



Appeal n°:

UPC_CoA_631/2025

UPC_CoA_632/2025

APL_32571/2025

APL_32572/2025

App_33679/2025

App_33696/2025

App_36024/2025

App_36025/2025

ORDER

**of the Court of Appeal of the Unified Patent Court
concerning an application to intervene (R. 313 RoP)
issued on 23 September 2025**

APPLICANT/INTERVENER IN THE PROCEEDINGS BEFORE THE COURT OF APPEAL

APPLE Inc., Cupertino, California, United States

(hereinafter “**Apple**”)

represented by Abdelaziz Khatab, attorney-at-law, and other representatives of Simmons & Simmons LLP

APPELLANT (CLAIMANT AND COUNTERDEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Telefonaktiebolaget LM Ericsson, Stockholm, Sweden

(hereinafter “**Ericsson**”)

represented by Wim Maas, attorney-at-law, and other representatives of Taylor Wessing N.V. and Jacobacci Avvocati

RESPONDENTS (DEFENDANTS AND COUNTERCLAIMANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1) ASUSTEK Computer Inc., Taipei City, Taiwan (R.O.C.)

2) Arvato Netherlands B.V., Heijen, The Netherlands

(hereinafter “**ASUS**” and “**Arvato**”)

represented by Alexander Wilson, attorney-at-law, and other representatives of Powell Gilbert LLP and Nunziante Magrone Studio Legale Associato

PATENTS AT ISSUE

APL_32571/2025: EP 2 727 342

APL_32572/2025: EP 3 076 673

PANEL AND DECIDING JUDGES

Panel 1a

Klaus Grabinski, President of the Court of Appeal

Peter Blok, legally qualified judge and judge-rapporteur

Emmanuel Gougé, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDERS OF THE COURT OF FIRST INSTANCE

APL_32571/2025:

- ☐ Order of the Court of First Instance of the Unified Patent Court, Milan Local Division, dated 20 June 2025
- ☐ Reference numbers:
 - UPC_CFI_730/2024
 - CC_62953/2024
 - App_22314/2025
 - ORD_23651/2025

APL_32572/2025:

- ☐ Order of the Court of First Instance of the Unified Patent Court, Milan Local Division, dated 20 June 2025
- ☐ Reference numbers:
 - UPC_CFI_728/2024
 - CC_62950/2024
 - App_22313/2025
 - ORD_23268/2025

FACTS AND REQUESTS OF THE PARTIES

1. On 14 June 2024 Ericsson filed two infringement actions against ASUS, Arvato and Digital River Ireland Ltd. (Digital River) (jointly, ASUS et al.) with the Milan Local Division.
2. On 29 November 2024, ASUS et al. filed a Statement of defence in the two infringement actions, two counterclaims for revocation and four identical applications (two for the two infringement actions and two for the respective counterclaims for revocation) for the protection of confidential information pursuant to R. 262.2 and 262A RoP (the applications for a confidentiality regime).
3. On 20 December 2024, Ericsson filed a response to the applications for a confidentiality regime. In its response, it announced that it intended to submit one or more exhibits to the Court containing (information from and on) licence agreements between Ericsson and third parties with its Statement of reply to the Statement of defence. For this reason, Ericsson requested to apply an “external eyes only” regime in relation to the confidential documents submitted by ASUS et al. as well as to the documents to be submitted by Ericsson, meaning that access to such confidential documents will be provided only to one expert on each party’s side and each party’s outside counsel.
4. Following an invitation by the Court to explore the possibility of reaching an agreement on the confidentiality regime, the parties informed the Court that they agreed that a confidentiality regime should be established in respect of all confidential information. ASUS et al. however were against applying an “external eyes only” regime. They argued that the UPCA and RoP provide no basis for applying such a regime and that it would prejudice their right to a fair trial.

