

FRENCH REPUBLIC
ON BEHALF OF THE FRENCH PEOPLE

PARIS COURT OF APPEAL

Division 5 - 16

(No 14/2020, 14 pages)

JUDGMENT OF 3 MARCH 2020

APPEAL OF AN INTERLOCUTORY ORDER

General Directory Entry Number : **RG 19/21426 - No Portalis 35L7-V-B7D-CBAZK**

Decision referred to the Court: Order of 8 November 2019 from the President of the Paris Court of First Instance

APPELLANTS:

LENOVO (UNITED STATES) INC, a company incorporated under US law
Having its registered office at Corporation Trust Center, 1209 Orange street, Wilmington, New Castle County - Delaware 19801 – United States of America
Represented by its legal representatives

MOTOROLA MOBILITY LLC, a company incorporated under US law
Having its registered office at Corporation Trust Center, 1209 Orange street, Wilmington, New Castle County - Delaware 19801 – United States of America
Represented by its legal representatives

SAS MOTOROLA MOBILITY FRANCE
Registered in the Nanterre trade and companies registry under the n° 518 392 006
Having its registered office at 20 rue des deux gares, 92500 Rueil Malmaison
Represented by its legal representatives

SAS LENOVO FRANCE
Registered in the Nanterre trade and companies registry under the n° 481 278 240,
Having its registered office at 20 rue des deux gares, 92500 Rueil Malmaison
Represented by its legal representatives

All of them represented by ..., member of the Paris Bar
having as litigator member of the Paris Bar

RESPONDENTS:

IPCom GmbH & Co. Kg, a company incorporated under German law
Registered in the German Companies Registry of Munich under the N° HRA 93950,
Having its registered office at Zugspitzstrasse 15, 82049 Pullach -Germany
Represented by its general partner IPCom Beteiligungs GmbH which is represented by its manager domiciled in this capacity at the said registered office
Represented by ..., member of the Paris Bar.

COURT COMPOSITION

The case was heard on 27 January 2020 in open court, before the Court composed of:

Mr François ANCEL, President

Ms Laure ALDEBERT, Judge

Ms Fabienne SCHALLER, Judge

who ruled on the case, a report was presented at the hearing by Mr François ANCEL in accordance with Article 785 of the Code of Civil Procedure.

Clerk at the hearing: Clémentine GLEMET

JUDGMENT

- Adversarial
- judgment made available at the Clerk's office of the Court, the parties having been notified in advance under the conditions provided for in the second paragraph of Article 450 of the Code of Civil Procedure.
- signed by François ANCEL, President and by Clémentine GLEMET, Clerk to whom the minute was delivered by the signatory judge.

I — FACTS

1. The Lenovo group, whose parent company is a company incorporated under Chinese law (Lenovo group Limited) specializes in design, manufacturing and marketing of computers, digital tablets, mobile phones and other electronic items. This group bought in 2014 the American company Motorola Mobility LLC, specialized in manufacturing and marketing of mobile phones.

2. It notably includes American subsidiaries, Lenovo (United States) Inc. and Motorola Mobility LLC and French subsidiaries, Lenovo (France) SAS and Motorola Mobility France SAS (hereinafter referred to as "the companies Lenovo ") which supply the French market.

3. The German company ICom GmbH & Co. KG (hereinafter "the company ICom") claims to be active in research and development and in the creation and the exploitation of patents portfolios particularly in the field of telecommunications

4. It states having acquired in 2007 from Robert Bosch GmbH, a company incorporated under German law, a portfolio of more than 160 patent families protecting technologies from GSM (2G), UMTS (3G) and LTE (4G) standards and mobile telecommunications and in particular patent EP 1 841 268 B2 (hereinafter referred to as patent EP 268) relating to an "Access of a mobile station to a random access channel depending on its user class » which has been held as essential to the UMTS (3G) standard by the English and German courts.

5. The company ICom indicates that it committed to the ETSI (European Telecommunications Standards Institutes) to grant "fair, reasonable and non-discriminatory" licenses (hereinafter referred to as "FRAND") on the essential patents which it indicates to hold and to have officially offer in September 2018 to the Lenovo group to subscribe to such operating licences of its patent portfolio under FRAND conditions.

6. Maintaining that the Lenovo group had implemented its essential patents and particularly in France the European patent EP 1 841 268 B2 through its American and French Lenovo subsidiaries, the company ICom gave on March 1, 2019 formal notice to the Lenovo group to reply to its license offer for March 15, 2019, failing which it would initiate legal proceedings for the protection of its rights.

