



Paris local division

UPC_CFI_440/2023
Order of the Court of First Instance
of the Unified Patent Jurisdiction, handed down on 06/05/2024

APPLICANT :

(INTERVENING PARTY)

Photon Wave Co.,Ltd.
52, Jugyang 1763 beon-gil,
Wonsam-myeon, Cheoin-gu,
Yongin-si, Gyeonggi-do, 17166
Republic of Korea

represented by Dorothea Hofer

DEFENDANT TO THE ACTION: (PLAINTIFF

IN THE MAIN ACTION)

Seoul Viosys Co, Ltd
65-16, Sandan-ro 163beon-gil,
Danwon-gu - 15429 - Ansan-si,
Gyeonggi-do - Republic of Korea

Represented by Pauline Debré

OTHER PARTIES INVOLVED :

(DEFENDANT IN THE MAIN PROCEEDINGS)

Laser Components
Hirschhausen 45B Route des Gardes
92190 Meudon
France

SASRepresented by Helge von

PATENT IN SUIT

Patent number

Owner

EP3404726

Seoul Viosys Co, Ltd

DECIDING JUDGES

Chairman and Judge-Rapporteur: **Camille Lignières**

Legally qualified judge: **Carine Gillet**

Legally qualified judge: **Peter Tochtermann**

LANGUAGE OF PROCEDURE: French

ORDER

Headnotes : The intervener may not develop claims contrary to those of the party it supports, and may not autonomously develop claims and procedural modalities distinct from those offered to the party it supports. Consequently, an intervener who has not filed a counterclaim for invalidity within the time limit set for the party he supports cannot claim an extension of time to file an autonomous claim.

Even though the European patent at issue was granted in English, the plaintiff company, a Korean national, chose to bring its action in French, which is respectful of the rights of the defendant, a French company established in France. However, neither the nationality of the representative of one of the parties, nor the nationality of the intervening company, constitute serious grounds for proposing a change in the language of the proceedings, for reasons of convenience or fairness.

Keywords: Intervention, R. 313 RdP, rejection of autonomous requests by the intervener, R. 9 RdP, rejection of extension of procedural time limits, R. 322 RdP, rejection of request for change of language.

PROCEDURE AND REQUESTS

On December 05, 2023, SEOUL VIOSYS brought an infringement action before the Paris Local Division, against LASER COMPONENTS, relating to European patent EP3404726.

Following an order dated February 12, 2024, the Judge-Rapporteur declared admissible LASER COMPONENTS' application to intervene against its supplier PHOTON WAVE. On March 18, 2024, LASER COMPONENTS filed its statement of defense, contesting, among other measures, the materiality of the infringement.

On March 18, 2024, PHOTON WAVE filed a brief seeking a declaration that its intervention was admissible, and a brief in intervention, with the following claims:

1. dismiss the infringement action,
2. order the plaintiff to pay the costs of the proceedings in a costs decision pursuant to art. 69 AJUB, R. 118.5 RdP,
3. declare the judgment on costs provisionally enforceable, where applicable, against provision of security,
4. rule that, in the context of intervention, the intervener may raise independently of the defendant the defendant's motions, all means of attack and defense in support of the defendant that the defendant herself could or could have raised, by

- In particular, the intervener can file an independent counterclaim for nullity,
5. in the event that it is authorized to file a counterclaim for invalidity independently of the defendant, to grant the intervener a period of two months in which to file a counterclaim for invalidity,
 6. in the event that the intervener is not entitled to bring a counterclaim for nullity independently of the defendant, to rule that :
 - (i) the intervener is considered a party with all the rights of a party,
 - (ii) the intervener is therefore entitled to file a counterclaim for invalidity in accordance with art. 33(4) 2nd sentence of the Unified Patent Jurisdiction Agreement 2013/C 175/01 before the Paris Local Division of the Unified Patent Jurisdiction,
 7. grant a two-month extension to the deadline for the intervention brief,
 8. determine English as the language of the procedure.

The intervener also requests, on the basis of rules R. 24(h) and R. 104 RdP, to :

- set the value of the infringement action at 250,000 euros,
- require TESCAN LAB to explain the facts on which it bases its interpretation of the characteristics of the claim, in view of the measurements,
- change the procedure language.

In response, SEOUL VIOSYS, invited to produce its written observations, at the latest on April 23, 2024, according to preliminary order of April 09, 2024, requests in its written observations of April 22, 2024 the rejection of the requests relating to :

- contesting the value of the share on the grounds that no evidence is provided in support of this contestation,
- to the TESCAN laboratory, for lack of explanation and legal basis,
- the change of language, arguing that French and English are foreign languages for the intervening Korean company, that the parties can refer to the patent specification in English and that maintaining the French language is not significantly disadvantageous, that this change of language would entail costs for the applicant in translating its statement of claim and all the supporting documents already filed, that the requested change of language is therefore not justified.

In addition, SEOUL VIOSYS requests that the Judge-Rapporteur enjoin the production of the witness statement to which LASER COMPONENTS and the intervener refer in their respective briefs, and that the date of production of this document constitute the starting point for the time limit for producing its brief in response to the defense and intervention.

REASONS FOR DECISION

As a preliminary matter, the panel considers that points 1 to 3, mentioned by PHOTON WAVE in its statement in intervention, concerning the rejection of the infringement claim, the payment of costs and the granting of provisional execution, should be examined at a later date in the context of the decision on the merits.

