



Appeal Reference number:
UPC_CoA_596/2024
APL_55849/2024

Order
of the Court of Appeal of the Unified Patent Court
issued on 12 July 2025
R 220.2 RoP Appeal on security for costs

KEYWORDS

Security for costs (R 158 RoP)

APPELLANT (DEFENDANT IN THE R 158 RoP APPLICATION AND CLAIMANT IN THE MAIN INFRINGEMENT ACTION BEFORE THE COURT OF FIRST INSTANCE)

Suinno Mobile & AI Technologies Licensing Oy, Helsinki, Finland (hereafter "**Suinno**")
represented by Petri Eskola, attorney-at-law, Backström & Co,

RESPONDENT (APPLICANT IN THE R 158 RoP APPLICATION AND DEFENDANT IN THE MAIN INFRINGEMENT ACTION BEFORE THE COURT OF FIRST INSTANCE)

Microsoft Corporation, Redmond, Washington, USA (hereafter "**Microsoft**")
represented by Prof. Dr. Tilmann Müller-Stoy and Nadine Westermeyer, attorneys-at-law,
Bardehle Pagenberg, Partnerschaft mbB Patentanwälte Rechtsanwälte.

PATENT AT ISSUE
EP 2 671 173

DECIDING JUDGES

Panel 1a

Klaus Grabinski, Presiding judge

Peter Blok, Legally qualified judge

Emmanuel Gougé, Legally qualified judge and judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Court of First Instance of the Unified Patent Court, Central Division, Paris Seat, dated 27 September 2024
- Numbers attributed by the Court of First Instance:
 - UPC_CFI_164/2024
 - App_42517/2024
 - ACT_18406/2024
 - ORD_45914/2024

DATE OF THE HEARING

17 June 2025

FACTS AND REQUESTS OF THE PARTIES

1. On 9 April 2024, Suinno filed an infringement action against Microsoft before the Paris Seat of the Central Division (hereafter the “Central Division”) (ACT_18406/2024_UPC_CFI_164/2024).

Request for Security for costs and CFI Order

2. On 25 July 2024, Microsoft filed a request for security for costs pursuant to Art. 69 UPCA and R. 158 RoP in parallel to its Statement of defence and its Counterclaim for revocation of the patent at issue, requesting that Suinno be ordered to provide security for the legal costs and other expenses in the amount of at least € 800,000, alternatively of € 600,000.
3. On 27 September 2024, the Central Division ordered Suinno to provide a security for costs to Microsoft in the amount of € 300,000 (ORD_45914/2024, hereafter “the impugned order”).
4. The Central Division considered that it is credible that Suinno’s financial situation gives rise to a legitimate and real concern that a possible order for costs may not be recoverable. Considering that Suinno failed to provide further information on the availability of further assets to comply with a possible cost order, it may be assumed, according to the CFI, that Suinno does not have financial resources to cover a possible order for reimbursement of legal costs.
5. On the basis of the value of the case, which it determined at € 4,950,000, the Central Division decided that the ceiling for recoverable costs was to be set at € 600,000, and that, considering the remaining uncertainties and difficulties in relation to the future course of the proceedings and the complexity of the procedural activities, it was reasonable to set an amount of the security equal to 50% of the ceiling, that is € 300,000.

R. 263 application for leave to change the claim

6. On 10 October 2024, Suinno filed an application for leave to amend the case, pursuant to R. 263 RoP, regarding the value of the case to be set at € 2 million instead of the initial € 5 to 6 million estimated by Suinno in its Statement of Claim. Suinno argued that this estimation was more accurate than the

one on which the request in the statement of claim was based.

7. The Central Division granted Suinno leave to change the claim reducing the request for damages to € 2 million. It rejected Suinno's request to reconsider the fees already paid to the Court (Order of 26 November 2024, ORD_62739/2024, ACT_18406/2024 UPC_CFI_164/2024 APP 55394/2024) and considered that the subject-matter of the application is the grant of the leave for a change of the claim and not for the amendment of the value of the proceedings.

