



Local Division Munich
UPC_CFI_846/2024

Order
of the Court of First Instance of the Unified Patent Court
issued on 9 April 2025

CLAIMANT IN THE MAIN PROCEEDINGS:

Promosome LLC, 48 Gurley Road, 06902 Stamford, Connecticut, US,

represented by: Georg A. Rauh of Vossius & Partner Patentanwälte Rechtsanwälte mbB,
Siebertstr. 3, 81675 München, DE.

DEFENDANTS IN THE MAIN PROCEEDINGS (APPLICANTS):

1. **BioNTech SE**, An der Goldgrube 12, 55131 Mainz, Germany,
2. **BioNTech Manufacturing GmbH**, An der Goldgrube 12, 55131 Mainz, Germany,
3. **BioNTech Manufacturing Marburg GmbH**, Emil-von-Bering-Straße 76, 35041 Marburg, Germany,
4. **BioNTech Innovative Manufacturing Services GmbH**, Vollmersbachstraße 66, 55743 Idar-Oberstein, Germany,
5. **BioNTech Europe GmbH**, An der Goldgrube 12, c/o BioNTech SE, 55131 Mainz, Germany,
represented by: Christine Kanz of HOYNG ROKH MONEGIER, Steinstrasse 20 - 40212 –
Duesseldorf, DE. (for Defendants 1-5).
6. **Pfizer Manufacturing Belgium NV**, Rijksweg 12, 2870 Puurs-Sint-Amands, Belgium,
7. **Pfizer SAS**, 23-25 Avenue du Docteur Lannelongue, 75014 Paris, France,
8. **Pfizer AB**, Solnavägen 3h, 11363 Stockholm, Sweden,
9. **Pfizer, Inc.**, 66 Hudson Boulevard East, 10001-2192, New York, USA.

represented by: Tobias J. Hessel of Clifford Chance Partnerschaft mbB
Königsallee 59 - 40215 – Düsseldorf, DE (for Defendants 6-9)

Defendants 1-9 are collectively referred to as “the Defendants”.

PATENT AT ISSUE:

European patent EP 2 401 365.

PANEL/DIVISION:

Panel 2 of the Local Division Munich.

DECIDING JUDGE:

This order has been issued by András Kupecz as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS:

English.

SUBJECT OF THE PROCEEDINGS:

Patent infringement action – R. 158 RoP Security for costs of a party

SUMMARY SUBMISSIONS AND REQUESTS

By way of application dated 7 March 2025, Defendants 1-5 request:

A. to order the Claimant to provide, within a short time period to be specified by the Court at its own discretion, adequate security amounting to EUR 5,000,000 for the legal costs and other expenses incurred and/or to be incurred by the Defendants, i.e., EUR 2,500,000 for Defendants 1) to 5), which the Claimant may be liable to bear,

B. in the event the Claimant fails to provide the ordered security within the time specified by the Court, to give a decision by default pursuant to R.355 of the Rules of Procedure (‘RoP’).

By way of application dated 7 March 2025, Defendants 6-9 request:

A. to order the Claimant to provide, within a short time period to be specified by the Court at its own discretion, adequate security amounting to EUR 5,000,000 for the legal costs and other expenses incurred and/or to be incurred by the Defendants, i.e., EUR 2,500,000 for Defendants 6) to 9), which the Claimant may be liable to bear,

B. in the event the Claimant fails to provide the ordered security within the time specified by the Court, to give a decision by default pursuant to R.355 of the Rules of Procedure.

The Claimant in its submission dated 24 March 2025 stated that it is in principle willing to provide security for Defendants’ legal costs and other expenses and agrees with Defendants that the security should be provided by deposit. Concerning the amount of the security, the Claimant indicated EUR 908,041.00 (for one law firm representing nine clients in a lawsuit), or, if the Court were to consider that it is reasonable for BioNTech and Pfizer to each instruct its own law firm, the amount of maximum EUR 1,432,703.80. These amounts are based on the German “*Rechtsanwaltsvergütungsgesetz*”. Further, according to the Claimant, the request by Defendants for a decision by default is unfounded and premature. The Claimant on this basis requests the Court to set the security as requested by

Claimant and to allow Claimant to provide the security by deposit within eight weeks of the issuance of the respective order by the Court.