7. Lenovo (United States) Inc. and Motorola Mobility LLC, considering that this offer was not FRAND with regard in particular to the royalty rate of the portfolio containing, in their opinion, expired patents, or on the verge of being so, initiated proceedings on 14 March 2019 against the company ICom in the United States District Court for the Northern District of California for the purposes to challenge its contractual liability for failure to meet its commitments to ETSI and setting the terms of a worldwide FRAND licence for the ICom's patent portfolio.

8. On July 2, 2019 ICom brought an action for infringement of the patent EP 268 against Lenovo Technology (UK) Limited and Motorola Mobility UK Ltd before the High Court of Justice in London to have it held that this patent is valid, essential and infringed, and issue a ban on the products claimed of counterfeiting except in the event of the conclusion of a FRAND licence within the framework of the proceedings pending before the California courts.

9. On September 18, 2019, U.S. Lenovo companies lodged with the California judge a motion for anti-suit injunction to prohibit the company ICom to continue the proceedings initiated in the UK and take further action against them or their subsidiaries and customers, or to ask a foreign court to order measures to prevent Lenovo group subsidiaries to implement such an anti-suit injunction, as long as the California court will not have ruled on the conditions for granting a FRAND license.

Proceedings :

10. It is under these circumstances that ICom served on the American companies of the Lenovo Group (namely Lenovo (United States) Inc. and Motorola Mobility LLC) and the French companies of the Lenovo group (namely Lenovo (France) SAS and Motorola Mobility France SAS) - hereinafter referred to as "the Lenovo Companies" – an emergency writ of summons , authorized on 24 October 2019, to appear before the President of the Court for the purpose of obtaining the withdrawal of the motion for anti-suit injunction filed before the California judge and the prohibition for these companies from initiating any proceedings which might restrict the right ICom to initiate and prosecute the alleged acts of infringement.

11. ICom initiated the same proceedings before the High Court of Justice in London against the English companies of the Lenovo group in order to obtain from the English judge an anti anti-suit injunction.

12. At the same time, ICom has been authorized to issue emergency proceedings against the French Lenovo companies, as well as Modelabs Mobiles (importer) and Digital River Ireland Limited (distributor) before the President of the Paris Court of First Instance for provisional ban.

13. By order dated 8 November 2019, the President of the Paris Court of First Instance , in particular:

- held that there shall be no declining of jurisdiction in favour of the District Court of the United States for the Northern District of California;

- ordered Lenovo Inc. and Motorola Mobility LLC to immediately withdraw as of the date of issue of the Order and in any case before November 14, 2019 the "Motion for antisuit injunction" which

they filed on September 18, 2019 with the Court of California, in that it relates directly or indirectly to all proceedings IPCOM initiated or is likely to initiate before the courts having jurisdiction in respect of alleged acts of infringement of the French part of the European patent EP 268 belonging to it, on account of acts committed on French territory by Lenovo group entities, including by Lenovo (France) SAS and/or Motorola Mobility France SAS, and/or their customers, wholesalers, distributors and/or intermediaries whose services they use;

- prohibited Lenovo Inc. and Motorola Mobility LLC from filing any new proceedings or application before any foreign court to the same purposes

- held that the withdrawal and restraining orders and the prohibition on bringing a new "motion for anti-suit injunction" are subject to a penalty payment of EUR 200 000 per infringement established and for each day's delay from the date of issue of this order;

14. By decision of 8 November 2019, the High Court of Justice in London, considering that it would be vexatious and oppressive for IPCOM if it were deprived of challenging the infringement and validity of patent EP 268, ordered the English companies Lenovo not to obstruct the continuation of the proceedings initiated by IPCOM before the English courts, the English judge having added, inter alia, that he believes that *"it is significant that the principle of courtesy is not significantly violated by the granting of the injunction sought "because it" would not substantially interfere with the issues before the U.S. court"*.

15. Following the order made by the President of the Paris Court of First Instance , the American companies Lenovo withdrew before the Californian court their motion for an "anti-suit" injunction against IPCOM as regards the proceedings initiated in France.

16. On November 14, 2019, IPCOM brought proceedings against the French companies Lenovo as well as the companies Modelabs Mobiles (importer) and Digital River Ireland Limited (distributor) before the Paris Court of First Instance for infringement of patent EP 268.