Appeal

8. The Central Division granted leave to appeal the impugned order (Order of 10 October 2024, ORD_55642/2024).
9. Suinno lodged an appeal against the impugned order, requesting that the amount of the security for costs be reduced from € 300,000 to € 100,000.
10. Suinno argues inter alia that the security for costs is "not commensurate with the real work it takes to communicate non-infringement or lack of validity to the Court", that "all risk is borne by the Claimant", that the value of the case has actually been amended to € 2 million following its application filed under R. 263 RoP and that a security for costs in the amount of € 100,000 is consistent with other security for costs already granted in the UPC.
11. Microsoft requests the Court of Appeal to dismiss the appeal and to order Suinno to bear the costs of the appeal proceedings.
12. According to Microsoft, a security for costs serves to protect the position and rights of the defendant who did not choose to initiate the main proceedings and that factors to be considered when ordering a security primarily include the financial position of the claimant. It further emphasizes that Suinno has not provided, neither in first instance nor in the appeal, any evidence regarding its financial position and that the amount of the security set in the impugned order is consistent with other UPC order already granted on security for costs.

Parallel proceedings

13. Because of parallel appeal proceedings (APL_53716/2024 UPC_ CoA_563/2024) concerning the validity of the representation of Suinno in a R. 262A application related to the infringement action (ACT_18406/2024_UPC_CFI_164/2024), Suinno requested that the present appeal on security for costs (APL_55849/2024) be decided once the appeal on the issue of representation (APL_53716/2024) had been decided.
14. On 11 February 2025, the Court of Appeal decided that Suinno was not validly represented (ORD_68946/2024 in APL_53716/2024_UPC_ CoA_563/2024).
15. Following the change of representative of Suinno as of 26 March 2025 in the present appeal proceedings (APL_55849/2024), Suinno's representative was requested to ratify the Statement of appeal and the Statement of Grounds of appeal filed on 11 October 2025, which it did, together with additional non-solicited observations filed on 8 May 2025 by which, "as a sidenote", it requested

the court to “considerably lower” the amount of the security for cost down to € 0 (App_55394/2024).

16. At the oral hearing, Suinno argued that ordering it to provide a security for costs in the amount of € 300,000 or € 100.000 would deprive it from access to justice, would be contrary to the legitimate interests of all parties (Art. 41(3) UPCA), would deny the right to an effective remedy and to a fair trial as provided for under Art. 47 of the Charter of Fundamental Rights of the European Union and would distort competition (Art. 42(2) UPCA).

GROUND

17. The appeal is admissible but shall be rejected.
18. This appeal is about the amount of the security for costs that Suinno has been ordered to pay. It is not about whether or not Suinno should have been ordered to pay a security for costs.
19. Art. 69(4) UPCA provides that, at the request of the defendant, the Court may order the applicant to provide adequate security for the legal costs and other expenses incurred by the defendant which the applicant may be liable to bear.
20. Under R. 158.1 RoP, at any time during proceedings, following a reasoned request by one party, the Court may order the other party to provide, within a specified time period, adequate security for the legal costs and other expenses incurred and/or to be incurred by the requesting party, which the other party may be liable to bear.
21. The burden of substantiation and proof why an order for security for costs is appropriate in a particular case is on the defendant making such a request, however, once the reasons and facts in the request have been presented in a credible manner, it is up to the claimant to challenge these reasons and facts and in a substantiated manner, especially since that party will normally have knowledge and evidence of its financial situation (CoA order of 17 September 2024, UPC_CoA_218/2024 APL_25922/2024, UPC_CoA_220/2024 APL_25924/2024, UPC_CoA_222/2024 APL_25928/2024, Volkswagen vs Network System Technologies).
22. Given that the Court of First Instance has a margin of discretion when deciding on a request for security for costs, the review by the Court of Appeal is limited (CoA Order of 17 September 2024, CoA_217/2024 APL_25919/2024, Audi AG v Network System Technologies, para. 8 and 9).
23. When setting the amount of the security for costs, the Central Division referred to the value of the case, as set out at the time by Suinno (€ 5 to 6 million) and, pursuant to the UPC Guidelines for the determination of the court fees and the ceiling of recoverable costs of 24 April 2023 (hereafter the “Guidelines”) and the Scale of ceilings for recoverable costs adopted by the Administrative Committee on 24 April 2023, set the ceilings for recoverable costs at € 600,000. Pursuant to Article 1 of the Guidelines on the determination of the value of the injunction claim and of the damage claim, considering the circumstances of the case and all available information on the parties, the Central Division has not exceeded the boundaries of its discretion in setting the amount of the security equal to 50% of the ceiling, meaning at € 300,000.
24. In the light of these considerations, Suinno’s argument that the security for costs is “not

