



UPC Court of Appeal
UPC_CoA_618/2024
APL_57918/2024

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 21 February 2025
regarding court fees for the appeal instance Notice of appeal
and statement of grounds of appeal
(R. 221 RoP)

APPELLANTS (AND APPLICANTS IN COST ASSESSMENT PROCEEDINGS BEFORE THE GEI)

1. **Hanshow Technology Co, Ltd**, Jiaxing City, Xiuzhou District, Zhejiang Province, China
 2. **Hanshow Germany GmbH**, Düsseldorf, Germany
 3. **Hanshow France SAS**, Boulogne-Billancourt, France
 4. **Hanshow Netherlands B.V.**, Amsterdam, The Netherlands
- (hereinafter jointly referred to as "Hanshow")

1-3 represented by: Roland Küppers, Rechtsanwalt, Taylor Wessing, Düsseldorf, Germany DEFENDANT (AND

APPLICANT IN THE COST SETTLEMENT PROCEEDINGS BEFORE THE COURT)

VusionGroup SA, Nanterre, France (hereinafter to
as "VusionGroup")

represented by: Dr Anton Horn, Attorney-at-Law, Heuking, Düsseldorf, Germany

STREITPATENT EP 3 883 277

LANGUAGE OF THE PROCEEDINGS

German

DECIDING JUDGE

This Order was issued by Ingeborg Simonsson, Standing Judge.

ORDER CONTESTED BY THE COURT OF FIRST INSTANCE

- Date: 18 October 2024, Munich local division

- Action numbers of the Court of First Instance: UPC_CFI_292/2023; ACT_567009/2023, App_44953/2024, ORD_52059/2024

FACTUAL AND LEGAL POINTS OF CONTENTION

Court fees for the appeal instance, application for a decision by default, application for leave appeal against a decision on costs (R. 221 RoP)

BRIEF PRESENTATION OF THE FACTS

The procedure concerning the application for an Order for interim measures

1. On 4 September 2023, VusionGroup filed an application for an Order for Provisional Measures against the Hanshow companies (ACT_567009/2023). On 20 December 2023, the application was rejected by the Munich local division, which also ordered VusionGroup to pay the legal costs and other expenses of the Hanshow companies, including the costs of filing the protective letter of 10 August 2023, up to a maximum amount of € 200,000.00. An appeal was lodged against this Order (APL_8/2024). On 13 May 2024, the Court of Appeal dismissed the appeal and ordered VusionGoup to pay the costs of the appeal proceedings (UPC_CoA_1/2024).

The application for a decision on costs

2. On 18 June 2024, an application was made to the Court of Appeal for in the appeal proceedings (App_36394/2024). Hanshow also applied for an extension of time. On 29 July 2024, the judge-rapporteur determined that an application for costs, including for the costs of the appeal proceedings, must be submitted to the Court of First Instance and decided by the judge-rapporteur of that instance. The application was accordingly referred to the Court of First Instance and the latter was instructed to take 18 June 2024 as the date of submission of the application for costs to the Court of First Instance.
3. On 2 August 2024, Hanshow filed an application to this effect with the Munich local division. The local division (App_44953/2024) dismissed the application for retroactive extension of time as inadmissible and, consequently, the application for costs of the appeal proceedings as inadmissible (the aforementioned APL_8/2024) for failure to comply with the one-month time limit for filing such an application pursuant to R. 151 RoP. The local division held that Hanshow should instead have filed an application for restitutio in integrum pursuant to R. 320 RoP.

The appeal procedure

4. Hanshow applied for leave to appeal on 31 October 2024. As no R. 221 RoP workflow is available in the CMS, the application was submitted as R. 220.2 RoP workflow. On 15 November 2024, the permanent judge allowed the appeal pursuant to R. 221.3 RoP.
5. On 21 November 2024, the standing judge ordered Hanshow to pay an additional court fee of € 1500 by 5 December 2024 at the latest.