17. By notice of November 22, 2019, Lenovo Inc., Motorola Mobility LLC, Motorola Mobility France and Lenovo (France) appealed the order of the summary judgment judge of November 8, 2019 in all its provisions.

18. By order of December 9, 2019, the delegate of the first president authorized the appellants to summon IPCOM on a fixed day for a hearing on January 27, 2020 inviting them to issue the writ of summons no later than December 20, 2019.

19. By decision of December 12, 2019, the Californian judge held that the American companies Lenovo did not bring sufficient "prima facie" proof of the jurisdiction of the American court to rule on their claim for contractual responsibility of IPCOM for breach of its commitments to ETSI, and on their request for determination of a rate of FRAND royalty for a license on the patent portfolio of IPCOM. He authorized a "discovery" procedure for the sole purpose of ruling, if need be, again later on its jurisdiction and found "terminated" the motion for anti-suit injunction from the American companies Lenovo, which can if necessary submit it again once the "discovery" procedure on jurisdiction has been completed.

20. By order handed down on January 20, 2020, the President of the Paris Court of First Instance rejected IPCOM's application for provisional ban after having held in particular that the measures of prohibition, recall and confiscation sought, which covered a period of a few weeks taking into account the expiry date of the patent on February 15, 2020, were manifestly disproportionate and of a nature to cause an imbalance in the situation of the parties in giving an undue advantage to the

patentee who might have imposed a license that does not meet the FRAND conditions.

II — CLAIMS OF THE PARTIES

21. According to their latest submissions sent electronically on 24 January 2020, Lenovo requested the Court in particular under Articles 42, 46, 100, 101, 808 (previous version) and 809 (previous version) of the Code of Civil Procedure, to

-Reverse the order of November 8, 2019 in all its provisions except that it found the objection of lack of jurisdiction admissible;

Ruling again:

Primarily:

- Say that it has no jurisdiction to hear ICom's application against Lenovo (United States) Inc., and Motorola Mobility LLC and, as a consequence, to declare the judgment common to Lenovo (France) SAS and Motorola Mobility France SAS; and direct ICom to better lodge its claim before the US District Court for the Northern District of California,

In the alternative :

- Say that there is no reason to rule in summary proceedings;
- Reject all requests from ICom against Lenovo companies (United States) Inc., Motorola Mobility LLC;

In any case :

- Order ICom to pay to Lenovo (United States) Inc., Motorola Mobility LLC, Lenovo (France) SAS and Motorola Mobility France SAS the sum of EUR 50,000 under Article 700 of the Code of Civil Procedure;
- Order ICom to pay all costs and say that they will be recovered by the SPC Grappotte Bénétreau, in accordance with article 699 of the Code of Civil Procedure.

22. According to its latest submissions sent electronically on 17 January 2020, ICom requested the Court in particular under Articles 46, 808 (previous version), 809 (previous version) and 331 alinea 2 of the Code of Civil Procedure and under Articles 7-2 and 24-4 of EU Regulation 1215/2012 of 12 December 2012, to:

- Uphold in all its provisions the interim order (RG n ° 19/59311) handed down on November 8, 2019 by the President of the Paris Court of First Instance ;
- Declare inadmissible, and in any case groundless, all pleas and claims of Lenovo (United States) Inc., Motorola Mobility LLC, Lenovo (France) SAS and Motorola Mobility France SAS; dismiss them;
- Order Lenovo (United States) Inc., Motorola Mobility LLC, Lenovo (France) SAS and Motorola Mobility France SAS in solidum to pay all costs that will be directly recovered by SELAS ..., Lawyers, in accordance with article 699 of the Code of Civil Procedure;

IV — PLEAS OF THE PARTIES

23. The Lenovo companies claim that the French courts do not have territorial jurisdiction to order the measures requested by ICom against the American companies of the Lenovo group.

24. They point out that the jurisdiction of the French courts cannot result from the application of article 42 al.2 of the Code of Civil Procedure since the French companies of the Lenovo group are brought before this jurisdiction only for purposes of declaration of common judgment so that, as there is no claim filed against them, the place of their registered office in France cannot be used to assess the jurisdiction of French courts.

25. They add that the jurisdiction of the French courts cannot result from the application of Article 46 al.2 of the Code of Civil Procedure with regard to the place of the damage since the stay of the proceedings initiated in France while the American procedure continues cannot result in a damage to ICom since the current procedure before the Californian court aims at fixing the royalties which ICom could claim for the exploitation of this patent and that the appellants have undertaken, for themselves and on behalf of their affiliates around the world, to comply with the decision of the Californian court and to take a FRAND license under the terms to be defined by this Court.

