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Local division Munich
UPC_CFI_127/2024
ACT_14859/2024

Procedural order

of the Court of First Instance of the Unified Patent Court local division Munich
issued on 3 July 2025

LEADING SENTENCE

Even if the defendant in an infringement action is formally the plaintiff in a counterclaim for a declaration of invalidity, he may, pursuant to Article 69(4) UPCA and Rule 158.1 RoP, also request security for the costs which he has incurred and/or will incur in bringing the counterclaim for a declaration of invalidity. Otherwise, the defendant could be unreasonably restricted in its legal defence because it is forced to bring a counterclaim for a declaration of invalidity for the objection of invalidity of the patent at issue without any prospect of reimbursement of the costs incurred by it (continuation of the Court of Appeal, Order of 20 June 2025, UPC_CoA_393/2025, APL_20694/2025 - Emboline/AorticLab).

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CLAIMANT

Headwater Research LLC, represented by its owner Dr Gregory Raleigh, 110 North College Avenue, Suite 1116, Tyler, TX 75702, USA,

represented by: Attorney Dr Rastemborski and all other attorneys of the law firm Eisenführ Speiser, Gollierstraße 4, 80339 Munich, admitted to the UPC Agreement.

DEFENDANT

1. **Motorola Mobility LLC**, represented by President Sergio Buniac, 222 West Merchandise Mart Plaza, Suite 1800, Chicago, Illinois, IL 60654, USA,

2. **Motorola International Sales LLC**, represented by President Sergio Buniac, 222 West Merchandise Mart Plaza, Suite 1800, Chicago, Illinois, IL 60654, USA,

3. **Motorola Mobility Germany GmbH**, represented by the Managing Directors Rembert Yarom Meyer-Rochow and Björn Simski, Vorstadt 2, 61440 Oberursel, Federal Republic of Germany,

5. **Flextronics International Europe B.V.**, Phase 9 Building, Nobelstraat 10 - 14, Oostrum, 5807 GA, Netherlands,

Defendants 1) to 3) represented by: Attorney Wunderlich, Freshfields Bruckhaus Deringer Rechtsanwälte Steuerberater PartG mbB, Potsdamer Plat 1, 10785 Berlin,

Defendant 5) represented by: Attorney Boris Kreye, Bird & Bird LLP, Maximiliansplatz 22, 80333 Munich.

PATENT AT ISSUE

European Patent No. EP 3 110 072

PANEL/CHAMBER

Panel 2 of the Munich local division

PARTICIPATING JUDGES

This Order was issued by Judge Dr D. Voß as judge-rapporteur.

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LANGUAGE OF THE PROCEEDINGS

German

SUBJECT MATTER

Application for security for costs of proceedings pursuant to Rule 158.1 RoP

FACTS OF THE CASE

1 The Claimant is taking legal action against the Defendants for an alleged infringement of the patent at issue. The defendants 1) to 3) on the one hand and the defendant 5) on the other hand have filed a counterclaim for a declaration of invalidity.

2 Originally, Digital River Ireland, Ltd. was also sued as defendant 4), which was also the plaintiff in the counterclaim together with defendants 1) to 3). After the defendant 4) became insolvent, the Claimant declared the withdrawal of the action against the defendant 4). In return, defendant 4) withdrew the counterclaim for a declaration of nullity insofar as it had been brought by it. The withdrawals of the action were admitted by decision of the PANEL on 13 June 2025.

3 Both the Claimant and the defendants request that the other party be ordered to provide security for legal costs in their favour.

APPLICATIONS

4 The Claimant has already requested in the statement of claim

> Order that the defendants are obliged to provide it with appropriate security for the costs of the legal dispute until the oral hearing.

5 The defendants 1) to 3) and 5) have opposed this application in their respective defence.

6 The defendants 1) to 3) apply,

> Order the Claimant to provide them with adequate security for the costs of the litigation and other costs incurred and/or to be incurred by the Defendants.

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7 The defendant 5) requests the court to

order the Claimant to provide it with adequate security for the costs of the litigation and other costs incurred and/or to be incurred by it.

8 The Claimant requests that the Court

reject the defendant's application for security for the costs of the proceedings.