1- Forced intervention and counterclaim for patent invalidity (points 4, 5, 6, 7)

According to rule 315.4 RdP, "*the intervening party is considered to be a party, unless the court decides otherwise*". As such, the intervening party has the rights attached to party status and participates in the proceedings, subject nevertheless, in accordance with rule 313.2 RdP, to the intervention being "*made in support of all or part of a claim*", which means that the intervening party may not develop claims contrary to the party he supports, and may not

autonomously develop claims and according to procedural modalities distinct from those offered to the party it supports.

According to rules 23 RdP and 25.1 RdP, the defendant has three months to file a statement of defence and to file a counterclaim for invalidity.

Pursuant to rule 9.2 of the Rules of Procedure, the court may disregard any diligence, evidence or argument that has not been completed or submitted within a time limit set by the Rules of Procedure.

In accordance with rule 9.3(a) of the Rules of Procedure, the court may, at the reasoned request of a party, extend, even retroactively, a time limit referred to in the Rules of Procedure.

In the present case, PHOTON WAVE is intervening in support of LASER COMPONENTS, which had three months in which to file a defense and, if necessary, a counterclaim for patent invalidity. The intervener may not adopt a procedural position different from that of the defendant in the main action.

LASER COMPONENTS filed a statement of defence, within the aforementioned time limit, on March 18, 2024, without filing a counterclaim for patent invalidity.

PHOTON WAVE has not, within the same time limit expiring on March 18, 2024 and to which it was subject, as previously indicated, filed a counterclaim for nullity. PHOTON WAVE cannot therefore claim to be entitled to file such a counterclaim, even though it failed to do so within the allotted timeframe and does not invoke any serious grounds justifying the granting of additional time.

The subsequent request for a two-month extension of the time limit for filing a counterclaim for nullity must be rejected.

2- Language change request (point 8)

PHOTON WAVE is requesting a change of language, so that the proceedings will henceforth be conducted in English, without however specifying the applicable procedural rule, stating that the defendant, a French company, has itself lodged such a request and arguing that its employees understand documents in English, while those in French have to be translated, with risks of error, loss of information and loss of time and money.

In view of the grounds of convenience and fairness invoked by PHOTON WAVE in its intervention brief, the application must be considered to be based on article 49(4) of the AJUB and rule 322 RdP.

The plaintiff, who has chosen to act in French before the Paris Local Division in one of the two possible languages before this division, has indicated her opposition to the proposal to change the language of the proceedings to English, as requested by the intervener in its brief.

In this case, therefore, there is no agreement between the parties on the requested change of language.

In an order dated February 27, 2024, the Judge-Rapporteur, after consulting the Board, has already indicated the reasons for his rejection of a proposal to the parties to change the language of proceedings, at the request of LASER COMPONENTS. Even though the European patent at issue was granted in English, the plaintiff, a Korean company, has chosen to bring its action in French, which respects the rights of the defendant, a French company established in France.

However, neither the nationality of the representative of one of the parties, nor the nationality of the intervening company, constitute serious grounds for proposing a change in the language of the proceedings, for reasons of convenience or fairness.

Consequently, the conditions laid down by rule 322 RdP are not met in this case for a change in the language chosen by the applicant to be decided.

3- On the determination of the value of the dispute and on the explanations relating to the report drawn up by TESCOAN ANALYTICS

These questions are not covered by the written procedure, but by the pre-trial procedure, in which they will be dealt with, where appropriate, in accordance with rule 104(b) and (i).

4- Postponement of the starting date of the time limit for replying

Pursuant to rule 24(j) RoP, to which rule 13.2 RoP, the defendant in the infringement action must provide, simultaneously with the filing of his statement of defence, a copy of each of the documents referred to in the statement of defence, in order to "*enable the defendant to prepare a defence on the basis of all the arguments put forward in the statement of claim and all the annexes in support of his arguments*" and to ensure "*that the fundamental principles of justice and fairness, which must be ensured taking into account the legitimate interests of both parties (see preamble 5 of the Rules of Procedure), are properly respected*". (JUB Court of Appeal, October 13, 2023, UPC_CoA_320/2023).

Furthermore, requests for the production of evidence are governed by rules 190 et seq. of the Rules of Procedure. In the present case, however, the certificate which is the subject of the request has been drawn up in order to demonstrate the facts. The probative value of this certificate will be assessed at a later date, and since the defendants only communicated an extract from the witness certificate when they served their statement of case, there is no reason to enjoin them from communicating the document in its entirety from now on. Consequently, there is no reason to postpone the deadline for SEOUL VIOSYS's reply.

DECISION

Declares that PHOTON WAVE has not filed a statement of invalidity of the patent within the allotted time,

Rejects PHOTON WAVE's request for an extension of the deadline for filing a statement of invalidity,

Rejects PHOTON WAVE's request for a change of language, Rejects SEOUL

VIOSYS's request for an extension of the time limit for replying,

Declares that the determination of the value of the dispute and the explanations relating to the report drawn up by TESCOAN ANALYTICS, will be dealt with in the context of the mise en état,

Resolves that claims relating to the dismissal of the infringement action, the payment of costs and the granting of provisional execution will be dealt with in the judgment on the merits.

This order is subject to appeal in accordance with the provisions of rule 220.2 of the Rules of Procedure.

Rendered in Paris on May 6, 2024.

Camille Lignières, President and Judge-Rapporteur

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