



**Local division Hamburg**  
**UPC\_CFI\_123/2024**  
**ACT\_43786/2024**

**Decision**  
**of the Court of First Instance of the Unified Patent Court**  
**Local Division Hamburg**  
**issued on 1 August 2025**

APPLICANT:

**Alexion Pharmaceuticals, Inc.**, 121 Seaport Boulevard, Boston, MA 02210, USA,

represented by: Elena Hennecke, Freshfields PartG mbB,  
Feldmühleplatz 1, 40545 Düsseldorf

DEFENDANT:

**Samsung Bioepis NL B.V.**, Olof Palmestraat 10, 2616 LR Delft, Netherlands,

represented by: Andrea Ritter, Simmons & Simmons LLP, Kö-Bogen,  
Königsallee 2a, 40212 Düsseldorf

PATENT AT ISSUE

European Patent n° EP 3 167 888

PANEL/DIVISION

Panel of the Local Division Hamburg

DECIDING JUDGE/S

This decision has been delivered by the judge-rapporteur Sabine Klepsch

#### LANGUAGE OF THE PROCEEDINGS

English

#### SUBJECT-MATTER OF THE PROCEEDINGS

Application pursuant to Rule 151 RoP – Cost Decision

#### SUMMARY OF FACTS

- 1 The Applicant is the proprietor of the European Patent EP 3 167 888 B1 (hereinafter: patent in suit or the patent) and applied for preliminary measures directed against the marketing of the Defendant's contested embodiment Epysqli®. The proceedings were being conducted under the file number ACT\_13849/2024 (UPC\_CFI\_123/2024).
- 2 On 26 June 2024, the Local Division Hamburg dismissed the application for provisional measures. According to this decision, the costs of the proceedings are borne by the Applicant. The value of the dispute was set at € 100.000.000,00. The ceiling for recoverable costs is therefore € 2.000.000,00.
- 3 On 27 July 2024, the Defendant submitted an application for a cost decision, claiming the costs for the first instance. The claimed costs are broken down as follows:

**I. Legal representative fees – Simmons & Simmons**

Litigation fees based on time spent	EUR	██████████
Travel and accommodation		
Flights and train	EUR	778.00
Hotel in Hamburg	EUR	1,298.42
Local transportation	EUR	134.95
	<u>EUR</u>	██████████

**II. Patent attorney fees – Hoffmann Eitle**

Litigation fees based on time spent	EUR	██████████
Travel and accommodation		
Flights	EUR	1,195.84
Hotel in Hamburg	EUR	1,756.54
Local transportation	EUR	120.66
	<u>EUR</u>	██████████

**III. UK Solicitors' fees – Simmons & Simmons**

Litigation fees based on time spent	EUR	██████████
Travel and accommodation		
Flights	EUR	768.58
Hotel in Hamburg	EUR	1,260.39
	<u>EUR</u>	██████████

**IV. Third party fees – Expert Prof Kontermann**

As per invoice of 29 January 2024	EUR	2,975.00
As per invoice of 26 April 2024	EUR	11,462.50
As per invoice of 5 June 2024	EUR	4,900.00
	<b>EUR</b>	<b><u>19,337.50</u></b>

**VI. Travel and accommodation costs  
– Defendant**

Mileage to Hamburg, Parking	EUR	479.82
Hotel in Hamburg	EUR	540.35
	<b>EUR</b>	<b><u>1,020.17</u></b>

**In total:**

**EUR** [REDACTED]

- 4 In response to the Applicant's comment on the application for a cost decision, the Defendant corrected some cost positions. Regarding to the Defendant, the calculation of the costs in the application of the cost decision of 26 July 2024 contains mistakes, in favour of the Applicant. Based on the specification above the overall recoverable costs would be (...).
- 5 Alternatively by a calculation according to the German Lawyers' Fees Act (RVG):

**1. Legal fees for first instance proceedings pursuant to fee schedule of the RVG (“Vergütungsverzeichnis des RVG, VV RVG”)**

Amount in dispute: EUR 100,000,000.00

1,3 Procedural fee No. 3100 VV RVG	131,155.70
1,2 Appointment fee No. 3104 VV RVG	121,066.80
Display fee No. 7002 VV RVG	20.00
<b>Subtotal</b>	<b>252,242.50</b>