POINTS IN DISPUTE BETWEEN THE PARTIES

9 The defendants are of the opinion that they are not required to provide security. According to the wording of Article 69(4) UPCA, the Claimant is not entitled to make an application for the provision of security. Rule 158.1 RoP must be interpreted in accordance with the Convention. Moreover, the requirements for a successful application by the Claimant for an Order for security for costs were not met. There are no indications that the defendants are unable to pay the Claimant's claims, nor is the enforcement of an order for costs in the countries in which the defendants are domiciled impossible or particularly difficult.

10 The defendants 1) to 3) are of the opinion that the Claimant must, however, provide security for the legal costs. There are considerable doubts as to whether the Claimant will be able to bear the legal costs and other expenses of the Defendants. The Claimant is not an established operating company. Its primary business model consists of licensing its patent portfolio and thus generating licence income. Nothing more could be learnt about the business model. The Claimant is also not financially equipped in such a way that it has sufficient funds to reimburse costs in the event that it is unsuccessful.
"Experian", a global provider in the field of data insights and risk management, classifies the Claimant's creditworthiness as "low" (report dated 12 August 2024, Annex FBD-P 1). In addition, the Claimant is exposed to a cost risk due to various legal proceedings that it is pursuing.

11 The defendant re 5) points out that the Claimant's website refers to a team of engineers, scientists and technicians working for the company. However, the team is not presented on the website. It is only known that Dr Raleigh leads it. On "LinkedIn", the Claimant had
13 followers. The business address given (110 N. College Avenue, Suite 1116) under "Google Maps" refers to the Claimant's address given in the statement of claim and at the European Patent Office (1011 Pruitt Place), where there is a residential building. It

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it must be assumed that the Claimant is a rather modest company which, apart from Mr Raleigh, has no employees. The Claimant's patent portfolio is also manageable with 58 hits in the European Patent Register. The value of the patents is unclear. The Claimant's only source of income appears to be the judicial enforcement of its patents. However, direct licensing does not appear to take place, but rather via start-ups to be founded by so-called "team members" or "industrial and commercial partners". Finally, the Claimant is involved in a considerable number of legal disputes, 15 patent infringement proceedings in the USA alone. As a result, the Claimant is already exposed to a considerable cost risk of up to USD 45 million in the USA. There are doubts that the Claimant has sufficient financial resources to cover these cost risks. According to "PitchBook", a company for the analysis of company data, the Claimant has one investor and has raised USD 6.84 million in various financing rounds since its foundation (as of 17 January 2025). Against this background, the defendant 5) considers a security deposit of EUR 300,000.00 to be appropriate in view of a value in dispute of EUR 3 million.

12 The Claimant is of the opinion that there is no reason why it should have to provide security for legal costs. It was founded in 2008 and has been operating successfully as a technology developer ever since. Its commercial success is due to the innovative strength and entrepreneurial spirit of its shareholder and managing director Dr Raleigh. The risk of insolvency or inability to pay, which could call into question the realisability of a theoretically conceivable claim for reimbursement of costs by the defendants, does not exist. Despite their burden of proof, the defendants have not presented any evidence that would argue against the Claimant's financial capacity. With regard to the report of the credit agency "Experian" submitted by the defendants 1) to 3), it is unclear from which sources the credit agency obtains its data and according to which standards it evaluates them. Instead, it appears to have problems with securing its database. Moreover, the report does not prove the Claimant's inability to pay, but notes that the Claimant always pays its debts on time. In fact, the Claimant had sufficient funds. The acquisition of third-party funds described in the "PitchBook" report had been successful. In addition, it was the owner of a large patent portfolio of 59 active patents and patent applications at the European Patent Office, for which there was a presumption of validity. This portfolio alone is a considerable asset. In addition, the Claimant continuously generates income from the licensing of this portfolio. The fact that the Claimant is a "non-practicing entity" is irrelevant. It is not a classic patent exploiter, but develops its own technical solutions for the purpose of licensing; any judicial enforcement of its patent rights is carried out in its own name and for its own account. Insofar as the defendants believe that the Claimant is exposed to a considerable cost risk, this does not apply because it has not been realised and there is no risk of it being realised. The defendants rightly did not assert that any title to costs of the defendants against the Claimant would not be enforceable or would only be enforceable at disproportionately high expense. Moreover

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the defendant's idea of the amount of security for legal costs and could only be ordered on the basis of a substantiated cost estimate by the defendants.

