

UPC_CFI_525/2024
Order
of the Court of First Instance of the Unified Patent Court,
delivered on 26/06/2025

HEADNOTES

1. In case of the insolvency of a party the party's representative is still able to file the stay application under Rule 311.1 RoP.
2. A stay according to R. 311 RoP is generally a stay of the proceedings as a whole.
3. Due to the stay of the proceedings an obligation to provide a security according to R. 158 RoP is suspended.
4. The Local Division's power to revoke a case management order under R. 335 RoP is suspended when an appeal is lodged against the contested order.

KEYWORDS

Insolvency of a party; Stay of proceedings R. 311 RoP; Security for costs, Art. 69 (4) UPCA, R. 158 RoP; Revoke an order, R. 335 RoP.

CLAIMANT

Visibly Inc.
(Claimant) - 207 East Ohio Street #233 - 60611 -
Chicago - US

Represented by Dr. Marc Grunwald

DEFENDANTS

Easee B.V.
(Defendant) - Singel 126 - 1015AE - Amsterdam - NL

Represented by Dr. Wim Maas

Yves Prevoo
(Defendant) - Singel 126 - 1015AE - Amsterdam - NL

Represented by Dr. Wim Maas

Easee Holding B.V.
(Defendant) - Singel 126 - 1015E - Amsterdam - NL

Represented by Dr. Wim Maas

PATENT AT ISSUE

Patent No.

Proprietor

EP3918974

Visibly Inc.

DECIDING JUDGE

Judge-rapporteur

Dr. Stefan Schilling

LANGUAGE OF THE PROCEEDINGS:

English – since 24 October 2024

SHORT SUMMARY OF FACTS:

With submissions in the main action and the counterclaim for revocation dated 02 June 2025 the Defendants jointly request that the Court stays the proceedings pursuant to Rules 311.1 and/or 295 RoP for a period of 3 months from the date on which this Court makes such Order. They additionally request to revoke the Security Order issued on 30 May 2025 pursuant to Rule 335.

They explained that on 27 May 2025, Easee B.V. (Defendant 1) was declared bankrupt by the Amsterdam District Court and on 30 May 2025, Easee Holding B.V. (Defendant 3) was also declared bankrupt. The appointed curator is D. Sjouke of Dijsselhofplantsoen 16 1077BL Amsterdam. They referred to the Central Dutch Insolvency register.

They pointed out that as Defendant 1 and Defendant 3 were declared bankrupt prior to the issuance of the Security Order dated 30 May 2025 any enforcement of the order against them would no longer be possible. The only remaining defendant is Mr Yves Prevoo, a natural person, who is sued in his capacity as a managing director. They are of the opinion that Mr Prevoo could not be held liable under the Infringement Action within the meaning of the UPCA under the case law of Court of Appeal, and had only participated in the Counterclaim Action as part of an effective defence. Therefore, they request to revoke the Security Order in its entirety based on Rule 335.

An appeal against the order has been lodged at the Court of Appeal including an application to order suspensive effect (App_28639/2025 UPC_CoA_542/2025).

The Claimant commented on the application and objected to the requested stay. It deemed the proof provided not being sufficient. After all, a stay could not include the natural person Defendant 2, who is not insolvent.

On request by the Court the Defendant 1) provided additional documentation of the opening of insolvency proceedings.

GROUND FOR THE ORDER

The request to stay the proceedings has to be granted.

1.

According R. 311.1 RoP the insolvency of a party, contrary to many national laws, does not lead to an automatic stay of proceedings at the Unified Patent Court. However, the Court shall, if a party is declared insolvent under the law applicable to the insolvency proceedings stay the proceedings up to three months. They may be stayed until the competent national authority or person dealing with the insolvency has decided whether to continue the proceedings or not. Where the competent national authority or person dealing with the insolvency decides not to continue the proceedings, the Court may decide, upon a reasoned request by the other party, that the proceedings should be continued in accordance with the applicable national insolvency law, which is the Law of the Netherlands in the present case. The order to stay the proceedings is also foreseen in R. 295 lit. j) RoP.

a)

The Defendants have sufficiently proven that Defendants 1) and 3) are currently under insolvency proceedings in the Netherlands, where they are seated, by Court orders dated 27 and 30 May 2025.

b)

The parties' representatives are still able to file the stay application under Rule 311.1 RoP. This corresponds with the concept of the RoP that the insolvency of a party does not lead to an automatic stay of proceedings, thus upholding the legal ability of the assigned representative to act before the UPC on behalf of the party. In fact, it is the acting representatives' obligation to notify the Court of the insolvency. While the representatives are bound in their actions to the applicable national law and to any mandate of the assigned legal procurator, the Court nevertheless has the authority to order a stay as soon as it gains knowledge of the insolvency of a party, regardless of who provided the Court with this information. The same applies in case the Court decides to continue the proceedings even if the curator decided not to, R. 311.1 third sentence RoP.

c)

The proceedings are stayed in their entirety. A stay according to R. 311 RoP is generally a stay of the proceedings as a whole as it - in contrast to Rule 310 RoP, which applies in the event of the death or dissolution of a party - does not expressly allow for the continuation of proceedings between the remaining parties. Though there might be exceptions to this rule, e.g. in cases where a multitude of Defendants are independent of one another, a continuation against the natural person who is the company director is not appropriate in the current proceedings. According to the case law of the Court of Appeals (29.10.2024 - UPC_CoA_549/2024, APL_51838/2024 – Belkin vs Koninklijke Philips) it is doubtful whether a company director can be held liable for patent infringement under the UPCA. The CoA has pointed out that a managing director of a patent-infringing company represents that company and thus this company cannot be considered a 'third party' within the meaning of Article 63 UPCA and Art. 11 of the Enforcement Directive 2004/48. Therefore, liability under Art. 63(1) sentence 2 UPCA as an intermediary cannot arise solely from the function of managing director of a patent-infringing company. Hence, the situation at hand does not give reason to limit the stay to the two insolvent Defendants.

2.

Due to the stay of the proceedings the three Defendants are no longer obliged to provide the ordered security. This is independent of the fact that the Local Division's power to revoke the security order under R. 335 RoP has been suspended, as the defendants have already lodged an appeal against the contested order, which is now subject to the sole authority of the Court of

Appeal. As due to the newest decision of the CoA a Defendant is never obliged to provide a security for costs (20.06.2025 - UPC_CoA_393/2025, APL_20694/2025), a judgement by default could not be issued by the Court of First Instance, anyway.

3.

According to R. 311.3 RoP the claimant may withdraw the action against an insolvent defendant in accordance with Rule 265. Such withdrawal shall not prejudice the action against other parties.

ORDER

The proceedings are stayed in their entirety due to the insolvency proceedings regarding Defendants 1) and 3) for a period of 3 months, R. 311.1 RoP.

INFORMATION TO THE PARTIES

During a stay of the proceedings all time limits are automatically suspended and shall begin to run afresh from the date the stay comes to an end, R. 296.3 RoP. In consequence of the stay, the previously scheduled dates for the interim conference and the oral hearing are now obsolete.

ORDER DETAILS

Order no. ORD_26598/2025 in ACTION NUMBER: ACT_51510/2024

UPC number: UPC_CFI_525/2024 and UPC_CFI_14/2025

Action type: Infringement Action

Related proceeding no. Application No.: 26135/2025 and 26136/2025

Application Type: Generic procedural Application

ISSUED 26 JUNE 2025

Dr. Schilling
Judge-rapporteur