**2. Patent attorney fees for first instance proceedings pursuant to fee schedule of the RVG (“Vergütungsverzeichnis des RVG, VV RVG”)**

Amount in dispute: EUR 100,000,000.00

1,3 Procedural fee No. 3100 VV RVG	131,155.70
1,2 Appointment fee No. 3104 VV RVG	121,066.80
Display fee No. 7002 VV RVG	20.00
<b>Subtotal</b>	<b>252,242.50</b>

Total amount according to the principles of the German Lawyers' Fees Act (RVG):

**EUR 505,485.00**

REQUEST

- 6 The Defendant requests the court to order the payment of the calculated total amount of (...) within a reasonable time.

The Applicant requests to dismiss the Defendant's application for a cost decision of 26 July 2024.

POINTS AT ISSUE

- 7 The Defendant is of the opinion that the costs for two legal representatives, two patent attorneys and two english solicitors is reasonable und proportionate. The instruction of more than one legal representative and more than one patent attorney is justified in this complex and high value provisional measure case. Also the costs for the inclusion of two English solicitors to the team are recoverable. The English solicitors were co-ordinating the proceedings in relation to the patent in suit across Europe and parallel nullity proceedings were/are pending before the English courts. Moreover, the English solicitors

had been involved in the EPO proceedings concerning patents from the same family of the patent in suit which took place before the UPC procedure was initiated by the Applicant. Candidate experts had been identified by the English solicitors and approached before the Applicant started the UPC action. Involvement of the English solicitors led to costs savings for the UPC representatives in relation to the identification of prior art, development of technical arguments, expert searches, expert interviews, the preparation of expert opinions, and the preparation of the commercial witness declarations.

- 8 The expenses relate to the oral hearing in Hamburg. The costs are travel and accommodation costs. Hotel rooms had been booked for multiple nights because of the court's notice that the oral hearing could extend over two days and the need for preparatory meetings ahead of the hearing.
- 9 The expert costs listed relate to the expert Prof Kontermann who delivered two expert opinions filed in the procedure.
- 10 Furthermore, the Defendant sent two employees, Remco de Haas, Commercial Director, and Erne van Proosdij, Legal Manager, to the oral hearing to attend and be available for commercial and related questions.
- 11 The Applicant is of the opinion that the Defendant has not provided sufficient evidence to support the costs claimed. The Defendant has not provided sufficient evidence of the representation costs for which it requests compensation for. The Defendant might have submitted redacted invoices showing that it was charged by its legal representatives. However, these redacted invoices do not even indicate that the costs were actually incurred in connection with representing the Defendant before the UPC. In particular, the narratives of the invoices are redacted. As a result, the Applicant is of the opinion that it is not possible to determine whether the hours worked were actually incurred in connection with the UPC proceedings or in connection with parallel national proceedings or proceedings before the Opposition Division of the EPO concerning the patent in suit.
- 12 Furthermore, the invoice of the legal representatives also includes the costs of Julia Mroz (see Exhibit S&S 1, page 2), who is not named as the Defendant's legal representative in the application for a cost decision. According to the Defendant, therefore, Julia Mroz's costs are not costs for its representation.
- 13 Furthermore, the Applicant is of the opinion that costs for representation by the UK solicitors including their travel expenses, are not reasonable. The Defendant's argument that the involvement of the UK solicitors led to cost savings for the UPC representatives does not change the assessment that the costs for the UK solicitors themselves were in any case unreasonably high.
- 14 In addition, the travel expenses of the patent attorneys of Hoffmann Eitle set out in Exhibit S&S 4 are also clearly unreasonably high. In particular, according to pages 3 and 10 of

Exhibit S&S 4, both patent attorneys already arrived in Hamburg on 23 June 2024, i.e. two days before the oral hearing. Even allowing for a prior meeting with the respective representatives in preparation for the oral hearing, such an early arrival is neither necessary nor appropriate for the legal defence. Furthermore, the Applicant is not liable for the costs of the 'rooftop package' that the patent attorneys have booked at the hotel.