13 Instead, the defendants were obliged to provide security in favour of the Claimant. They are exposed to much higher litigation cost risks than the Claimant. The defendants 1) to 3) were unsuccessful in a main action before the Regional Court of Munich I and had to discontinue the sale of some of their products, had to bear the costs of the legal dispute and were also exposed to claims for damages. In addition, there are three further proceedings before the UPC Agreement.

REASONS FOR THE ORDER

14 The Claimant's application to order the Defendant to provide security is unsuccessful. The admissible applications of the defendants 1) to 3) and 5), on the other hand, are well-founded.

A

15 The Claimant's application to order the Defendants to provide adequate security for the costs of the litigation and any other costs incurred and/or to be incurred by the Claimant is unsuccessful.

16 Article 69(4) UPCA does not provide a legal basis for granting security for costs on the application of a plaintiff in infringement proceedings. This also applies to the plaintiff in an action for revocation. The provision deliberately limits the possibility of requesting the provision of security against a defendant. Although Rule 158 RoP uses a broader formulation, it cannot go beyond the UPCA. Rule 158 RoP contradicts the deliberate restriction in Art. 69 para. 4 UPCA. However, in the event of a conflict between the Rules of Procedure and the UPCA, the provisions of the UPCA take precedence (Court of Appeal, Order of 20 June 2025, UPC_CoA_393/2025, APL_20694/2025 - Emboline/AortisLab).

17 The basic idea behind Art. 69 para. 4 UPCA is to protect a defendant from an insolvent plaintiff who brings an action without having sufficient means to reimburse the defendant for the costs of legal defence incurred as a result of the proceedings brought. However, this idea does not apply to a counterclaim for a declaration of invalidity, since such a counterclaim is still the direct consequence of the infringement action brought by the plaintiff. Under the UPCA system and the Rules of Procedure, a defendant cannot raise a defence of invalidity without simultaneously bringing a separate counterclaim for a declaration of invalidity. Allowing a security for costs on application by the plaintiff in infringement proceedings in response to a counterclaim thus unreasonably restricts the defendant's ability to defend itself (Court of Appeal, Order of 20 June 2025, UPC_CoA_393/2025, APL_20694/2025 - Emboline/AortisLab).

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According to these principles, a security in favour of the Claimant cannot be considered in the case in dispute. No evidence has been presented or is otherwise apparent that could justify a decision deviating from the aforementioned principles.

B

18 The defendant's admissible applications to order the claimant to provide appropriate security for the costs of the legal dispute are well-founded.

I.

19 Pursuant to Article 64(4) UPCA and Rule 158.1 RoP, the court may, on an application by the defendant, order security for the party's legal costs and other expenses at its discretion, taking into account the facts and arguments put forward by the parties. Dabei hat es zu prüfen, ob die finanzielle Lage des Klägers Anlass für berechtigte und tatsächliche Bedenken gibt, dass eine mögliche Kostenanordnung nicht realisierbar sein könnte und/oder dass eine mögliche Kostenanordnung des Gerichts nicht oder nur unter unverhältnismäßigen Schwierigkeiten vollstreckbar sein könnte (Berufungsgericht, Anordnung vom 26.08.2024, UPC_CoA_328/2024, APL_36389/2024 - Ballinno/Kinexon; Order of 17.09.2024, UPC_CoA_217/2024, APL_25919/2024 - NST/Audi; Order of 29.11.2024, UPC_CoA_548/2024, APL_52969/2024 - Sodastream/Aarke). Contrary to the Claimant's opinion, a (current) risk of insolvency or insolvency of the Claimant, which could call into question the realisability of a claim for reimbursement of costs by the Defendant, is not relevant. It is sufficient to doubt that the claim resulting from a future cost order can be realised. It is equally irrelevant whether a cost order in favour of the defendant is to be expected or whether the plaintiff is willing to fulfil a future claim for reimbursement of costs by the defendant in the future (Court of Appeal, Order of 29 November 2024, UPC_CoA_548/2024, APL_52969/2024 - SodaStream/Aarke).

