

**Order**  
**of the Court of First Instance of the Unified Patent Court**  
**issued on 12 September 2025**  
**concerning EP 2 746 957**  
**concerning App\_29561/2024**  
**(R. 158 RoP)**  
**concerning App\_20197/2025**  
**(R. 333 RoP)**

CLAIMANT

**TOTAL SEMICONDUCTOR, LLC**  
- 101 E. Park Blvd., Ste 600 - 75074 - Plano,  
Texas – US

Represented by Thomas Lynker

DEFENDANTS

- 1) **Texas Instruments Incorporation**  
- 12500 TI Blvd - 75243 - Dallas – US  
  
Represented by Klaus Haft
- 2) **Texas Instruments Deutschland GmbH**  
- Haggertystr. 1 - 85356 - Freising – DE  
  
Represented by Klaus Haft
- 3) **Texas Instruments EMEA Sales GmbH**  
- Haggertystr. 1 - 85356 - Freising – DE  
  
Represented by Klaus Haft

## PATENT AT ISSUE

European Patent No. EP 2 746 957

## PANEL/DEVISION:

Panel of the Local Division in Mannheim

## DECIDING JUDGES:

This order was issued by the presiding judge Tochtermann, the judge-rapporteur Böttcher, the legally qualified judge Zana and the technically qualified judge Scilletta.

## LANGUAGE OF PROCEEDINGS: English

## SUBJECT-MATTER OF THE PROCEEDINGS: Patent infringement action – R. 158, R. 333 RoP

## BRIEF SUMMARY OF THE FACTS:

Claimant is seeking review of an order in which the judge-rapporteur ordered it to provide security for costs pursuant to R. 158 RoP (App\_20197/2025).

Before the statement of claim had been served on the Defendant 1, the Defendants 2 and 3 filed a request for security for costs pursuant to Art. 69(4) UPCA, R. 158 RoP (App\_29561/2024).

In their request, the Defendants 2 and 3 argued that there are tangible reasons that the Defendants will not be able to enforce and/or collect a claim for cost reimbursement against the Claimant. First, in the absence of international treaties facilitating the enforcement of a decision in the case at hand in the USA, Claimant's domicile, it would be burdensome to enforce a claim for cost reimbursement. Second, there were reasons to believe that Claimant will not have adequate funds to cover the reimbursement of legal costs and other expenses. Claimant seemed not to have income from an operative business but seemed to have been founded only recently on 6 January 2023 as special purpose entity that lives as a licensing company on the basis of third-party investor funds which are provided to fund the Claimant's litigation business in order to achieve returns from potential license fee payments or settlements. There were no indication that the funding agreements provide for funding to cover claims for reimbursement of costs in the event of a loss of the case. Claimant seemed not to have any true place of business given that it has its seat at a co-working space. Moreover, Claimant's alleged representative Tacitus Technology Ventures LLC also had its seat at a (different) co-working space.

The Claimant opposed the request. It argues that Defendants 2 and 3 did not bring forward sufficient facts and arguments that give rise to fears that any claim for reimbursement of costs cannot be satisfied or that, despite sufficient financial resources, enforcement of a decision on costs appears to be impossible or subject to particular difficulties. In particular, it were not relevant, let alone sufficient that Claimant's domicile is in the US. None of the reasons brought forward ("no operative business", "Claimant only founded immediately before starting litigation", "doing business in a co-working space", "having a representative that does business in a co-working space") could establish a risk of lack of financial resources. If it were relevant whether a company has an operative business and/or rents separate office space on a permanent basis, the UPC would have to order every non-practicing entity filing a patent infringement action to provide security. These circumstances as such were not relevant for the question whether a company has sufficient funds to reimburse litigation costs or whether there is a risk of insolvency. Otherwise, no

“start-up company” would ever be able to initiate litigation without providing security. In the past, there had been numerous companies being domiciled in the EU, having no operative business, founded only before the start of litigation and operating from co-working spaces, which started litigation before German national courts without having been ordered to provide security for costs. There were no valid reason to treat the Claimant differently. Contrary to Defendants’ 2 and 3 unfounded speculation, Claimant is not dependent on third party investors. Rather, it was established as a wholly owned subsidiary of an investment company and acquired the patent-in-suit from NXP along with 9 other patent families. It had sufficient financial resources, through financial arrangements with its parent Company (which is different from its manager Tacitus Technologies Ventures LLC that is comparable to any other CEO), to pay the legal fees and expenses for the proceedings at hand, as well as for any other proceedings in the future.

The Defendants 2 and 3 requested (App\_29561/2024)

- I. to order the Claimant to provide adequate security for legal costs and other expenses incurred by the Defendants which the Claimant may be liable to bear;
- II. to issue a decision by default against the Claimant if the Claimant fails to provide adequate security within the time limit set by the Court.

