

**ORDER**  
**of the Court of Appeal of the Unified Patent Court**  
**issued on 26 June 2025**  
**concerning an application for suspensive effect (R. 223 RoP)**

APPLICANTS, APPELLANTS (AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Easee B.V.**, Amsterdam, The Netherlands
2. [REDACTED]
3. **Easee Holding B.V.**, Amsterdam, The Netherlands

(hereinafter for all: “Easee”, for Appellant 1 and 3: “Easee companies”; for Appellant 2: “managing director”)

represented by Dr. Wim Maas, attorney-at-law, Taylor Wessing N.V., Eindhoven, The Netherlands

RESPONDENT (AND CLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

**Visibly Inc.**, Chicago, Unites States of America  
(hereinafter: “Visibly”)

represented by Dr. Marc Grunwald and other attorneys-at-law of the law firm Peterreins Schley, Munich, Germany; Dr. Malte Frese, Patent Attorney, and other patent attorneys of the law firm Hemmer Lindfeld Frese, Lübeck, Germany

PATENT AT ISSUE

EP 3 918 974

LANGUAGE OF THE PROCEEDINGS

English

PANEL AND DECIDING JUDGES

Rian Kalden, presiding judge and legally qualified judge  
Patricia Rombach, legally qualified judge and judge-rapporteur  
Ingeborg Simonsson, legally qualified judge

#### IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Date: 30 May 2025, Hamburg Local Division,

Reference numbers attributed by the Court of First Instance: ORD\_58129/2024, App\_57843/2024 in relation to the main proceedings concerning infringement action ACT\_51510/2024 UPC\_CFI\_525/2024

#### SUMMARY OF FACTS

1. Visibly filed an action against Easee (two companies [hereinafter: Easee companies] and their managing director [hereinafter managing director]) for infringement of its patent EP 3 918 974 (patent at issue). Easee filed a counterclaim for revocation.
2. Visibly requested that Easee be ordered to provide Visibly with appropriate security for costs of the legal dispute in the amount of EUR 112,000. Easee requested that the court dismiss the application, alternatively that the security is to be set at EUR 10,000.
3. In the impugned order, the Hamburg Local Division ordered Easee to provide security for legal costs in the amount of EUR 75,000 for the revocation action within four weeks of receiving the order. The Local Division denied the request for security for costs for the infringement proceedings.
4. Easee appealed this order insofar as it is to Easee's disadvantage.

#### PARTIES' REQUESTS

5. Easee requests that the security order be suspended during the appeal proceedings under R. 223 RoP.
6. Visibly requests that the Court of Appeal dismiss the application for suspensive effect and that Easy be ordered to bear the costs of the proceedings, in the alternative that the Court of Appeal dismiss the application of the managing director for suspensive effect.

#### PARTIES' SUBMISSIONS

7. Easee argues essentially as summarised below:
  - A defendant cannot be required to provide security solely for filing a counterclaim for revocation.
  - The CFI did not provide any legal basis for the joint liability, and Visibly also did not substantiate the managing director's insolvency risk.
  - With regard to the application for suspensive effect Easee argues that before the impugned order was issued, the Easee companies were already bankrupt (on 27 and 30 May, respectively), rendering enforcement against them impossible. The sole remaining defendant, against whom the action was brought only in his capacity as managing director, cannot be held liable under the infringement action. His participation was limited to filing a mandatory counterclaim to raise an invalidity defence. Enforcing the EUR 75,000 security solely against him would be disproportionate and violate his right to an effective defence.
8. Visibly argues essentially as summarised below:

- Eassee fails to demonstrate the requisite urgency or risk of irreparable harm that would warrant extraordinary relief.
- Taylor Wessing had likely no legitimation to act on behalf of the Eassee companies anymore. At the very least, there is no power of attorney from the curator authorizing Taylor Wessing to carry out any procedural actions on behalf of these parties.
- The present matter goes beyond the - standard - facts of the AorticLab vs. Emboline case, that are quite distinct from the case at hand: Visibly is now proceeding with full knowledge that it will, in all likelihood, be compelled to shoulder the entire financial burden of these proceedings even in the event of winning the case, absent any realistic prospect of cost recovery. This arises from the ongoing financial instability of Eassee. Compounding this, the managing director has already begun operating through an entirely distinct corporate vehicle (Eassee Health B.V.). Eassee Health B.V. –apparently still financially sound - is also the opposing party in pending opposition proceedings against the patent in suit.

#### GROUNDS FOR THE ORDER

##### A. Managing director

9. The managing director's application for suspensive effect can already be decided.

##### I. *Admissibility*

10. The Application for suspensive effect is admissible, in particular the requirements pursuant to Art. 74 UPCA, R. 223.1 RoP are met.