20 The burden of proving that a security for costs is appropriate in a particular case lies with the defendant who makes an application to that effect. Once the grounds and facts have been credibly set out in the application, it is up to the plaintiff to dispute or refute these grounds and facts in a substantiated manner, especially as the plaintiff usually has knowledge and evidence regarding his financial situation. It is for the claimant to justify that and why the provision of security would unreasonably prejudice its right to an effective remedy (Order of 17 September 2024, UPC_CoA_217/2024, APL_25919/2024 - NST/Audi).

II.

21 In accordance with these principles, the Tribunal will e x e r c i s e its discretion to order an appropriate security to be provided by the Claimant for

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costs of the proceedings and expenses to be reimbursed to the defendant.

1.

22 In the case in dispute, only the Claimant's financial situation is at issue. The parties rightly assume that the enforcement of an order for costs in the USA, where the Claimant is domiciled, is neither impossible nor associated with disproportionate difficulties (Munich local division, Order of 29 September 2023, UPC_CFI_15/2023, ACT_459987/2023 - Edwards/Meril; Paris local division, Order of 21 May 2024, UPC_CFI_495/2023, ACT_596432/2023 - ICPillar/ARM).

23 With regard to the Claimant's financial situation, however, the Court has serious doubts as to whether the Claimant is in a position to satisfy the Defendant's claims for reimbursement of costs in the event of a cost order.

a)

24 It is undisputed that the Claimant is a so-called "non-practicing entity" whose business model consists of the licensing of intellectual property rights and which otherwise does not conduct any operational business. According to the defendant's submission, the Claimant's assets essentially consist of the patents and patent applications it holds. However, the value of this patent portfolio is not known. According to the report of the credit agency "Experian", the Claimant's creditworthiness is low. The report from the credit agency
"PitchBook" indicates that the Claimant is dependent on external financing. It is also undisputed that the Claimant is involved in more than ten infringement proceedings in the USA alone. All these circumstances give rise to sufficient doubt as to whether the Claimant will be in a position to reimburse the costs and expenses incurred by the Defendants as a result of the present infringement proceedings in the event of an unfavourable costs order.

b)

25 The Claimant has not dispelled any doubts about her financial capacity through substantiated submissions. Public records of the Claimant's assets and financial situation do not appear to be available, so that the Defendants are unable to provide more detailed information. After all, they have already submitted reports from credit agencies on the Claimant's financial standing. However, the Claimant has not made a substantiated statement regarding her assets and liquidity. The mere assertion that she has sufficient funds is not sufficient. It must therefore be assumed with the defendants that the Claimant actually only consists of its shareholder-managing director, Dr Raleigh, as a key employee and is operated from a residential building without any other substantial material assets. In the absence of further information on the Claimant's liquidity, doubts remain as to the Claimant's financial capacity.

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26 The fact that the Claimant is a "non-practicing entity" is not in itself a reason to order it to provide security for legal costs. However, contrary to its burden of substantiation, the Claimant does not provide any information as to whether and to what extent it generates any income at all from the licensing of its patents. There are no other sources of income, with the exception of third-party funds from financing rounds (see below). In this respect, it remains the defendant's assessment that the Claimant is a modest company whose financial resources raise doubts as to whether the costs and expenses of the defendant can be borne in the event of a loss.

27 The Claimant's patent portfolio cannot be taken into account as a relevant asset either, because contrary to its burden of substantiation, the Claimant has not provided any further details on the value of the portfolio. In this respect, the defendants have expressed doubts about the value of the property rights and applications held by the Claimant. In the absence of concrete knowledge on the part of the defendants of the value of the portfolio, it would have been incumbent on the Claimant to provide further details. It should also have been able to do so without difficulty because the portfolio is likely to be regularly listed as an asset in a balance sheet, unless the value of the portfolio can also be determined from its use as collateral or the like. In any case, the mere fact that a patent has been granted is not an indication of its (pecuniary) intrinsic value. The Claimant here confuses a presumption of the validity of the patent with the - non-existent - presumption of its intrinsic value. However, not every legally valid patent can be successfully commercialised.

