

**Decision**  
**of the Court of Appeal of the Unified Patent Court**  
**issued on 22 May 2026**  
**by default in case of non-compliance (R. 158.5 RoP, R. 355 RoP)**

HEADNOTES:

For the purposes of R. 355.2 RoP the appellant is regarded as the claimant in the appeal proceedings. This means that R. 355.2 RoP does not apply in appeal proceedings when a decision by default is requested by the respondent against the appellant because the appellant failed to take a step within the time limit foreseen in the RoP or set by the Court or failed to appear at an oral hearing pursuant to R. 355.1 (a) and (b) RoP.

KEYWORDS:

- Decision by default against the appellant (R. 355, 357 RoP)
- Consequences of the failure to provide security for costs (R. 158.5 RoP)

APPELLANT (DEFENDANT IN THE COUNTERCLAIM FOR REVOCATION PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**Suinno Mobile & AI Technologies Licensing Oy**, Helsinki, Finland

(hereinafter 'Suinno')

represented by attorney at law Petri Eskola, Backström & Co Attorneys, Helsinki, Finland

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

**Microsoft Corporation**, Redmond, United States

(hereinafter 'Microsoft')

represented by Prof. Dr. Tilman Müller-Stoy, attorney at law, Bardehle Pagenberg, Munich, Germany

PATENT AT ISSUE

EP 2 671 173

PANEL AND DECIDING JUDGES

Panel 2

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Steven Kitchen, technically qualified judge

Udo Matter, technically qualified judge

## IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

Decision of the Paris Central Division of 7 January 2026 in the counterclaim for revocation proceedings UPC\_CFI\_433/2024 (CC\_43155/2024)

## LANGUAGE OF THE PROCEEDINGS

English

## SUMMARY OF FACTS

1. Suinno is the proprietor of the patent at issue. Suinno lodged an infringement action against Microsoft before the Paris Central Division. Microsoft lodged a counterclaim for revocation.
2. The Paris Central Division ordered Suinno to provide security for costs for the infringement proceedings. Due to Suinno's failure to pay the security for costs regarding the infringement action, an application for a decision by default was filed by Microsoft and was ultimately granted by the Court of Appeal (12 July 2025, UCP\_CoA\_363/2025).
3. Following the (final) dismissal of the infringement action, on 6 November 2025 (UPC\_CFI\_724/2025) Suinno was ordered by the Paris Central Division to reimburse Microsoft for costs incurred in the infringement proceedings in the amount of EUR 350,000 within three weeks. Suinno lodged an application to grant leave to appeal pursuant to R. 221 RoP against the cost decision, which was denied by the Court of Appeal on 24 December 2025 (UPC\_CoA\_911/2025). To date, Suinno has made no payment to Microsoft.
4. The Paris Central Division denied the request for stay in the counterclaim for revocation proceedings with order of 30 September 2025, and the proceedings relating to the counterclaim for revocation continued. With the impugned decision, the Paris Central Division revoked the patent at issue in its entirety regarding the territories of the Contracting Member States in which it has effect and ordered Suinno to bear the costs of Microsoft in the counterclaim proceedings.
5. Suinno appealed the impugned decision.
6. On 24 March 2026, Microsoft filed an application for a stay of proceedings pursuant to R. 295 (m) RoP and an application for security for legal costs pursuant to R. 158 RoP. Microsoft requested inter alia a decision by default if Suinno fails to provide such a security within the time specified by the Court.
7. On 7 April 2026 the Court of Appeal ordered Suinno to provide a security for costs to Microsoft in an amount of EUR 600,000 either by deposit or by a bank guarantee issued by a bank licensed in the European Union, within three weeks from the date of service of this order and extended the time period for lodging the Statement of response until 19 June 2026 (hereinafter "security order").
8. On 24 April 2026, Suinno filed an application to revoke or vary the security order (R. 335, 336, 9.3 (a), 353 RoP).

9. On 28 April 2026 the Court of Appeal rejected Suinno's application as the application to revoke the security order is admissible but has no merit and there are also no grounds for extending the time period for providing security.
10. Suinno has not provided security for costs, whether all or part of it, within the three-week period.
11. On 21 May 2026 Microsoft repeated its request for a decision by default.