commensurate with the real work it takes to communicate non-infringement or lack of validity to the Court” is not sufficiently substantiated. Its argument that a security for costs in the amount of € 100,000 is consistent with other security for costs already granted in the UPC do not give more reason to decrease the amount of the security for costs either, as it does not address the amount of legal costs and other expenses to be incurred by Microsoft in this particular case. The assertion that “all risk is borne by the Claimant” is not relevant to determination of the amount of security and is incorrect, given that it is credible that Suinno’s financial situation gives rise to a legitimate and real concern that a possible order for costs may not be recoverable.

25. The fact that Suinno filed an application for leave to amend the case and to limit the damage claim to € 2 million and that the Central Division granted Suinno leave to reduce the request respectively does not change this finding either.
26. As rightly pointed out by the Central Division, which rejected Suinno’s request to reduce the fees already paid to the Court, a change of the claim with a limitation of the damage claim has to be distinguished from an amendment of the value of the proceedings (Order of 26 November 2024, ORD_62739/2024, ACT_18406/2024 UPC_CFI_164/2024 APP 55394/2024) as Suinno is also asserting further claims with its action for infringement, such as a claim for injunctive relief.
27. Also the fact that the Central Division decided that the value of the proceedings for the purpose of applying the scale of ceilings for recoverable costs is set at € 13 million with regard to the infringement action speaks against a reduction of the security as required by Suinno (order of 21 April 2025, ORD_69248/2024, ACT_18406/2024 UPC_CFI_164/2024).
28. The new arguments raised by Suinno on 8 May 2025 in its Reply to a procedural order as well as during the oral hearing referred above under para. 16 shall be disregarded and declared inadmissible pursuant R. 233.3 RoP following which grounds of appeal which are not raised within the period specified for the Statement of grounds of appeal in R. 224.2 RoP shall not be admissible.
29. Suinno failed to provide any justification for not meeting the time limit. The Court of Appeal shall thus disregard the request filed by Suinno as a “side note”, in its response to a procedural order relating to the appointment of Suinno’s representative, that “the considerably lowered sum for the Security is now 0 €”.
30. The same applies to the arguments raised by Suinno for the first time during the oral hearing.
31. Regardless of the inadmissibility of these arguments, Suinno has not demonstrated that the security for costs ordered by the Local Division would amount to an actual barrier to access to justice or a limitation of its fundamental right to an effective remedy and a fair trial.
32. Even assuming that the impugned order constitutes a limitation of Suinno’s rights, such limitation must be deemed necessary to protect the rights of Microsoft, in the light of Microsoft’s legitimate and real concern that a possible order for costs may not be recoverable. Suinno failed to submit


facts and circumstances that could alter the balance of rights in the present case.

ORDER

The Court of Appeal rejects the appeal.

This order was issued on 12 July 2025.

EMMANUEL,
LUCIEN, RENÉ
GOUGÉ



Signé numériquement par
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Klaus Grabinski

President of the Court of Appeal

In his absence, signed on his behalf

Peter
Hendrik
Blok



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Peter Blok

Legally qualified judge

EMMANUEL,
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Emmanuel Gougé

Legally qualified judge and judge-rapporteur