5. By orders of 28 April 2025 (ORD_20073/2025 and ORD_69253/2024, the confidentiality orders), the judge-rapporteur of the Milan Local Division – in summary – established a confidentiality regime for the confidential documents submitted by ASUS et al., as well as all other documents designated as confidential by one of the parties, without prejudice to the right of the other parties to challenge the confidential nature of such documents. The judge-rapporteur however rejected the adoption of an “external eyes only” regime. The group of persons having access to the confidential information therefore included one natural person from each party.
6. By orders of 20 June 2025 (ORD_23268/2025 and ORD_23651/2025, the panel review orders), the panel of the Milan Local Division dismissed Ericsson’s applications for review of the confidentiality orders of 28 April 2025 (App_22314/2025; App_22313/2025).
7. Ericsson filed appeals against the panel review orders, requesting that the Court of Appeal – in summary – (partially) revoke the panel review orders and the confidentiality orders of 28 April 2025 and order an “external eyes only” regime with regard to specific confidential documents, referred to as Confidential License Agreements, and uphold the confidentiality orders in all other respects.
8. Apple filed applications to intervene under R. 313 RoP, requesting that the Court of Appeal i) admit Apple as an intervener in support of Ericsson’s position that the panel review orders should be set aside and that the an external eyes only regime should apply to Apple’s confidential information, ii) give Apple a period of 15 days to lodge a Statement of intervention, and iii) allow Apple to participate in the oral hearing to support Ericsson in their appeal. Apple submits that agreements between Ericsson and Apple, including materials relating to the formation and performance of the agreements, may be disclosed to ASUS et al. in the proceedings between Ericsson and these parties. It argues that those agreements contain highly confidential information which could be disclosed to parties in competition with Apple or with which Apple may enter into agreements in the future.
9. ASUS and Ericsson filed comments on Apple’s applications for intervention. Ericsson does not oppose the intervention. ASUS requests that the Court of Appeal reject the application in its entirety. ASUS argues that the appeal proceedings are not an intervenable action, that Apple failed to demonstrate a legal interest, and that Apple’s concerns are unfounded.
10. On 2 September 2025, Apple lodged applications to file further submissions in response to ASUS’s comments (App_36024/2025 and App_36025/2025).

REASONS FOR THE ORDER

11. R. 314 RoP provides that the judge-rapporteur shall decide on the admissibility of an application to intervene by way of order. In the present case, the judge-rapporteur referred the order to the panel pursuant to R. 331.2 RoP.
12. Apple’s applications for intervention are admissible for the following reasons.
13. ASUS argues that R. 313 RoP provides a basis for intervention only if the applicant has a legal interest in the final outcome of the action and that, therefore, a legal interest in a “side question” such as a confidentiality regime is not sufficient. This argument must be dismissed. Under R. 313.1 RoP, an application to intervene may be lodged at any stage of the proceedings by any person establishing a legal interest in the result of an action submitted to the Court. R. 313.2 RoP provides that an application to intervene shall be admissible if it is made in support, in whole or in part, of a claim, order or remedy sought by one of the parties. These provisions do not require that the applicant has a legal interest in the final outcome of the action. An interim order, such as an order establishing a confidentiality regime, is part of “the result of the action” within the meaning of R. 313.1 RoP and is an “order sought by one of the parties” within the meaning of R. 313.2 RoP. Contrary to ASUS’s submissions, this does not mean that

an intervener can choose “arbitrary aspects of proceedings” to join. Intervention will only be permitted if and to the extent that the applicant demonstrates a legal interest in a claim, order or remedy sought by one of the parties.

14. In the present case, Apple has a legal interest in an order sought by one of the parties. It has a direct and present interest in the outcome of the appeals against the panel review orders, as the confidential information at issue includes information on agreements between Ericsson and Apple. The fact that the final orders on the confidentiality regime will not legally bind Apple, nor the fact that the confidentiality regime concerns information which Ericsson voluntarily submits, excludes that Apple is affected by such orders and has a legal interest in such orders.
15. Whether all of Apple’s concerns relating to the confidentiality regime are well-founded and whether Apple’s submissions are sufficient to grant the orders sought by Ericsson, will be decided by the Court of Appeal in its final orders in the appeal proceedings. The fact that Apple is a party to the agreements is in the present case sufficient for it to be admitted as an intervener.
16. It follows that Apple’s applications for intervention are admissible. Apple will be given the opportunity to file a Statement in intervention within 15 days of the service of this order and Apple will be allowed to participate in the oral hearing to support Ericsson.
17. Ericsson, ASUS and Arvato will be informed of this order by service of the order on them through the Court’s case management system (R. 315.1 sub a RoP). They will be given the opportunity to respond to Apple’s Statement in intervention within 15 days of the service of Apple’s Statement in intervention.
18. Since Apple’s requests will be granted, it has no interest in filing responses to ASUS’s comments on its applications to intervene. Apple’s applications to file further submission will therefore be rejected.

ORDER

- I. Apple is admitted as an intervener in the appeal proceedings in support of Ericsson’s position that the panel review orders of the Milan Local Division should be set aside and that an attorney’s eyes only confidentiality regime should apply to Apple’s confidential information;
- II. Apple is given the opportunity to file a Statement in intervention within 15 days of the service of this order on Apple;
- III. Ericsson, ASUS and Arvato will have the opportunity to respond to Apple’s Statement in intervention within 15 days of the service of Apple’s Statement in intervention on these parties;
- IV. Apple will be allowed to participate in the oral hearing to support Ericsson in its appeals;
- V. Apple’s applications to file further submission are rejected.

This order was issued on 23 September 2025.

Klaus Grabinski
Presiding judge and President of the Court of Appeal
Signed on his behalf in his absence

Peter Blok
Legally qualified judge and judge-rapporteur

Emmanuel Gougé
Legally qualified judge