The Claimant requested

to dismiss the application of Applicants to order the Respondent to provide adequate security for legal costs and other expenses incurred by the Applicants which the Respondent may be liable to bear.

For further details, it is referred to the parties’ brief (App\_29561/2024).

In parallel to the request for security for costs, as a precautionary measure, in case the Claimant disputes that, under the relevant investment agreement(s) the investors of Claimant will not agree to provide funds for expenses which promise no return and, in fact, represent an additional loss (e.g., payment of Defendants’ litigation costs), the Defendants 2 and 3 filed a request pursuant to R. 190 RoP aiming at the production of such agreement(s) between Claimant and its investor(s) which specify the purpose for which the funds provided by said investor(s) are requested and applied (App\_34952/2024). The Claimant opposed the request, thereby arguing that the request constitutes a non-permissible fishing expedition and that there are no funding agreements between it and third party investors relating to the present infringement proceeding given that Claimant is a fully owned subsidiary of an investment company. For further details, reference is made to the respective workflow (App\_34952/2024).

On 16 October 2024, the former judge-rapporteur issued an order ordering the Claimant to provide security in an amount of EUR 600.000, corresponding to the ceiling for recoverable costs as adopted by the decision of the Administrative Committee on 24. April 2023, based on the value in dispute of the infringement action. In the order, leave to appeal was refused.

Upon Claimant’s request for discretionary review pursuant R. 220.3 RoP, the standing judge of the Court of Appeal allowed the request for discretionary review on the question whether the judge-rapporteur could decide alone on security for costs of a party and deny leave to appeal. The leave to appeal did not extend to the substantive matter of security for costs in the impugned order. The Court of Appeal (UPC\_CoA\_651/2024) then set the order aside and referred the case back because the judge-rapporteur was not competent to decide on leave to appeal but only the panel when deciding on a request for review pursuant to R. 333 RoP of the judge-rapporteur’s order on the

request for security for costs. Since the time period for requesting such a panel review had expired without the Claimant being to be blamed for turning to the Court of Appeal with a request for discretionary review pursuant to R. 220.3 RoP instead of turning to the panel for review pursuant to R. 333 RoP because the impugned order conveyed the impression that the outcome was final, the Court of Appeal did set aside the impugned order not only with regard to the decision on leave to appeal but in total.

On 11 April 2025, the current judge-rapporteur re-issued the original order of 16 October 2024 to give Claimant the opportunity to file a request for review pursuant to R. 333 RoP (ORD\_17844/2025, related workflow to App\_29561/2024).

For further details, reference is made to the order of 11 April 2025. The order was served on Claimant the same day.

On 28 April 2025 (Monday), the Claimant filed the request for review at hand (App\_20197/2025).

In its request, the Claimant argues that Defendants did not bring forward any financial information on Claimant and thus did not demonstrate that there is real concern that the costs might not be recoverable. In this respect, the case at hand differed from the case in the order of the Court of Appeal of 17 September 2024 (UPC\_CoA\_218/2024, 220/2024, 222/2024). Therefore, in its opinion, the Claimant was not obliged to elaborate further on its financial situation. Apart from that, the impugned order failed to exercise discretion with regard to the amount of the security properly. Contrary to the impugned order, the Claimant had not suggested to set the amount at the maximum amount of the recoverable costs but rather left the amount to the LD's discretion, merely emphasizing that the ceilings for recoverable costs provide guidance as to the maximum amount of recoverable costs and that these ceilings are therefore indicative as to the appropriate amount of security. The impugned order did not provide any reason as to why an amount of (e.g.) 50 % of the maximum recoverable cost would not be sufficient as it were customary case law of other Local Divisions given that the amount could be increased in the course of the proceedings if necessary.

The Defendants oppose the request. They argue that the case at hand is comparable to the case of the Court of Appeal's order of 17 September 2024. The specific facts investigated and brought forward by Defendants ("no operative business", "investor funds likely not available for cost reimbursement", "Claimant found immediately before starting litigation", "Claimant doing business in a co-working space", "Claimant's representative Tacitus Technology Ventures LLC residing in a co-working space") were as substantiated as they can be on the basis of publicly available information and gave rise to a legitimate and real doubt concerning Claimant's financial capacity. In particular, Claimant's response that there were no funding agreements between it and third-party investors even reinforced such concerns. Quite apparently, the Claimant entity had not been set up as a durable enterprise that intends to do business, but solely for providing a legal "shell" to start litigation. Apart from this, it made no difference whether the investor is Claimant's parent company or a third party. None of them were obligated to provide funds for expenses which promise no return and, in fact, represent an additional loss (e.g., payment of Defendants' litigation costs) at a time when the investment has already failed (i.e., the Claimant's action is dismissed). The Claimant failed to provide sufficient information about its financial capacity as required. In Defendants' opinion, the amount of security is appropriate.