26. They state that the only measure from which the stay of proceedings could deprive ICom was a provisional ban with effect for a few weeks, between the date of the President's order and the expiry date of this patent, i.e. on February 15, 2020 but that the President of the Court rejected, by his order of January 20, 2020, to order such a provisional ban.

27. In the alternative, the Lenovo companies consider that the conditions of Articles 808 and 809 of the Code of Civil Procedure (in their previous version) are not met, considering that ICom's claims are seriously challengeable.

28- They indicate firstly that the conditions of Article 808 of the Code of Civil Procedure are not met since the existence of a simple dispute cannot suffice to justify the granting of any measure which would give to one of the parties an unreasonable advantage in the dispute against the other party and that in this case, the motion for anti-suit injunction aims precisely at restoring a balance of rights between the parties by avoiding multiple infringement proceedings, the sole purpose of which is to gain an advantage within FRAND license negotiations. They consider that by seeking to have Lenovo and Motorola products banned in certain markets, while the American companies Lenovo are ready to take out a license for the ICom patents, on their own behalf and on that of their affiliates around the world, ICom abuses its position as a patentee, which justifies even more the motion for anti-suit injunction filed with the Californian court.

29- They state that this measure is not contrary either to French international public order, nor to European international public order and that the "anti-suit injunction" measure is not intended to encroach on the sovereignty and jurisdiction of another state jurisdiction but to preserve the jurisdiction of the competent forum first seized from oppressive procedural behaviour of ICom. They add that this motion is not different nature of the motion for "anti anti-suit" that ICom itself has filed so that the President of the Court should have questioned the infringement brought by his own decision to the sovereignty of the American jurisdictions.

30- They indicate that there is, outside the scope of European Union law, not applicable in this case, no principle of incompatibility excluding the use of "anti-suit" injunctions in French law, being observed that the Court of Cassation accepted it where the measure is intended to sanction the breach of a pre-existing contractual obligation, which is the case here since ICom violated its commitments made to ETSI in refusing to grant a FRAND license.

31- The Lenovo companies secondly claim that the conditions for implementing Article 809 of the Code of Civil Procedure, which does not allow to prevent hypothetical damage, are also not met as ICom cannot claim to suffer any imminent harm, since the pending US proceedings seek to determine the amount of FRAND royalties owed by American companies and their subsidiaries so

that the exploitation of patents will give rise to a consideration.

32. They consider that IPCom cannot claim suffering from a manifestly unlawful disturbance since neither the right to justice nor the property right of this company are flouted. They state in this regard that the right to justice is not intended as an unconditional and systematic right to bring a claim before the French judge, that IPCom's right to justice is exercised before the Californian judge and that when the Californian judge will have ruled on the conditions of a license FRAND, IPCom may exercise its prerogatives as holder of essential patents and in particular obtain the payment of royalties. .

33- They believe on the contrary that the injunction is intended to protect the American companies Lenovo from an abuse by IPCom of its patent right since in a context for determining FRAND royalties, the filing of actions in infringement may be found to be contrary to competition law, in that the patentee abuses of its dominant position, in particular when the third party implementing the standard, such as this is the case here, has expressed its willingness to take out a license under FRAND conditions.

34- IPCom argues in response that the President of the Paris Court of First Instance had material and territorial jurisdiction to order interim measures. It indicates in this regard that this motion for anti-suit injunction had the objective of depriving it of the right to act before the French judge to assert its rights over the French part of the European patent of which it is the holder, so that it was likely to suffer a damage in France and the French court had territorial jurisdiction under Article 46 of the Code of Civil Procedure. It adds that this motion for anti-suit injunction could be filed again, the stay of the trial before the American judge only lasting until the outcome of the discovery procedure.

35- IPCom further explains that the measures ordered are justified in light of conditions laid down in Article 809 of the Code of Civil Procedure when, as the first judge held, the motion for anti-suit injunction exposed it to an imminent harm of its fundamental rights under its industrial property right and its right to an effective legal protection of this right, protected by Articles 1, 6-1 and 13 of the European Convention on Human Rights, 17 and 47 of the Charter of Rights fundamentals of the European Union.

