



UPC Court of Appeal
UPC_CoA_526/2025
APL_28246/2025
App_28261/2025
App_28260/2025
App_32598/2025

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 23 July 2025
concerning a withdrawal pursuant to R. 265 RoP and
an application for reimbursement of Court fees (R. 370.9 RoP)

APPLICANT, APPELLANT (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; assisted by Dr. Malte Frese, Patent Attorney, and other patent-attorneys of the law firm Hemmer Lindfeld Frese, Lübeck, Germany

RESPONDENTS (AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Easee B.V.**, Amsterdam, The Netherlands
2. **■■■■■** Amsterdam, The Netherlands
3. **Easee Holding B.V.**, Amsterdam, The Netherlands

(hereinafter for all: “Easee”)

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

PATENT AT ISSUE

EP 3 918 974

LANGUAGE OF THE PROCEEDINGS

English

PANEL AND DECIDING JUDGES

Panel 2

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 lodged an action against Easee for infringement of its patent EP 3 918 974 (patent at issue). Easee lodged a counterclaim for revocation.
2. Visibly requested that Easee be ordered to provide Visibly with appropriate security for Visibly's legal costs and other expenses in the amount of EUR 112,000.
3. In the impugned order, the Hamburg Local Division ordered Easee to provide security for legal costs in the amount of 75,000 EUR within four weeks of receiving the order. The Local Division denied the request for security for costs for the infringement proceedings.
4. Visibly appealed this order insofar it is to Visibly's disadvantage.
5. With order of 26 June 2025 (ORD_26598/2025) the Hamburg Local Division ordered that the proceedings are stayed in their entirety (meaning also regarding the managing director) due to the insolvency proceedings regarding the Easee companies.
6. The Court of Appeal decided to stay the proceedings in their entirety for the time that the CFI proceedings are stayed pursuant to R. 295m RoP (ORD_31761/2025).
7. Visibly filed an application for permission to withdraw the appeal, citing an out-of-court settlement reached by both parties. In response to the Court's request for comments, Easee consented to the withdrawal.

PARTY'S REQUEST

8. Visibly requests that the Court:
 - I. permit the withdrawal of the appeal pursuant to R. 265.1 RoP by analogy;
 - II. declare the appeal proceedings closed;
 - III. confirm that no decision on costs is required;
 - IV. order the reimbursement of 60% of the court fees to Visibly Inc.;
 - V. order the decision to be entered on the register.

GROUND

Conditions for permitting withdrawal

9. As long as there is no final decision in an action, a claimant may, pursuant to R. 265.1 RoP, apply to withdraw his action. The application to withdraw shall not be permitted if the other party has a legitimate interest in the action being decided by the Court. R. 265.1 RoP also applies mutatis mutandis to the withdrawal of an appeal from an order issued in an application.
10. In view of Eassee's consent, Eassee cannot be considered to have a legitimate interest in the appeal being decided by the Court. The application to withdraw can thus be permitted.
11. The stay of proceedings does not prevent the parties from withdrawing their appeals.

Applications according to R. 262.2 RoP and R. 262A RoP (App_28261/2025)

12. After the withdrawal of the appeal the Court fails to see an interest of the parties that the Court decides on Visibly's application to restrict access to and use of specific information, according to R. 262A.1 RoP. Therefore, this application has become devoid of purpose (R. 360 RoP). In a preliminary order of 18 June 2025, the judge-rapporteur ordered that the information identified by Visibly as confidential must be treated as such by Eassee's representatives and their assistants until further notice. This protects Visibly's interests. Eassee does not claim to have an interest that the Court decides on this matter in a final order.
13. A decision on a request according to R. 262.2 RoP is generally not made until an Application under R. 262.1(b) RoP is lodged (cf. Court of Appeal, Order of 9 January 2025, UPC_CoA_769/2024, APL_64383/2024, App_68619/2024, *Insulet vs Menarini*). There are no discernible grounds to depart from this principle in the present matter.

Costs

14. No decision on costs is required here, since both parties have declared that a cost decision is not requested.

Reimbursement of Court fees

15. In case of the withdrawal of an action (R. 265 RoP), the party liable for the Court fees will be reimbursed by 60 % in accordance with R. 370.9 (b) (i) RoP if the action is withdrawn before the written proceeding has been concluded. In this case, the written proceedings had not been concluded when the application to withdraw was made. Reimbursement of 60% of the appeal fee is to be ordered in accordance with this provision.

ORDER

The Court of Appeal:

- permits the withdrawal of the appeal and declares the proceedings closed;
- orders that this decision shall be entered on the Register;
- declares that there is no need for a cost decision;
- orders that 60 % of the appeal Court fees be reimbursed to Visibly.

Issued on 23 July 2025

Rian Kalden

Rian Kalden

Date:

2025.07.23

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Presiding judge and legally qualified judge

Asa Ingeborg Simonsson

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Legally qualified judge

Patricia Ursula Rombach

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Legally qualified judge and judge-rapporteur