II in the Statement of Claim as regards Art. 32.1 UPCA shall be dealt with in the main proceedings, pursuant to Rule 20.2 RoP;*
 - *The costs will be taken into account in the main proceedings;*
 - *An appeal may be brought against the present order within 15 calendar days of its notification to the unsuccessful party pursuant to Art. 73(2)(a) UPCA and Rule 220.2 RoP.*

The appeal proceedings

5. On 27 October 2025, VIVO filed a generic application under 9.3 RoP, requesting the Court of Appeal to stay, pursuant to R. 295 (c) (ii) RoP *mutatis mutandis* and/or R. 21.2 RoP *mutatis mutandis*, the CFI proceedings (UPC_CFI_361/2025 and UPC_CFI_263/2025) pending the appeal proceedings (CoA_755/2025, CoA_757/2025) concerning two CFI orders on confidential information. This application was rejected (Order of the Court of Appeal, 31 October 2025 in UPC_CoA_755/2025 and UPC_CoA_757/2025).
6. On 13 November 2025, VIVO lodged an appeal under R. 21 RoP against the impugned orders. Together with the appeal, VIVO filed a request to stay pursuant to R. 21.2 RoP, requesting the Court of Appeal to stay, on an expedited basis by way of a preliminary order, the proceedings before the CFI until a final decision on the appeal has been issued or, in the alternative, to extend the terms for filing the SoD with regard to the part concerning a FRAND defence as well as a potential Counterclaim concerning licenses according to Art. 32(1)(a) UPCA for three, alternatively two months after a final decision on this appeal has been issued.

7. VIVO argues, in summary, that the appeal addresses a substantive and unprecedented question that the Court has not previously decided – ie whether, according to VIVO, the UPC has jurisdiction a patentee can seek an active FRAND rate determination before the UPC instead of raising it as a defence – which needs to be clarified before the parties incur substantial costs in preparing their defences and before the Court expends further judicial resources.
8. SUN PATENT refers to the general rule under R. 19.6 RoP according to which the main proceedings are not stayed pending the decision of the CoA on a PO and must as far as possible continue unhindered and that VIVO has not brought forward any exceptional circumstances which require to derogate from said principle (SUN PATENT comments on the request for a stay of proceedings, 22 November 2025).
9. In this order, the Court of Appeal rules only on VIVO's requests for a stay of the first instance proceedings and for an extension of the terms for filing the SoD and a potential counterclaim.

GROUNDS FOR THE ORDER

10. According to R. 19.6 RoP, the period for lodging the SoD [Rule 23] shall not be affected by the lodging of a Preliminary objection (hereafter "PO"), unless the judge-rapporteur decides otherwise.
11. In case of an appeal against a decision or order on a Preliminary opinion (R. 21 RoP), it is however provided that if an appeal is lodged against such an order, the proceedings at first instance may be stayed by the judge-rapporteur or the Court of Appeal on a reasoned request by a party (R. 21.2 RoP).
12. The Court of Appeal may thus grant a stay under exceptional circumstances, having regard to the relevant circumstances of the case, such as the stage of the proceedings before the Court of First Instance, the stage of the appeal proceedings and the interests of the parties (Court of Appeal, 21 June 2024, APL_26889/2024, UPC_CoA_227/2024, Mala v Nokia).
13. The mere fact that, according to VIVO, the PO relates to a question of jurisdiction which has never been decided by the court and which has triggered a high amount of controversial discussion among scholars, does not constitute exceptional circumstances which can justify a stay.
14. Given the remaining time before the expiry of the deadline for filing the SoD and, hence, the fact that most of the preparation of its defence must have already been well advanced, VIVO has also not convinced the Court that exceptional circumstances would arise out of the costs

incurred in preparing VIVO's defenses while the Court of Appeal has not decided in the appeal on the impugned orders.

15. It follows that VIVO's interest in avoiding costs and efforts in preparing VIVO's defense does not outweigh SUN PATENT's interest in obtaining a decision in the infringement actions without unnecessary delay.
16. As to the extension of time limits for submissions in the first instance proceedings, such extensions must, as a general rule, be decided upon firstly by the CFI (UPC_CoA_755/2025 and UPC_CoA_757/2025, order of 31 October 2025, para. 13 and 14). This is because the CFI is better informed of all the relevant circumstances of the case pending before it and because the CFI has a margin of discretion in managing the case.
17. In this case, the CFI already decided on similar extension requests and dismissed them (see paragraph 3 above). VIVO failed to demonstrate that the Paris LD overstepped the boundaries of its discretion in its decision on these requests.

PROCEDURAL ORDER

The Court of Appeal rejects VIVO's request.

This procedural order was issued on 27 November 2025.

Klaus Grabinski, President of the Court of Appeal

Emmanuel Gougé, legally qualified judge and judge-rapporteur

Peter Blok, legally qualified judge