36- It recalls that the hearing of pleadings before the American court concerning the "Motion for Anti-Suit Injunction" of the American companies Lenovo was set for November 14, 2019 and that this motion was therefore likely to be granted against IPCom at any time from that date, so that the risk to which it was exposed of being deprived of its fundamental right to judicial protection of its intellectual property in France constituted in itself a manifestly unlawful disturbance which was to cease, and the realization of that risk constituted an imminent harm which had to be prevented, in accordance with article 809 of the Procedural Code civil.

37- It adds that the imminent harm to which IPCom was exposed did not completely disappear in view of the decision handed down by the American court on 12 December 2019 insofar as if the American court rejected the motion for anti-suit injunction from the American companies, it nevertheless left open the possibility for them to file again such motion if necessary after completion of the discovery process in jurisdiction matters.

38- IPCom further considers that the conditions of Article 808 of the Code of Civil Procedure are also met. It maintains that there is a dispute between, on the one hand, IPCom, holder of the French part of the European patent EP 268, and on the other hand, the French Lenovo companies and their partners for the import and marketing in France of alleged counterfeit products, namely the company ModeLabs Mobiles and the Irish company Digital River Ireland Limited and that under

Articles L.615-17, L.615-3 and D.631-2 of the Intellectual Property Code, and D.211-6 of the Code of Judicial Organization, this dispute falls within the exclusive jurisdiction of the Paris Court of First Instance with regard to civil actions and related claims regarding the patent, and of its President seized in summary proceedings with regard to measures intended to prevent further infringement

39- It recalls that the so-called “anti-suit” orders of the type that may be handed down by English or American courts affect the prerogatives of sovereignty of the French State and, in particular, of its rules of jurisdiction and that therefore, apart from certain very specific cases of litigation involving the implementation of an arbitration clause and / or a clause conferring jurisdiction freely agreed by the parties - which is not the case here - they are contrary to international public policy under French and European law.

40- IPCom considers that the motion for anti-suit injunction aims to hinder the exercise by French courts of their jurisdictional powers, and therefore affects the international public policy under French law. It argues in this regard that it is inaccurate to claim that the same would apply to the "anti-anti suit" measure ordered by the judge since it does not have the purpose or the effect of depriving the appellants of a fundamental right, nor to hinder the exercise of the jurisdictional powers of the American court, as the appealed order does not prohibit the appellants from continuing their action before the American court.

41- It adds that the motion for anti-suit injunction also affects the international public policy of the European Union since it aims to prevent French courts from exercising their powers under Articles 7-2 and 24-4 of EU Regulation No. 1215/2012 of 12 December 2012, to hear claims on the validity and counterfeiting in France of the French part of the European patent EP 268, and to deprive IPCom of the effective judicial protection of its intellectual property in all Member States of the European Union designated by the said patent, including France, while this judicial protection is guaranteed by Articles 17 and 47 of the Charter of fundamental rights of the European Union

42. The Court refers, for a further statement of the facts and claims of the parties, to the decision made and to the aforementioned submissions, by application of the provisions of Article 455 of the Code of Civil Procedure.

IV — REASONS FOR THE DECISION

On the plea of lack of territorial jurisdiction

43- It should be noted that neither IPCom nor the first judge determined the jurisdiction of the Parisian court on the ground of Article 42 al. 2 of the Code of Civil Procedure, which they admitted was not applicable in the present case, so that that basis does not have to be examined and that territorial jurisdiction should be assessed with regard to the conditions laid down by Article 46 of the Code of Civil Procedure.

44- The judge with territorial jurisdiction in summary proceedings is the one in whose jurisdiction urgent measures must be taken or the one belonging to the court that shall rule on the merits, which may be under Article 46 of the Code of Civil Procedure and in tort cases, the court of the place where the defendant lives, the court of the place of the harmful event or the court in which the damage was suffered.

45- In the present case, the President of the Court dismissed the objection of jurisdiction based on Article 46 of the Code of Civil Procedure after having considered, for relevant reasons that the Court adopts, that if the American judge was to grant anti-suit injunction, IPCom would be deprived

of the right to act before the French judge for asserting its rights over the French part of the European patent it owns, thus suffering a damage on this territory, so that the French court shall have territorial jurisdiction under Article 46.

46- It shall be added in this regard that it is not up to the Court, when ruling solely on the issue of jurisdiction, to assess whether the alleged damage is established in the light of commitments that Lenovo companies say they have made "for themselves and their affiliates worldwide " before the American court to comply with the judgment that shall be handed down by this court, as this question falls under the assessment of the merits of the measure claimed.