The Claimant requests

- I. to review and set aside the Procedural Order of the Court of First Instance of the Unified Patent Court - Local Division Mannheim issued on 11 April 2025 (ORD\_17844/2025 in ACT\_14978/2024, UPC\_CFI\_132/2024, concerning App\_29561/2024) ordering Claimant to provide a security in an amount of EUR 600,000 (R. 333 RoP); and
- II. to dismiss the application of Defendants 2) and 3) of 11 June 2024 to order Claimant to provide adequate security for legal costs and other expenses incurred by Defendants 2) and 3) which Claimant may be liable to bear; and
- III. in the alternative, if the Court does not dismiss the application to order Claimant to provide security, to lower the amount of security to a maximum amount of EUR 300,000.

The Defendants request:

- I. refuse Claimant's requests I.-III., and
- II. confirm the case management order ORD\_17844/2025 of the Judge Rapporteur dated 11 April 2025.

For further details, it is referred to parties' briefs (App\_20197/2025).

REASONS FOR THE ORDER:

The admissible request for review is unfounded. The panel confirms the order of the judge-rapporteur on the basis of the same considerations.

1. As not disputed by the parties, the impugned order of 11 April 2025 (by referring to the original order of 16 October 2024) is based on correct legal standards.

When exercising its discretion under Art. 69(4) UPCA and R.158 RoP, the court must determine, in the light of the facts and arguments brought forward by the parties, whether the financial position of the claimant gives rise to a legitimate and real concern that a possible order for costs may not be recoverable and/or the likelihood that a possible order for costs by the UPC may not, or in an unduly burdensome way, be enforceable. 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 in a substantiated manner, especially since that party will normally have knowledge and evidence of its financial situation. It is for the claimant to argue that and why a security order would unduly interfere with its right to an effective remedy (cf. Court of Appeal, order of 17 September 2024, UPC\_CoA\_218/2024, 220/2024, 222/2024, paras. 7 et seq.). The defendant's burden of demonstration and proof with regard to foreign law applicable in the territory where the possible order for costs is to be enforced also encompasses the foreign law's application (cf. Court of Appeal, order of 29 November 2024, UPC\_CoA\_548/2024).

2. Applying these principles to the case at hand results in the Claimant being ordered to provide security for costs.

The Defendants have presented facts and reasons in a credible matter that raise legitimate and real concerns that costs may not be recoverable.

The Claimant does not dispute the facts invoked by the Defendants that it has no operative business, that it was only recently founded, that it resides in a co-working space on a non-permanent basis and that it is a licensing company that had received investment funds to acquire patents and, if necessary, litigate in order to exploit them commercially.

None of the circumstances invoked by Defendants is sufficient on its own to justify the ordering of security. In particular, the fact that the Claimant is a non-practicing entity and a licensing company is not sufficient in itself. However, taken together, the instant facts give rise to legitimate and real concerns that a possible order for costs reimbursement may not be recoverable. In particular, having no operative business implies that there is no current own revenue. Indeed, the Claimant does not assert that it has already regular, recurrent income such as license fees to cover its ongoing operating costs. In addition, Claimant did not clearly state that the financing or enforceable financing commitments provided by its parent company are sufficient to cover claims for reimbursement of costs if the infringement action should be not successful. The vague statement in Claimant's reply to the request for security for costs that Claimant "has sufficient financial resources, through financial arrangements with its parent Company, to pay the legal fees and expenses for the proceedings at hand, as well as for any other proceedings in the future", is too vague to entail any negative consequences for Claimant's legal representatives should the Claimant finally fail to reimburse Defendants' costs. It remains unclear whether Claimant's parent company has an enforceable obligation to bear the litigation costs incurred by and reimbursable to successful opposing parties. The Claimant's reference to "[it owning] intangible assets in the form of various patent families (the value of which would already be sufficient to cover Applicants' legal costs)" is also vague. In the absence of further explanations, the parent company naturally has a considerable interest in not providing the Claimant with sufficient funds to cover the costs of losing the case. In this context, the fact that Claimant operates from a co-working space rather than establishing a permanent place of business or operating from the offices of its parent company is a warning sign in the absence of further explanation. Maintaining the place of business in a co-working place avoids commitment and may indicate that the business is not intended to be permanent. In addition, a non-permanent place of business may make it more difficult to enforce claims. At the same time, not using the parent company's premises avoids the appearance of a dependent activity, an appearance, which, as the case may be, could be detrimental to the parent company in the event of Claimant's insolvency.

Moreover, the Claimant did not allege that, contrary to Defendants, there were more financial information about Claimant publicly available that the Defendants could have put forward.