28 Furthermore, the Claimant is exposed to cost risks from other infringement proceedings. However, these cannot necessarily be linked to the infringement proceedings pending in the USA. It cannot be ruled out as a matter of law that the Claimant is not obliged to reimburse the costs of the opposing party in the proceedings conducted in the USA if it is unsuccessful. However, in the absence of further evidence, it cannot be assumed that the proceedings in the USA relate to the Claimant's valuable claims that are positively attributable to its assets. Apart from the fact that the Claimant has not provided a substantiated response to the infringement proceedings in the USA and the associated cost risks, it is also not the task of the court to examine the prospects of success of other infringement proceedings in the context of an application for security for costs pursuant to Rule 158.1 RoP (cf. for the pending infringement proceedings: Court of Appeal, Order of 29 November 2024, UPC_CoA_348/2024, APL_52969/2024 - SodaStream/Aarke). The same applies to the other infringement proceedings that the Claimant is known to be pursuing before the UPC Agreement. However, there is a certain cost risk here that will be realised if the Claimant is unsuccessful.

29 Insofar as the Claimant argues that it has been operating as a successful technology developer since 2008, whose economic success is due to the innovative strength and entrepreneurial spirit of its shareholder-managing director, this is without substance with regard to its financial situation.

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without substance. Innovative strength and entrepreneurial spirit are not assets that can be enforced. Nor do they justify the certain prospect of future assets from which the reimbursement of costs and expenses could be contested.

30 The Claimant's objections to the credit agency reports submitted by the defendants are not valid. The report from "Experian" classifies the Claimant's creditworthiness as low. For her part, the Claimant does not present any facts that could speak in favour of her creditworthiness. In this respect, it is not sufficient to criticise the fact that it is unclear from which sources the data in the report originates and how "Experian" arrives at its conclusions. In the absence of other sources of information, the defendants are dependent on such reports, which in any case can be assumed to be based on an assessment of at least rudimentary company data. It would have been incumbent on the Claimant to respond to this in a substantiated manner. The fact that "Experian" may have had a data leak says nothing about the reliability of the data. Insofar as the Claimant refers to the reference in the report that the Claimant has promptly serviced claims to date, this also does not lead to a different assessment of the Claimant's financial situation. The reference makes a statement about the past without it being known which receivables existed at what time and in what amount. The reference does not allow any conclusions to be drawn about the Claimant's current or future financial situation. Instead, the reference to the Claimant's creditworthiness is decisive because it makes a statement as to whether the Claimant's future solvency can be assumed. However, this probability appears to be low.

31 For these reasons, the reference to the successful acquisition of third-party funds, according to the "PitchBook" report, does not apply. It is obvious that third-party funds cannot be raised indefinitely if there is no prospect of their repayment, profit distributions or other economic benefits for the donors. In this respect, it remains the case that the Claimant's financial situation is doubtful. It is unclear to what extent and in what form third-party funds have been raised. It appears that the Claimant is essentially financed by third parties. It is questionable whether there are sufficient funds to cover the defendant's reimbursement claims or whether the third-party funds granted are not even earmarked and not available for reimbursement. Even if the Claimant is not only reliant on external funds, there is no submission regarding the amount of any licence income, the available equity capital and which claims exist against the Claimant that would allow a conclusion to be drawn regarding its solvency. It would be up to the Claimant to dispel the doubts raised by the reports about the Claimant's financial capacity.

32 Finally, the Claimant has not argued that and why the provision of security would unreasonably prejudice its right to an effective remedy

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2.

33 The court considers a security deposit of EUR 200,000.00 in favour of the defendants re 1) to 3) and of EUR 100,000.00 in favour of defendant 5) as appropriate.

a)

34 In determining the amount of the security to be provided, the court was guided by the fact that the representation costs to be reimbursed in the event of an unsuccessful claim are based on the upper limits for the reimbursable costs. Pursuant to Article 1(2) and (3) of the Table of Limits on Recoverable Costs based on the Value in Dispute of 24 April 2023 (hereinafter: Table), the limits on recoverable costs apply to the costs of representation and apply in every instance of the court proceedings, regardless of the number of parties and claims involved.

