



Local division Hamburg
UPC_CFI_40/2025
ACT_3177/2025

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 for appeal proceedings

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 on 19 March 2024 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. The Applicant filed an appeal, the oral hearing at the Court of Appeal took place on 4 November 2024. With its decision of 20 December 2024, the Court of Appeal rejected the appeal. According to this decision, the costs of the appeal proceedings are borne by the Applicant.
- 3 On 20 January 2025, the Defendant submitted an application for a cost decision, claiming the costs for the appeal. The claimed costs are broken down as follows:

I. Legal representative fees – Simmons & Simmons	
Litigation fees based on time spent	EUR [REDACTED]
Travel and accommodation	
Mileage	EUR 460.15
Parking	EUR 49.60
Hotel in Luxembourg	EUR 512.00
II. Patent attorney fees – Hoffmann Eitle	
Litigation fees based on time spent	EUR [REDACTED]
III. Patent attorney fees – Simmons & Simmons	
Litigation fees based on time spent	EUR [REDACTED]
Travel and accommodation	
Flight	EUR 226.29
Local transportation	EUR 230.00

Hotel in Luxembourg	EUR 801.00
IV. UK Solicitors' fees – Simmons & Simmons	
Litigation fees based on time spent	EUR [REDACTED]
Travel and accommodation	
Train	EUR 360.10
Hotel in Luxembourg	EUR 1,262.98
V. Costs of the cost proceedings - Estimate	EUR [REDACTED]
<u>In total:</u>	<u>EUR</u> [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 20 January 2025 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) recoverable cost would be:

I. Legal representative fees – Simmons & Simmons	
Litigation fees based on time spent	EUR [REDACTED]
Travel and accommodation	
Mileage	EUR 460.15
Parking	EUR 49.60
Hotel in Luxembourg	EUR 512.00
II. Patent attorney fees – Hoffmann Eitle	
Litigation fees based on time spent	EUR [REDACTED]
III. Patent attorney fees – Simmons & Simmons	
Litigation fees based on time spent	EUR [REDACTED]
Travel and accommodation	
Flight	EUR 226.29
Local transportation	EUR 230.00

Hotel in Luxembourg	EUR 801.00
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Travel and accommodation	
Train	EUR 360.10
Hotel in Luxembourg	EUR 1,262.98
V. Costs of the cost proceedings - Estimate	EUR [REDACTED]
<u>In total:</u>	<u>EUR</u> [REDACTED]

**1. Legal fees for Appeal pursuant to fee schedule of the RVG
("Vergütungsverzeichnis des RVG, VV RVG")**

Amount in dispute: EUR 100,000,000.00

1,6 Procedural fee No. 3200 VV RVG	161,422.40
1,2 Appointment fee No. 3202 VV RVG	121,066.80
Display fee No. 7002 VV RVG	20.00
Subtotal	282,509.20

**2. Patent attorney fees for Appeal pursuant to fee schedule of the RVG
("Vergütungsverzeichnis des RVG, VV RVG")**

Amount in dispute: EUR 100,000,000.00

1,6 Procedural fee No. 3200 VV RVG	161,422.40
1,2 Appointment fee No. 3202 VV RVG	121,066.80
Display fee No. 7002 VV RVG	20.00
Subtotal	282,509.20

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

EUR 565,018.80

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 20 January 2025.

POINTS AT ISSUE

- 7 The Defendant is of the opinion that the costs for two legal representatives, four 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. The instruction of four patent attorneys is justified, particularly in view of the specifics in this case: The patent attorneys involved in the first instance proceedings and at the beginning of the appeal proceedings, Dr Leonhard Werner-Jones and Dr Sebastian Giese, had to resign for internal reasons representation of the Defendant during the appeal proceedings. The representation was then taken over by patent attorneys Dr Fritz Lahrtz and Dr Tanja Pintsch for the remaining appeal proceedings including the hearing on 4 November 2024. The Defendant is of the

opinion, that the overall sum relating to the costs of the patent attorney's work is moderate and reflects the fact that their work complemented, and not doubled, each other's.

- 8 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.
- 9 The expenses relate further to the oral hearing in Luxembourg. The costs are travel and accommodation costs. Hotel rooms were reserved for the UK representatives and the patent attorney for several nights due to the necessity of preparatory meetings with the client before the hearing and the limited travel options to and from Luxembourg.
- 10 The Defendant applies further for a reimbursement for the cost recovery procedure in the application for cost decision. These costs have arisen and will arise after the one month period of Rule 151 RoP and therefore could not be specified in the application for cost decision of 20 January 2025.
- 11 The Applicant is of the opinion that the Defendant has not provided sufficient evidence to support the costs claimed. The Defendant might have submitted redacted invoices (Exhibit S_S_02) 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 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.
- 13 In addition, the travel expenses of the patent attorney are also unreasonably high. The Defendant claims accommodation costs for patent attorney Dr. Fritz Lahrtz for three nights,

from 2 to 5 November 2025. There is no indication of an early arrival for preparatory meetings, as both attorneys arrived only on the evening before the hearing.

GROUNDINGS FOR THE ORDER

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

I. Principles

15 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.

16 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.

17 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).

18 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.

- 19 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).
- 20 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

- 21 Following these principles, costs in the amount of (...) are acknowledged by the Court.
- 22 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. Drafting Response to Appeal, II. Preparation for oral hearing and attending oral hearing, III. Follow-up to the oral hearing. The work described under I. includes the work from the reasons of the first instance decision until drafting of the Response to the Appeal, which was submitted on 13 August 2024. II. means the overall preparation to and attending the oral hearing on 4 November 2024 (the latter was charged by 7.00 hours for each attorney). IV. refers to the time after the oral hearing until now. The court considers the hours allocated to be reasonable in terms of both the grounds and the amount.
- 23 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 judge-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.
- 24 The costs for the patent attorneys is reasonable. The Applicants’ allegation that the change of patent attorneys had resulted in additional costs for training and familiarisation seems to be unfounded. The submissions and exhibits provided by the Defendant indicate that the patent attorneys of Hoffmann Eitle had been involved in the written part of the

procedure, thereafter the patent attorneys of Simmons and Simmons have taken over. No double costs are apparent based on the aggregated summaries.

- 25 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.
- 26 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, the objection is justified. There is no indication of an early arrival for preparatory meetings two days before the oral hearing, as both attorneys arrived only on the evening before the hearing. Therefore, for only one night reimbursement is justified.
- 27 The Defendants' demand for reimbursement of representation costs for the cost procedure is unfounded. Proceedings for cost decisions under R. 150 et seq. RoP are summary proceedings, determined by the judge-rapporteur. Awarding compensation for the additional costs that can be attributed to the proceedings for cost decisions as such is not envisaged in the Rules. It would give the parties an incentive to spend considerable resources on these summary proceedings. Awarding costs upon costs cannot have been intended in the Rules. A party, even if successful in the context of proceedings for a cost decision under R. 150 RoP, will normally have to carry its own costs attributable to the cost proceedings. In exceptional cases a party may be ordered to bear any unnecessary costs it has caused the court or another party (see Art. 69(3) UPCA, UPC_CoA_618/2024, Decision of 6 June 2025, mn. 54 – Hanshow v VusionGroup).

28 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 Applicant 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_11300/2025 im VERFAHREN NUMMER: ACT_13849/2024

UPC number: UPC_CFI_40/2025

Art des Vorgangs: Application for provisional measures

Application No.: 3177/2025

INFORMATION ON APPEAL:

A party adversely affected by a decision referred to 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).