Against this backdrop, the circumstances invoked by the Defendants, when viewed as a whole, constitute a legitimate and real concern that Defendants' cost may not be recoverable in the event that Claimant's infringement action is not successful. Therefore, in accordance with the principles outlined above, the Claimant was obliged to elaborate further on its financial situation and failed to do so.

The fact that the Claimant was able to provide the security as ordered does not alter the result. It is not sufficiently excluded that the funds were only made available in order not to endanger the continuation of the proceedings.

Taking all circumstances of the individual case into account, the balance of the parties' interests tilts in favour of the Defendants. As discussed supra, there is a considerable risk that the

Defendants may not be able to recover their costs. On the other hand, the Claimant did not bring forward any specific fact why the obligation to provide security for costs would unreasonably deny its access to justice in the specific case at hand. In fact, the Claimant did provide the security and was nevertheless able to file a request for the exchange of further written pleadings pursuant to R. 36 RoP and to apply for leave to amend the case pursuant to R. 263 RoP in order to introduce a further product as infringing. The fact that providing and maintaining of the security at hand involves costs does not outweigh Defendants' interests in obtaining such a security for costs.

3. The panel also confirms the amount of the security, i.e. EUR 600.000, taking the interests of the parties and the circumstances of the individual case into account.

The parties rightfully do not oppose that, when determining the amount of the security, the judge-rapporteur considered the infringement action in total and not only the part that relates to the Defendants 2 and 3. The reason why the request for security for costs was originally filed only by the Defendant 2 and 3 is obviously that, at that time, the statement of claim had not yet been served on the Defendant 1. However, the request of Defendants 2 and 3 related to a security for costs for all Defendants belonging to the same group of companies (cf. "security for legal costs and other expenses incurred by the Defendants which the Claimant may be liable to bear"). In this particular situation where the service on another company within the group is underway and imminent, there are no concerns to consider the Defendants 2 and 3 to be authorized to request security also in favour of the Defendant 1. Apart from that, the Defendant 1 confirmed at the latest in Defendants' joint statement on Claimant's request for review that the security is also intended to cover the costs incurred in the proceedings in relation to the Defendant 1. At least, this joint statement has to be interpreted as meaning that the Defendant 1 is now joining the Defendants' 2 and 3 request. At the current stage of the proceedings, at least according to the legal rationale of R. 102.1, R. 331.2 RoP, the panel has the power to decide on such request.

The panel has no doubt that the costs incurred by the Defendants are likely to reach an amount of EUR 600.000 given that the proceedings at hand are complex and that the Claimant had introduced new aspects with regard to the alleged infringement in its reply and – at the time of the issuance of the impugned order of 11 April 2025 – had already requested to allow the exchange of further written pleadings pursuant to R. 36 RoP. In addition, the Defendants filed a counterclaim for revocation for which the security also has to cover potential recoverable costs (cf. LD Munich, order of 3 July 2025, UPC\_CFI\_149/2024). Against this backdrop, it is not decisive that an amount of EUR 600.000 is not too high in the light of Defendants' (and Claimant's) preliminary estimation of legal costs pursuant to R. 104(k) RoP and whether such new information, which was not available at the time the impugned order was issued, can be taken into account in proceedings under Rule 333 RoP.

It is not apparent that the amount of the security would unreasonably hinder the Claimant in the enforcement of its patent. In fact, the Claimant has already deposited the security.

4. Leave to appeal is not granted. The order merely applies the principles already clarified by the Court of Appeal to the individual case.

5. Since the request for security for costs is successful, the Defendants' 2 and 3 request pursuant to R. 190 RoP (App\_34952/2024) is void of purpose. There is no indication that the Defendants also wish to obtain the agreements in this case. There would also be no legitimate interest in doing so.

## ORDER

1. The Claimant's request to review the order dated 11 April 2025 (ORD\_17844/2025) is rejected.
2. Leave to appeal is refused.

### INFORMATION ABOUT APPEAL:

The present order may either

- be the subject of an appeal by any party which has been unsuccessful, in whole or in part, in its submissions together with the appeal against the final decision of the Court of First Instance in the main proceedings, or
- be appealed by any party which has been unsuccessful, in whole or in part, in its submissions at the Court of Appeal with the leave of the Court of First Instance within 15 days of service of the Court of First Instance's decision to that effect (Art. 73(2)(b) UPCA, R. 220.2, 224.1(b) RoP)

### ORDER DETAILS

Order no. ORD\_20443/2025 in ACTION NUMBER: ACT\_14978/2024

UPC number: UPC\_CFI\_132/2024

Action type: Infringement Action

Related proceeding no. Application No.: 20197/2025

Application Type: APPLICATION\_ROP\_333

Issued in Mannheim on 12 September 2025

## **NAMES AND SIGNATURES**

Presiding judge Tochtermann	
Legally qualified judge Böttcher	
Legally qualified judge Zana	
Technically qualified judge Scilletta	