35 The upper limit of the costs to be reimbursed is EUR 600,000.00 according to the table. It results from the amounts in dispute for the infringement proceedings and the counterclaim for a declaration of invalidity. The amounts in dispute for the infringement proceedings and the counterclaim are calculated in accordance with section
II. 2. b) (4) of the Guidelines for the Determination of Court Fees and the Upper Limit for Recoverable Costs of 24 April 2023 (hereinafter: Guidelines) for the purpose of determining the amount of the recoverable costs and thus also for determining their upper limit. The amount in dispute for the infringement action is stated by the Claimant at EUR 3,000,000.00. The same applies to the counterclaims for a declaration of nullity. It can be left open at this point whether the value in dispute for the counterclaims should not be reduced on the basis of section
II. 2. b) (2) (ii) of the guidelines to EUR 4,500,000.00. In both cases, the sum of the amounts in dispute is above EUR 4,000,000.00 and below EUR 8,000,000.00 and leads to an upper limit of EUR 600,000.00 for the recoverable costs.

b)

36 There is no doubt that the representation costs incurred by the defendants on the occasion of the counterclaim for a declaration of nullity are to be included in the determination of the amount of the security (as already stated by the Düsseldorf local division, Order of
27 December 2024, UPC_CFI_100/2024, ACT_11921/2024 - Ona Patents/Google; Order of 14 April 2025, UPC_CFI_335/2024, ACT_36426/2024 - Maxeon Solar/Aiko Energy). As explained under A, there is no legal basis for an application by the plaintiff in an infringement action or an action for annulment to order security for costs (Court of Appeal, Order of 20 June 2025, UPC_CoA_393/2025, APL_20694/2025 - Emboline/AorticLab). However, the defendants in the dispute are not the plaintiffs in an infringement action or nullity action, but the plaintiffs in a counterclaim for a declaration of nullity. In this respect, the values of Art. 69 para. 4 UPCA must be taken into account, according to which, in principle, the defendant is to be protected against an insolvent plaintiff who initiates an action without having sufficient means to reimburse the defendant for the costs incurred in the event of failure to pay (see Court of Appeal, Order of 20 June 2025, UPC_CoA_393/2025, APL_20694/2025 - Emboline/AorticLab).

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37 According to this basic idea, the defendant in an infringement action must also be able to demand security for the recoverable costs incurred by bringing a counterclaim for a declaration of invalidity, even if the defendant is formally the plaintiff in that counterclaim. Otherwise, the defendant could be unreasonably restricted in his legal defence because he is forced to bring a counterclaim for a declaration of nullity without any prospect of reimbursement of the costs incurred. These assessments do not contradict the wording of Art. 69 para. 4 UPCA. The provision refers generally to the costs of the legal dispute for which security must be provided. The term "litigation" is to be understood in a generalised manner and includes both the action and the counterclaim. The Court of Appeal rightly pointed out that the Rules of Procedure continue to refer to the plaintiff as the plaintiff, even if he is formally the defendant in a counterclaim for a declaration of invalidity, and conversely to the defendant as the plaintiff in this counterclaim as the defendant (Court of Appeal, Order of 20 June 2025, UPC_CoA_393/2025, APL_20694/2025 - Emboline/AorticLab). The formal status of the defendant as the plaintiff in a counterclaim for a declaration of invalidity therefore does not preclude the costs incurred by him as a result of the counterclaim from being included in the calculation of the security. Rather, these must be taken into account because the defendant in an infringement action can demand security for the costs of the legal dispute and other costs incurred by him pursuant to Art. 69 (4) UPCA, which necessarily include the costs of a counterclaim for a declaration of nullity which the defendant raises in his legal defence.

c)

38 As the upper limit applies uniformly to the proceedings irrespective of the number of parties and claims (see above), the upper limit must be divided between the parties. However, the upper limit is not automatically to be divided by the number of parties liable to pay costs. The purpose of the cap on reimbursable representation costs is to prevent unjustified reimbursement of costs both in cases where one party has several representatives and in cases where one representative represents several parties. In the latter case, it is assumed that the several parties with a common representative are economically related or belong to the same economic group and/or that there are no conflicts of interest (local division Düsseldorf, Order of 14 April 2025, UPC_CFI_335/2024, ACT_36426/2024 - Maxeon Solar/Aiko Energy).

39 In the case in dispute, it appears appropriate to allocate the upper limit of the recoverable costs between defendants 1) to 3) on the one hand and defendant 5) on the other. Defendants 1) to 3) are uniformly represented and belong to the Motorola-
/Lenovo Group, whereas defendant 5) is represented elsewhere and is a logistics company that is legally independent of the other defendants.

