

EIP

Joining a party

Seoul Viosys., Ltd v Laser Components SAS (UPC_CFI_440/2023)

Order dated 12 February 2024 (ORD_3311/2024)

In this infringement case before the Paris Local Division the defendant, Laser Components SAS, sought to add a third party, Photon Wave Co. Ltd. a Korean company (“Photon Wave”), to the case under the provision for forced intervention. The defendant argued it had a statutory right to a guarantee from Photon Wave, its supplier of the allegedly infringing UV LED chips, in respect of any damages and costs arising out of the action.

The claimant, Seoul Viosys., Ltd, argued that granting the application would be likely to prejudice its legitimate interests by prolonging the proceedings and allowing the defendant to continue to sell the alleged infringing products. In addition, the claimant argued that the court does not rule on the liability of third parties and the statutory guarantee does not require the seller to be party to the action but only to be notified of it within a reasonable time.

Decision

The Judge-Rapporteur considered Rule 316A.1 RoP on forced intervention which provides:

“A party who contends that the person should be bound by the decision in the action even if he refuses to intervene shall give reasons for this contention in its reasoned request. In such a case the invitation must include these reasons and must state that the party making the request contends that the person should be bound by the decision in the action even if that person refuses to intervene.”

She noted that the defendant has a guarantee claim (“dispose d’un recours en garantie”) against the supplier under Article 43 of the United Nations Convention on Contracts for

the International Sale of Goods in respect of any judgment that may be entered and a direct interest in Photon Wave being part of the case.

The argument that the duration of proceedings would be extended was not decisive as the time limits for the intervenor to file a statement of case are strictly governed by Rule 316A.2. The claimant cannot rely on the risk of continuing infringement because it has not made an application for provisional measures. Further, even if the court does not have to hear the dispute between the defendant and the supplier, it seems useful and necessary for the supplier to be involved in the case and bound by the decision that is made.

The Judge-Rapporteur accordingly made an order for the defendant to provide the Registry with a valid email contact address for the supplier. The supplier will have one month from being notified by the Registry to oppose its forced intervention failing which it will be bound by the decision in the action in accordance with Rule 316A.2.

Comment

We are not aware that this provision has been invoked before. It will be interesting to see whether Photon Wave lodges an objection under Rule 316A.2.

As a practical point, the Judge-Rapporteur has asked for an email address to notify the supplier of the forced intervention. As a company outside the EU, Photon Wave may consider that it should be more formally served if it is to become bound under Rule 316A

We note that this is another instance of a Rule of Procedure providing for a “reasoned request”. The interpretation of that phrase has given rise to the appeal in the Ocado v Autostore case in respect of third party document access requests.