47- It shall be added for the sake of completeness, that the jurisdiction of the President of the Paris Court of First Instance of Paris was also justified by the fact that this judge belongs to the court which shall in fact hear the claim of patent infringement brought by IPCom, that the motion for "anti-suit" injunction is precisely intended to prevent and on which it has therefore a direct impact.

48- In light of these elements, the order of the judge of first instance on territorial jurisdiction shall be upheld.

On the assessment of the merits of the measures sought before the President of the Court of First Instance:

49- Even if it is not disputed that the motion for anti-suit injunction brought before the Californian judge has been withdrawn following the decision of the trial judge, it is for the court to firstly determine whether this request for withdrawal was justified the day the trial judge ruled.

50- Furthermore, taking into account that this new element occurred after the decision of the trial judge was handed down, it is up to the Court to assess whether the ban which has been imposed on the American companies to file "*any new proceedings or applications before any foreign courts with the same purpose* " is still justified under Articles 808 and 809 (previous version) of the Code of Civil Procedure that are now Articles 834 and 835 of this code.

On the merits of the application to withdraw the motion for anti-suit injunction before the American jurisdiction

51- In application of Article 835 of the Code of Civil Procedure (formerly 809 of this code), the president of the Court of First Instance may, even in the presence of a serious challenge, order interim protective measures or restoration measures required, either to prevent imminent damage, or to put an end to a manifestly unlawful disturbance.

52- It should be recalled that any disturbance resulting from a material or legal fact which, directly or indirectly, is an obvious violation of the rule of law, can constitute a manifestly unlawful disturbance.

53- In the present case, it is common ground that the purpose of the anti-suit injunction filed before the American court on September 18, 2019 was to prohibit IPCom, on the one hand, from continuing the action for patent infringement filed in the United Kingdom against the affiliated companies of the American companies Lenovo in the United Kingdom but also, on the other hand, to prohibit IPCom from bringing claims against the applicants (the American companies Lenovo), the affiliated companies of the applicants or one of their clients, all actions alleging an infringement of essential patents claimed by IPCom and this during the action pending before the Californian court.

54- The purpose of the motion for anti-suit injunction was thus also to prevent initiating and / or continuing any infringement action against companies of the Lenovo group, including those likely to be brought before a French court.

55- It emerges in this regard from the exhibits filed in the proceedings and in particular from the written submissions of the parties filed before the Californian judge that the American common law system recognizes the judge the power to order a party not to initiate a parallel procedure in the same country or a foreign country if this compromises the course or outcome of the proceedings before this jurisdiction and particularly when such an action "seeks to compromise the capacity of the court to achieve a just result in the matter before it "(Microsoft Corp. v. Motoral, Inc. 696 F. 3D 872, 886 (9 th Cir. 2012)) or, as recalled by Lenovo companies in the motion for an anti-trial injunction they filed with the American judge, "*when unnecessary delays and inconvenience and significant expense for parties and witnesses "will likely result from the resolution of an issue in two separate actions or "where separate decisions could give place with inconsistent decisions or even a race for judgment "*".

56- Thus, on the day the first judge ruled, IPCom was likely to see itself prohibited by the Californian judge, with regard to the faculty offered by its law, to initiate and / or to pursue any action for patent infringement against the companies of Lenovo group and / or their customers to protect the French part of the EP 268 patent, that it owns and particularly before the French courts.

57- Such an impediment characterizes a manifestly unlawful disturbance as long as it infringes the right for the holder of an industrial patent to access the only judge competent to rule on the infringement of its title, disregarding not only the provisions of the Intellectual Property Code and in particular Article L. 611-1 of the Intellectual Property Code according to which "*any invention may be the subject of an industrial property title issued by the director of the National Institute of industrial property which confers on its owner or his successors in title an exclusive right of exploitation "* and Article L. 615-1 of the same code which provides that "*Any infringement of the rights of the owner of the patent, as defined in Articles L.613-3 to L. 613-6, constitutes an infringement "*", but also of the protection granted to the right of property by European standards and in particular Article 1 of Protocol 1 of the European Convention on Human Rights according to which "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*", of Article 17 of the Charter of Fundamental Rights of the Union European expressly including intellectual property in this protection, and finally Articles 6 § 1 and 13 of the European Convention on Human Rights relating to the right for everyone to have their case heard fairly, publicly and within a reasonable time by an independent and impartial tribunal, and to the right to an effective remedy before a national authority.