40 Furthermore, a division of the upper limits in a ratio of 2:1 is justified, i.e. EUR 400,000.00 with regard to defendants 1) to 4) and EUR 200,000.00 with regard to defendant 5). The defendants 1) to 4) not only have a larger share of the legal dispute in terms of numbers, but have also borne the main burden of the proceedings to date. Defendant 5) only entered the proceedings later and was able to build on the documents of the other defendants. Furthermore, it can be assumed that the statements on the technical functioning of the contested products are essentially attributable to defendants 1) to 3) because defendant 5), as a pure logistics service provider, regularly has no insight into the technical contexts. Defendant 4) must be taken into account in the allocation of the caps because the cap applies to the entire proceedings and to all parties and thus also to defendant 4). Her withdrawal from the proceedings must be taken into account in the further assessment of the security deposit.

d)

41 Furthermore, when determining the amount of the security, it must be taken into account that the amounts mentioned so far represent an upper limit and thus a protective provision against excessive reimbursement of costs, which is the last to be applied by the court (see recital 1 of the guidelines). As regards the costs of representation, these are only recoverable under Article 69(1) UPCA and Rule 152 RoP if they are reasonable and proportionate.

42 Finally, in exercising its discretion, the court must take into account that, depending on the circumstances, the provision of security may restrict the plaintiff's right to an effective remedy and to a fair trial as guaranteed by Union law, including Article 47 of the Enforcement Directive (Local Division Düsseldorf, Order of 14 April 2025, UPC_CFI_335/2024, ACT_36426/2024 - Maxeon Solar/Aiko Energy). Therefore, a balance must always be struck between the defendant's interest in providing security on the one hand and the plaintiff's interest in the effective enforcement of its patent rights on the other.

43 Taking all this into account, the court exercises its discretion to the effect that the Claimant is obliged to provide the defendants 1) to 3) with security in the amount of EUR 200,000.00 and the defendants 5) with security in the amount of EUR 100,000. These amounts are half of the pro rata upper limits stated above. In this regard, it should be noted that Defendant 4) has already withdrawn from the proceedings and has agreed with Claimant that each party shall bear its own costs. Furthermore, none of the defendants has explained the extent to which it has incurred costs for representation to date. This does not permit the setting of a higher security deposit. Conversely, it is not apparent that the imposition of such a security would unreasonably hinder the Claimant in the enforcement of its patent.

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e)

44 The security may be provided in the form of a deposit of the amount to the UPC account for a deposit of security for costs or by a bank guarantee from a bank authorised in the European Union. The Claimant may choose which form of security it prefers.

45 In view of the hearing date scheduled for the beginning of November, the court considers a period of six weeks to be reasonable for the provision of the security within the meaning of Rule 158.1 sentence 1 RoP. Informing the Claimant of the consequences of a delay in providing security follows from Rule 158.4 RoP.

46 As this is an Order of the judge-rapporteur, no notice of the possibility of appeal pursuant to Rule 158.3 RoP was to be given. An appeal is only admissible after review of the Order by the panel (see Court of Appeal, Order of 14 January 2025, UPC_CoA_651/2024, APL_59329/2024 - Total Semiconductor/Texas).

ORDER

1. The Claimant is ordered to provide the Defendants 1) to 3) with security in the amount of EUR 200,000.00 for the costs of the litigation and other costs incurred and/or to be incurred by the Defendants 1) to 3).
   3) have incurred and/or will incur.

2. The Claimant is ordered to provide the Defendant 5) with security in the amount of EUR 100,000.00 for the costs of the legal dispute and other costs incurred and/or to be incurred by the Defendant 5).

3. The security may be provided by depositing it in the account of the Unified Patent Court designated for the deposit of security.

4. The securities must be provided within a period of six weeks, beginning with the service of this Order. The Claimant is advised that a default judgement may be issued pursuant to Rule 355 RoP if both or either of the securities are not provided within the said time limit.

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DETAILS OF THE ORDER

Order No. ORD_47961/2024 in PROCEDURE NO:	ACT_14859/2024
UPC number:	UPC_CFI_127/2024
Nature of the proceedings:	Action for infringement
No. of the associated procedure Application no:	47247/2024
Type of application:	Submission for procedural request

Order no. ORD_18005/2025 in PROCEDURE NO:	ACT_14859/2024
UPC number:	UPC_CFI_127/2024
Nature of the proceedings:	Action for infringement
No. of the related proceedings Application no.:	2945/2025
Type of application:	Submission for procedural request