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UPC rules that in house lawyers cannot act as UPC representatives

Suinno Mobile & AI Technologies Licensing Oy v Microsoft Corporation
(UPC_CFI_164/2024)

Order of 16 September 2024 (ORD_41174/2024)[1]

This decision of the Paris Central Division of the UPC arose in the context of an infringement action brought by Suinno against Microsoft, and in particular an application by Suinno to keep certain evidence confidential. The court had ordered access to certain materials to be restricted to a confidentiality club consisting of Microsoft attorneys and directors, and Microsoft challenged this order. One of the issues Microsoft raised was whether, as was the case here for Suinno, where a person was the managing director and main shareholder of a party, could that person act as the UPC representative of that party, in view of the requirement of independence of representatives as set out in Article 48(5) UPC Agreement.

The UPC accepted the need for confidentiality of the materials. More significantly, the court accepted that Article 48(5) UPC Agreement, which is modelled on Article 19 (5) of the Statute of the Court of Justice of the European Union, precludes a party being represented by a lawyer that is employed by or financially dependent upon the party. While acknowledging that such lawyers can validly represent their employer in court where allowed under national legal systems, the UPC ruled that, analogous to the situation at the CJEU, parties must use the services of a third person who is authorised and cannot act themselves.

Accordingly, the court held that the original application for confidentiality filed by Suinno was invalidly filed and therefore set aside the resulting order and declared the application

inadmissible. However, it ordered that the restrictions on access to the materials be maintained.

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Permission to appeal was granted, and it will be interesting to see whether the Court of Appeal takes the same view. If so, this has significant consequences for access to justice at the UPC by smaller parties who may struggle to fund external litigation lawyers.

[1] <https://www.unified-patent-court.org/en/node/1104>