The Court issued a preliminary order dated 31 March 2025, noting that the parties are in principle in agreement that security for legal costs is to be provided by the Claimant and that this should be provided by way of deposit. The parties disagreed mainly on the amount of security to be provided and the time limit within which the security should be provided.

With respect to the determination of the appropriate amount of security, the Court pointed out that it currently did not intend to follow the suggestion of the Defendants to raise the ceiling for recoverable costs. At this point in the proceedings, it appeared to be premature to decide on this issue. Similarly, the Defendants' request for a decision by default appeared to be premature at this stage.

With this in mind, the parties were encouraged to find common ground as to the appropriate amount of security and the time limit within which it should be provided. The Court indicated that, in principle, the Court would accept an agreement reached between the parties to this effect.

In response to the Court's preliminary order dating 31 March 2025, the Defendants informed the Court, by submission dated 7 April 2025, that the parties found agreement on the amount of the security and the time limit for the provision of the security.

GROUNDS FOR THE ORDER

The parties agree that security for costs is to be provided and that this should be provided by way of deposit. Since the parties are in agreement, and the Court sees no reason to order otherwise, the Defendants' request to provide a security for costs is granted, subject to the following conditions.

The parties agreed that the Claimant will provide a security of 1.500.000 EUR (one million five hundred thousand Euro) within three weeks after the corresponding order of this Court has been served upon the Claimant. The security will be made by a payment into escrow to the Court's bank account. The security shall be equally distributed to both groups of defendants. Since the parties agree on the amount and time limit of the security, and the Court sees no reason to order otherwise, the Court will order accordingly below.

The request to give a decision by default pursuant to Rule 355 RoP in the event the Claimant fails to provide the ordered security within the time specified by the Court is rejected. This request is currently unfounded and premature. If and when a situation were to arise in which such a decision could be an appropriate remedy, a request may be made pursuant to Rule 158.5 RoP in connection with Rule 355 RoP. The Claimant is hereby informed of this possibility as required by Rule 158.4 RoP (also see below).

ORDER

For these grounds, having heard the parties, the Court:

- Orders the Claimant to provide security for legal costs and other expenses in the amount of EUR 1.500.000 EUR (one million five hundred thousand Euro), by way of deposit on the UPC account for deposits of security for costs, within three weeks of the date of service of this order.
- The security shall be equally distributed to both groups of defendants.
- Rejects the request to give a decision by default in the event the Claimant fails to provide the ordered security within the time specified by the Court.

9 April 2025
KUPECZ
Judge-rapporteur

DETAILS OF THE ORDER

Order no. ORD_11612/2025 in ACTION NUMBER: ACT_68533/2024 (Defendants 1-5)

UPC number: UPC_CFI_846/2024

Action type: Infringement Action

Related proceeding no. Application No.: 11341/2025

Application Type: Generic procedural Application

Order no. ORD_11612/2025 in ACTION NUMBER: ACT_68533/2024 (Defendants 6-9)

UPC number: UPC_CFI_846/2024

Action type: Infringement Action

Related proceeding no. Application No.: 11341/2025

Application Type: Generic procedural Application

INFORMATION UPON SPECIFYING THE TIME LIMIT

Pursuant to Rule 158.4 RoP the Claimant is notified that if it fails to provide the aforementioned security within the time stated (three weeks of the date of service of this order) by way of deposit on the UPC account dedicated for security deposits, the Court may give a decision by default pursuant to R.355 RoP.

Further information and instructions on making the payment of the security deposit can be found on the Court's website: <https://www.unified-patent-court.org/en/court/payments>.