- 15 Finally, it is not possible to verify the costs of the expert Professor Kontermann due to the lack of access to the invoices of the respective representatives. In particular, it is not possible to compare the hours charged by Professor Kontermann for meetings.

#### GROUND FOR THE ORDER

- 16 The application for a cost decision is admissible and partially justified.

#### **I. Principles**

- 17 According to Art. 69(1) UPCA, reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity requires otherwise, up to a ceiling in accordance with the Rules of procedure.
- 18 For representation costs, this principle is specified in R. 152.1 and .2 RoP to the effect that the applicant shall be entitled to recover reasonable and proportionate costs for representation, whereby the Administrative Committee shall adopt a scale of ceilings for recoverable costs by reference to the value in dispute. Regarding expert costs, R. 153 RoP stipulates that the compensation for costs of experts of the parties exceeding the expenses referred to in R. 180.1 RoP shall be based on the rates that are customary in the respective sector, with due regard to the required expertise, the complexity of the issue and the time spent by the expert for the services.
- 19 The costs of the legal dispute are those that have actually been incurred in the specific pending or disputed proceedings. These include the costs listed in R. 151(d) RoP, in particular. Other costs are those that have not been incurred in the pending proceedings, but which are directly and closely related to them (see UPC\_CFI\_696/2024 (LD Munich, Panel 2), Decision of 19 March 2025 – MSG Maschinenbau v EJP Maschinenbau; UPC\_CFI\_363/2023 (LD Düsseldorf, Decision of 14 April 2025 – Seoul Viosys v expert; UPC\_CFI\_16/2024, Decision of 22 April 2025, mn. 16 – Ortovox v Mammut).
- 20 To be eligible for reimbursement, the costs in question must be cumulative reasonable and appropriate, which is always a matter of individual assessment. These criteria are intended to safeguard the objectives set out in Art. 3 and 14 of the Directive 2004/28, namely to ensure a high level of protection for European patents and to prevent an injured party from being deterred from taking legal action to enforce its rights. They also aim to ensure that the measures, procedures and remedies necessary for the enforcement of

intellectual property rights are not unnecessarily costly (ECJU, 28 April 2022 – C-531/200 – NovaText/Ruprecht-Karls-Universität Heidelberg; ECJU, 28 April 2022 – 559/20 – Koch Media/Funke; ECJW, 28 July 2016 – C-57/15 – United Video Properties/Telenet; UPC\_CFI\_16/2024 (LD Düsseldorf), Decision of 22 April 2025, mn. 17 – Ortovox v Mammut). This also applies for the legal defence.

- 21 Taking this into account, “reasonable” essentially means “necessary”. From the perspective of a reasonable and rational party, the decisive factor is whether the measure that incurred the costs was objectively necessary and appropriate for achieving the legitimate object of the proceedings. Therefore, the measure must be relevant to the pursuit or defence of legal rights (UPC\_CFI\_16/2024 (LD Düsseldorf), Decision of 22 April 2025, mn. 18 – Ortovox v Mammut).
- 22 The focus of appropriateness is primarily on the amount of costs incurred. The costs incurred by the necessary measure must not be disproportionate. In particular, they must not exceed the value in dispute, the significance of the case, the difficulty and complexity of the relevant legal and factual issues, and the measure’s prospects of success. An ex ante assessment is also appropriate here (UPC\_CFI\_696/2024 (LD Munich, Panel 2), Decision of 19 March 2025, mn. 18 – 22 – MSG Maschinenbau v EJP Maschinenbau; see also UPC\_CFI\_363/2023 (LD Düsseldorf), Decision of 14 April 2025 – Seoul Viosys v expert; UPC\_CFI\_16/2024 (LD Düsseldorf), Decision of 22 April 2025, mn. 19 – Ortovox v Mammut).