#### REASONS

12. Pursuant to R. 158.5 RoP, the Court may give a decision by default pursuant to R. 355 RoP if a party fails to provide adequate security within the time stated.
13. Under R. 355.1 RoP, a decision by default may be given where the Rules of Procedure so provide if a party fails to take a step within the time limit foreseen in these Rules or set by the Court (R. 355.1(a) RoP). Under R. 355.1 RoP, the Court shall thus assess whether the party is in default. If so, and subject to the assessment of the balance of interests between the parties, in exercising its discretion, the Court may give a decision by default without examination of the merits of the action.
14. A decision by default against the defendant of the claim or counterclaim, however, may only be given where the facts put forward by the claimant justify the remedy sought and the procedural conduct of the defendant does not preclude giving such decision (R. 355.2 RoP).
15. As explicitly stated therein, R. 355.2 RoP only applies when a decision by default is sought "against the defendant of the claim or counterclaim". It does not apply when a decision by default is requested by the defendant against the claimant because the claimant failed to take a step within the time limit foreseen in the RoP or set by the Court or it failed to appear at an oral hearing pursuant to R. 355.1(a) and (b) RoP (CoA, 12 July 2025, UPC\_CoA\_363/2025, *Microsoft v Suinno I*, para. 17).
16. The rationale underlying R. 355.2 RoP is that a decision by default against the defendant by which the Court orders the remedy sought by the claimant or the counter-claimant, does not only require that the Court finds that the conditions mentioned in R. 355.1(a) or (b) RoP are met, but also finds that the conditions, which the order or the remedy sought presupposes, are met based on the facts that are put forward by the claimant which justify the claims, provided the procedural conduct of the defendant does not preclude to give such decision (*Microsoft v Suinno I*, para. 18).
17. Pursuant to R. 357 RoP, R. 355 and 356 RoP shall apply *mutatis mutandis* on appeal. R. 357.2 RoP states that when considering whether to give a decision by default, the Court of Appeal may consider the merits of the appeal. This does not mean that R. 355.2 RoP does not apply in appeal proceedings (see CoA, 5 May 2025, UPC\_CoA\_634/2024, *Meril v SWAT Medical*, para. 19). For the purposes of R. 355.2 RoP, the appellant is regarded as the claimant in the appeal proceedings. This means that R. 355.2 RoP does not apply in appeal proceedings when a decision by default is requested by the respondent against the appellant because the appellant failed to take a step within the time limit foreseen in the RoP or set by the Court or failed to appear at an oral hearing pursuant to R. 355.1 (a) and (b) RoP. This follows from the fact that it is the appellant who is seeking the "order" or "remedy" referred to in R. 355.2 RoP, namely

by requesting that the Court of Appeal set aside the impugned order or decision. This is particularly pertinent in cases where the defendant is the appellant and has not provided security for costs. If the respondent on appeal who was the claimant before the Court of First Instance (CFI) were required to present facts in support of the judgment being upheld, the purpose of providing security for costs in the appeal proceedings would largely be defeated. Even though the appellant has not provided security for costs, the respondent would still be required to file a Statement of response, incurring additional costs. As established in the order for the provision of security by the appellant, there is a risk that these costs will not be reimbursed. It is precisely from this risk that the respondent is to be protected (see CoA, 7 April 2026, UPC\_CoA\_21/2026, *Microsoft v Suinno II*, para. 17). For this reason, it is not necessary to consider the merits of the appeal pursuant to R. 355.2 RoP and no reason to do so under R. 357.2 RoP.

18. On 7 April 2026, the Court of Appeal expressly notified Suinno that, pursuant to R. 158.5 RoP, a decision by default may be given in accordance with R. 355 RoP if it failed to provide the security within the time stated.
19. Suinno has not provided security for costs, whether all or part of it, within the three-week period.
20. When exercising its discretion, the Court shall ensure that proceedings are organized based on the principles of fairness and equity (RoP, preamble para. 2) in the most efficient and cost effective manner (RoP, preamble para. 4) and must consider the balance of interest of the parties.
21. The effectiveness of security for costs ordered under R. 158 RoP is ensured by the power granted to the Court under R. 158.5 RoP to give a decision by default if the party bound to provide security for costs fails to do so. It is only under exceptional circumstances that the Court may derogate from this general rule (*Microsoft v Suinno I*, para. 24). Suinno has not put forward any reasons why no decision by default should be given under R. 158.5 and R. 355.1(a) RoP.
22. It should also be reminded that the principle of fairness and equity is further reflected in the Rules of Procedure to the benefit of the party against whom a decision by default has been given since that party, once a decision by default has been given, may lodge an Application to set aside that decision within one month of service of the decision (R. 356 RoP).

#### *Costs*

23. Since this decision closes the revocation action, the Court of Appeal shall decide on costs.
24. As the unsuccessful party, Suinno shall be held to bear the costs of the appeal proceedings.

#### ORDER

The Court of Appeal

- I. gives a decision by default against Suinno;
- II. dismisses the appeal;
- III. orders Suinno to bear the costs of the appeal proceedings.

A party against whom a decision by default has been given may lodge an Application to set aside that

decision within one month of service of the decision (R. 356.1 RoP). A further decision by default shall be final (R. 356.3 RoP).

Issued on 22 May 2026

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Steven Kitchen, technically qualified judge

Udo Matter, technically qualified judge