58- If the Lenovo companies maintain that this prohibiting measure is only temporary and only lasts for the time of the proceedings before the American judge, such a stay, having regard to the duration thereof which might take several years, but also of its uncertain outcome, compared to the limited duration of protection granted to the owner of a patent, which in this case expired on February 15, 2020, amounts to a concrete deprivation of the right for its holder to avail and protect his industrial property title before its expiration, knowing that it is not disputed that the Californian judge is not seized and could not in any event rule on such an action for infringement which is of the exclusive jurisdiction of the Paris Court of First Instance .

59- Thus, the only appropriate way to put an end to the manifestly unlawful disturbance was indeed to order the Lenovo companies to withdraw under penalty the "anti-suit" motion filed before the Californian judge, being moreover observed that it in no way prejudices the continuation of the

lawsuit initiated by the Lenovo companies before the Californian court, the subject of which is distinct since it does not relate to the infringement of the patent in dispute and that the outcome of the infringement action in France is not without interest for the Californian judge, supposing that he recognizes himself finally competent to rule on the responsibility of ICom and the fixing of a FRAND license.

60- Consequently, it shall be held, regardless of the assessment whether the motion for anti-suit injunction filed by Lenovo companies before the Californian judge complies with the French concept of international public policy, that this measure characterizes a manifestly unlawful disturbance within the meaning of Article 835 of the Code of Civil Procedure, in view of the disturbance it generates by infringing a fundamental right, so that the first judge has, rightly and within the framework of the powers it derives from this article, ordered the Lenovo companies to withdraw under penalty the disputed motion for anti-trial injunction and that its order shall therefore be upheld.

On the merits of the ban on Lenovo companies from filing any new applications for the same purpose;

61- It should be noted that if the litigation pending before the Californian judge is not fully completed due to the implementation of a "discovery" procedure whose outcome is likely to reopen before the Californian judge the debate over its jurisdiction, this Judge is no longer seized of any motion for an anti-suit injunction so that the manifestly unlawful disturbance referred to above has ceased, and the only possibility of filing a new motion for anti-suit cannot be enough to characterize such a disturbance.

62- Similarly, the imminence of damage has not been established since no motion has been made.

63- Consequently, in view of the development of the dispute and the conditions required by Articles 808 and 809 of the Code of Civil Procedure, which are now Articles 834 and 835 of the Code of Civil Procedure, which are no longer met, the decision of the first judge tending to prohibit Lenovo Inc. and Motorola Mobility LLC from filing "any new procedure or application before any foreign court whatsoever for the same purpose" is no longer justified, apart from the fact that it was not made with limits in time and space.

64- The order of November 8, 2019 shall therefore be reversed on this count.

Costs and expenses

65- Costs and procedural indemnity were properly settled by the trial judge.

66- At this court level, the Lenovo companies, losing parties, shall be ordered in solidum to pay the costs which may be recovered in accordance with the provisions of Article 699 of the Code of Civil Procedure.

67- In addition, the Lenovo companies must be ordered in solidum to pay ICom, which had to incur irrecoverable costs to assert its rights, compensation under Article 700 of the Code of Civil Procedure which fair overall sum is set at EUR 25,000 in view of the the partial reversal of the order.

ON THESE GROUNDS, THE COURT HEREBY

1-Upholds the order of November 8, 2019 on territorial jurisdiction and in so far as it ordered

Lenovo Inc. and Motorola Mobility LLC to withdraw under penalty the "motion for anti-suit injunction" filed on September 18, 2019 with the District Court of the United States for the Northern District of California, within the limits set by this order as well as the costs and expenses of first instance;

2-Overturns it in so far as it enjoined Lenovo Inc. and Motorola Mobility LLC from filing any new proceedings or application before any foreign court;

And ruling additionally :

3-Orders in solidum Lenovo Inc., Motorola Mobility LLC, Motorola Mobility France SAS and Lenovo France to pay to ICom the global sum of EUR 25,000 euros under Article 700 of the Code of Civil Procedure;

4- Orders in solidum Lenovo Inc., Motorola Mobility LLC, Motorola Mobility France SAS and Lenovo France SAS to pay the costs which shall be recovered in accordance with the provisions of Article 699 of the Code of Civil Procedure.

Clerk
G. GLEMET

President
F. ANCEL