Issues raised by VusionGroup in relation to the court fee and the grounds of appeal

6. In its response on appeal, VusionGroup raises several separate issues. The following two issues are addressed in this Order:
 - VusionGroup that Hanshow has not paid the additional court fee and is seeking a default judgement.
 - According to VusionGroup, Hanshow has not lodged a valid appeal. There is no notice of appeal or statement of grounds of appeal pursuant to R. 224 RoP. VusionGroup requests that the appeal be dismissed (R. 233.3 RoP).

REASONS FOR THE DECISION

The fee for the appeal instance

7. If a party applies for permission to appeal against a decision on costs, they pay a court fee of € 1,500. If the appeal is allowed, as in this case, the €1,500 originally paid does not apply (see table of court fees), but a fee of €3,000€ is for an appeal against a decision on costs pursuant to R. 221.4 RoP. Accordingly, the permanent judge ordered Hanshow to pay a further fee of €1,500 by 5 December 2024 at the latest. According to the law firm, this further fee was credited on 5 December 2024. VusionGroup's application for a default judgment must therefore be dismissed. There is no need to give Hanshow an opportunity to comment on this as the outcome is in Hanshow's favour.

The notice of appeal and the grounds of appeal were filed

8. In VusionGroup's view, the notice of appeal and statement of grounds of appeal must be filed within 15 days of service of the decision to allow the appeal (R. 221.3 RoP, R. 224.1(a) and 2(b) RoP), but no such filing had been made. VusionGroup argues that the application for leave to appeal cannot be equated with a notice of appeal and grounds of appeal.
9. These arguments do not hold water for legal reasons. There is no need to give Hanshow the opportunity to comment on this, as the result is in its favour.
10. Firstly, an application for the determination of costs is a summary procedure. This is reflected in the fact that such applications are decided at first instance by the judge-rapporteur (R. 156.2 RoP) and on appeal by the permanent judge (R. 221.4 RoP). Furthermore, unlike appeals against decisions on the merits, such an application always requires leave to appeal and there is no obligation for the permanent judge to hear the other party (as in R. 220.4 RoP) before allowing the appeal.
11. Secondly, R. 221 RoP does not always require a separate notice of appeal and grounds of appeal after an appeal against a costs order has been allowed. An application for leave to appeal under R. 221 RoP must already contain the grounds for the conduct of the


appeal; and, where appropriate, the facts, evidence and legal arguments on which the appeal is based (R. 221.2 RoP).

12. The Rules of Procedure treat applications for discretionary review and applications for leave to appeal against decisions on costs in the same way in that they must contain the same information (R. 220.3 RoP with reference to R. 221.2 RoP) and are decided by the permanent judge.
13. R. 220.4 RoP provides that the permanent judge, after granting the application for a discretionary review, orders whether and "if so" which further procedural steps are to be taken by the parties and within which time limits. It follows that in the event of a discretionary review, only the permanent judge examines whether further submissions are required. In accordance with the case law on R. 220.3 RoP, the permanent judge, when granting an application for discretionary review, or the entire panel once the appeal has been assigned to it, may consider it necessary for the parties to submit a further statement of grounds of appeal and defence in addition to the submissions already made in the application for discretionary review and the defence thereto; however, this will not always be necessary (Order of 21. March 2024, APL_595643/2023, UPC_CoA_486/2023, paragraphs 16 and 18).
14. In view of the above-mentioned equal treatment, there are good reasons why this should also apply *mutatis mutandis* if an appeal against a decision on costs is allowed.
15. The standing judge considered Hanshow's application dated 31 October 2024, which set out Hanshow's position in relative detail, as a notice of appeal and grounds of appeal. As VusionGroup was not heard before the appeal was allowed, the permanent judge gave VusionGroup the opportunity to file a defence to the appeal. This assessment is at the discretion of the permanent judge.

ORDER

1. VusionGroup's application for a default judgment is dismissed.
2. VusionGroup's application to dismiss the appeal as inadmissible is dismissed.

Issued on 21 February 2025

 Digitally signed
by Åsa Ingeborg
Simonsson Date:
2025.02.21
08:03:25 +01'00'

Ingeborg Simonsson
Permanent judge