##### II. *Merits*

11. The Application for suspensive effect is successful.

##### 1. *Conditions for ordering suspensive effect*

12. Pursuant to Art. 74 para. 1 UPCA, an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. The Court of Appeal can therefore only grant the application if the circumstances of the case justify an exception to the principle that the appeal has no suspensive effect. It must be examined whether the appellant's interest in maintaining the status quo until the decision on its appeal outweighs the Respondent's interest by way of exception (UPC Court of Appeal, Order of 18 January 2024, UPC\_CoA\_4/2024, App\_100/2024, Meril vs Edwards p. 5; Order of 19 June 2024, UPC\_CoA\_301/2024, App\_35055/2024, ICPillar, para. 7; Order of 19 August 2024, UPC\_CoA\_388/2024, APL\_39884/2024, Sibio et al vs Abbott, para. 6).

13. In particular, suspensive effect may be ordered if the Order against which the appeal is directed is manifestly erroneous (UPC Court of Appeal, Order of 18 January 2024, UPC\_CoA\_4/2024, App\_100/2024 Meril vs Edwards, p. 5; Order of 19 August 2024, UPC\_CoA\_388/2024, APL\_39884/2024, Sibio et al vs Abbott, para. 7) or the enforcement of the impugned Decision would render the Appeal largely irrelevant (UPC Court of Appeal, Order of 6 November 2023, UPC\_CoA\_407/2023, App\_584588/2023, Ocado vs Third Party; Order of 2 May 2024, UPC\_CoA\_177/2024, APL\_20002/2024, Progress Maschinen & Automation, para. 10).

## 2. *Application to the case at hand*

### *a) Evident error*

14. The Court of First Instance's findings and considerations constitute manifest errors, i.e. factual findings or legal considerations that are clearly untenable even on the basis of a summary assessment (Court of Appeal 29 October 2024, UPC\_CoA\_549/2024, APL\_51838/2024, App\_53031/2024 Belkin vs. Philips).
15. After the impugned order was issued, in other proceedings, the Court of Appeal has ruled that Art.69(4) UPCA does not provide a legal basis for an order to provide a security for costs at the request of a claimant in an infringement action and that a security for costs may also not be requested by such claimant in response to a counterclaim lodged by the defendant in the infringement action (UPC\_CoA\_393/2025, APL\_20694/2025 AorticLab vs. Emboline). Visibly has been given the opportunity to comment on the relevance of the order to these proceedings.
16. Visibly argues without success that the circumstances of the present case differ from those in AorticLab vs. Emboline. As it is clear from the reasons of the AorticLab vs. Emboline order, the principles apply regardless of the circumstances of the individual case.

### *b) Weighing of interests*

17. In view of the manifest error of law, the director's interest in maintaining the status quo prior to the decision pending the outcome of the appeal proceedings outweighs Visibly's interest in enforcement (see Court of Appeal, 29 October 2024 UPC\_CoA\_549/2024, APL\_51838/2024, App\_53031/2024 Belkin vs. Philips para. 67). Contrary to Visibly's opinion, irreparable (material) harm is not required in the event of an obvious legal error.

## B. Easee companies

18. Visibly disputes the competence of the law firm Taylor Wessing to file the appeal and the application for suspensive effect regarding the Easee companies in view of the insolvency of both entities having formally declared insolvent at the time when these motions were filed. In this regard, Easee companies shall be given the opportunity to comment.
19. Since, for the reasons stated above, the application for suspending effect would be successful in the case of a power of attorney, the suspensive effect of the Easee companies' appeal is to be ordered provisionally until the Court of Appeal decides on the application for suspensive effect.

## C. Costs

20. The Court of Appeal will not decide on the costs in this order, since this order is not a final order or decision concluding an action (Court of Appeal, 2 May 2024 UPC\_CoA\_177/2024 APL\_20002/2024 App\_20143/2024).

## ORDER

1. The appeal of the managing director against the order of the Hamburg Local Division, issued on 30 May 2025 (ORD\_58129/2024, App\_57843/2024, ACT\_51510/2024 UPC\_CFI\_525/2024), is granted suspensive effect.
2. The appeal of the Easee companies against the order of the Hamburg Local Division, issued on 30 May 2025 (ORD\_58129/2024, App\_57843/2024, ACT\_51510/2024 UPC\_CFI\_525/2024), is granted suspensive effect until the Court of Appeal decides on the application for suspensive effect.
3. The Easee companies are invited to comment on the competence of the law firm Taylor Wessing to file the appeal and the application for suspensive effect regarding the Easee companies within a time period of 5 days.
4. Visibly's request that Easee is ordered to bear the costs of the proceedings is rejected.

Issued on 26 June 2025

Date:

2025.06.26

*Rian Kalden*

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Rian Kalden, presiding judge and legally qualified judge

Patricia Ursula  
Rombach

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Patricia Rombach, legally qualified judge and judge-rapporteur

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Simonsson*

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Ingeborg Simonsson, legally qualified judge