## **II. Reimbursement in the present case**

- 23 Following these principles, costs in the amount of (...) are acknowledged by the Court.
- 24 With regard to the Defendants’ claim for reimbursement of litigation fees, in the court’s view, the litigation fees for the two lawyers and patent attorneys are justified. In its written statement of 4 April 2025, the Defendant provided more detailed information on the hours spent in connection with the procedural stages: I. Work until filing of Objection on 30 April 2024, which includes reviewing the Application for provisional measures and drafting the Objection against it. II. Work until filing of Counter Reply on 14 June 2024, encompassing drafting the Counter-Reply to the Applicant’s Reply. III. Preparation for and attendance at the oral hearing on 25 June 2024, with each lawyer having billed 7.00 hours for this. IV. Time after the oral hearing until the commencement of the Appeal proceedings (see Exhibit S&S 9). The court considers the hours allocated to be reasonable in terms of both the grounds and the amount.
- 25 There is no need to provide further proof of costs. According to R. 156.1 RoP, the judge-rapporteur may request that written proof be provided for all costs claimed in accordance with the rule. The request to provide written proof is at the discretion of the rapporteur (‘may’). A decision in the cost assessment proceedings is therefore possible in principle even without the submission of written evidence. The rapporteur will request the



submission of written evidence in particular if the indication of the costs does not appear plausible and comprehensible, which is not the case here.

- 26 In contrast to this, the Defendant has failed to provide a comprehensible explanation as to why it was appropriate and necessary for two English solicitors to be involved in the present proceedings. Therefore, the costs claimed for the two solicitors, are not recognised as recoverable. That the involvement of the UK solicitors led to efficiency gains – comparable to the use of expert witnesses – is not convincing, especially since no details are provided regarding the specific activities. The merely general statements, the English solicitors are co-ordinating the proceedings in relation to the patent in suit across Europe and parallel nullity proceedings are pending before the English courts, give no concrete indication that the activity was of specific value in the present proceedings. The same applies to the statement, that the English solicitors had been involved in the EPO proceedings concerning patents from the same family of the patent in suit, which took place before the Applicant initiated the UPC procedure. It might be possible that the involvement of the English solicitors led to cost savings for the UPC representatives in relation to the identification of prior art, development of technical arguments, expert searches, expert interviews, the preparation of expert opinions, and the preparation of the commercial witness declarations. Detailed information on this were not given. Especially considering that the costs attributed to the two UK solicitors are higher than those incurred by the five legal representatives and patent attorneys, this contradicts the principles of efficiency. The UK solicitors, despite their level of knowledge regarding the patent in suit and specialised expertise, generated more costs as those who actually filed the submissions and conducted the oral hearing.
- 27 On the contrary, the costs incurred for the private expert Prof. Kontermann are also eligible for reimbursement. The Defendant has sufficiently demonstrated the specific number of hours worked in connection with the activities performed and the costs claimed by submitting the expert's invoices (see Exhibit S&S 7). The court considers the hours spent by the expert in connection with the activities performed to be reasonable. Therefore, the costs claimed for the expert are recognised as recoverable.
- 28 Insofar as the Applicant also objects to the travel expenses claimed on the grounds that the patent attorneys arrived two days before the oral hearing, this seems reasonable. Arrival on the day before the preparation of the oral hearing ensures that the relevant persons are on site in good time and that the oral hearing can be properly prepared. In the end, the Applicant did not contest the other costs, including some of the travel expenses claimed by the patent attorneys and the costs of Julia Mroz, in view of the fact that these were relatively minor amounts.
- 29 Therefore, a total amount of (...) is reimbursable. Insofar as the Defendant has made a comparative calculation based on the German Lawyers' Fees Act (RVG), this is not relevant in the present case, as different reimbursement principles apply to the calculation of costs under the UPC and the RVG.

#### ORDER

1. The Claimant shall reimburse the Defendant for costs totalling (...).
2. Reimbursement shall be made within three weeks of this decision being served.
3. In all other respects, the application for a cost decision is dismissed.

#### DETAILS OF THE ORDER

Order No. ORD\_46711/2025 im VERFAHREN NUMMER: ACT\_13849/2024  
UPC number: UPC\_CFI\_123/2024  
Art des Vorgangs: Application for provisional measures  
Application No.: 43786/2024

#### INFORMATION ON APPEAL:

A party adversely affected by a decision referred to in in R. 157 RoP may lodge an application for leave to appeal to the Court of Appeal within 15 days of service of the decision (R. 221.1 RoP).