



Reference number:  
UPC\_CoA\_681/2025

**DECISION**  
**of the Court of Appeal of the Unified Patent Court**  
**issued on 1 October 2025**

**HEADNOTE**

A request for an order to lay open books forms part of the procedure for the determination of the amount of damages and compensation, which is governed by Chapter 4 of Part 1 RoP (see R. 131.1(c) and R. 141 to 144 RoP). A party filing such a request is liable for both the fixed fee and the value-based fee for the determination of damages.

**KEYWORDS**

Appeal; Court fee for an application for the determination of compensation

**APPELLANTS (APPLICANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)**

- 1. Bruker Spatial Biology, Inc.**, Seattle, WA, USA
- 2. Luxendo GmbH**, Heidelberg, Germany
- 3. Bruker Nederland B.V.**, Leiderdorp, Netherlands

hereinafter jointly: Bruker

represented by attorney-at-law Oliver Jan Jüngst, Bird & Bird LLP, assisted by other representatives of this firm

**RESPONDENTS (RESPONDENTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)**

- 1. 10x Genomics, Inc.**, Pleasanton, CA, USA
- 2. President and Fellows of Harvard College**, Cambridge, MA, USA

hereinafter jointly: 10x

represented by attorney-at-law Prof. Dr. Tilman Müller-Stoy, Bardehle Pagenberg

**PANEL AND DECIDING JUDGES**

Panel 1a

Klaus Grabinski, presiding judge and President of the Court of Appeal  
Peter Blok, legally qualified judge and judge-rapporteur  
Emmanuel Gougé, legally qualified judge

## LANGUAGE OF THE PROCEEDINGS

English

## IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Munich Local Division, dated 16 July 2025
  
- Reference numbers:  
UPC\_CFI\_2/2023

## SUMMARY OF FACTS AND REQUESTS OF THE PARTIES

1. On 1 June 2023, 10x filed an application for provisional measures against Bruker (at that time named NanoString Technologies Inc., NanoString Technologies Deutschland GmbH and NanoString Technologies Netherlands B.V.) with the Munich Local Division for infringement of European patent 4 108 782 (“the patent at issue”).
2. On 31 August 2023, 10x filed an infringement action against Bruker with the Munich Local Division for infringement of the patent at issue. Bruker filed counterclaims for revocation.
3. By order of 19 September 2023, the Munich Local Division granted 10x’s application for provisional measures. It ordered – in summary – that Bruker cease and desist from infringing the patent at issue.
4. On appeal by NanoString, the Court of Appeal by order of 26 February 2024 revoked the order of the Munich Local Division of 19 September 2023 and rejected the application for provisional measures.
5. On 25 February 2025, Bruker filed an application under Art. 60(9) UPCA and R. 213.2 RoP with the Munich Local Division seeking compensation for the damage caused by the provisional measures (“the application for compensation”). Bruker requested, inter alia, that the Court:
  - establish that 10x is liable for the damage caused by the provisional measures;
  - order 10x to pay € 28,124,000 as an interim award of damages; and
  - order 10x to lay open its books.In addition, Bruker requested that the Court reimburse in full the Court fee of €253,000 which it had paid for the application for compensation. Regarding the Court fee reimbursement, Bruker argued – in summary – that the Court fee for its R. 213.2 application was included in the Court fee paid by 10x for the application for provisional measures. It submitted that R. 370 RoP and the Table of Fees do not provide for any additional Court fee for an R. 213.2 application.
6. On 14 May 2025, Bruker informed the Munich Local Division that the parties had reached a settlement. Subsequently, 10x applied to withdraw the infringement action. Bruker also applied to withdraw the counterclaims for revocation as well as the application for compensation. In connection with its request to withdraw the application for compensation, Bruker reiterated its request that the Court reimburse all Court fees paid for the application for compensation.
7. By its order of 16 July 2025 (“the impugned order”), the Munich Local Division permitted the withdrawal of the infringement action, the counterclaims for revocation and the application for compensation. It

ordered reimbursement of the Court fees for the application for compensation in the amount of €151,800 (60% of the amount paid by Bruker).

8. Bruker filed an appeal against the part of the impugned order limiting the reimbursement of the Court fee for the application for compensation to 60%. It requests that the Court of Appeal revoke that part of the order, reimburse Bruker 100% of the Court fees paid and instruct the Registry to make an additional payment of €101,200 (40% of the fee paid). In addition, it requests that the Court of Appeal refund the Court of Appeal fee of €3,000 and refrain from issuing a cost decision for the appeal.
9. By its procedural order of 15 August 2025, the Court of Appeal gave 10x the opportunity to inform the Court whether it wished to file a Statement of response, noting that, if 10x did not wish to file a Statement of response, the Court would decide the appeal on the basis of Bruker's written appeal statement alone, without an interim procedure and oral hearing, as requested by Bruker. In response, 10x informed the Court that it did not wish to file a Statement of response. The appeal is therefore decided solely on the basis of Bruker's written appeal statement.

#### GROUNDS FOR THE DECISION

##### *Admissibility*

10. The impugned order, including the partial rejection of Bruker's request for reimbursement of Court fees, must be considered appealable under R. 220.1(a) RoP, as it terminates the infringement action, the counterclaims for revocation, and the proceedings relating to the application for compensation. The appeal is therefore admissible.
11. The fact that the Munich Local Division issued the impugned order as an order rather than a decision, does not alter the assessment. The heading chosen by the Court of First Instance is not decisive for determining the admissibility of an appeal against an order or decision.

##### *Merits*

12. For the following reasons, the appeal is not well-founded.
13. Bruker's assertion that the Rules of Procedure do not provide for a separate procedure for the determination of compensation and that there is no fee applicable for such applications is incorrect.
14. In its application, Bruker submitted a request for an order to lay open books for the purpose of determining the amount of compensation pursuant to R. 213.2 RoP. Such a request forms part of the procedure for the determination of damages and compensation, which is governed by Chapter 4 of Part 1 RoP (see R. 131.1(c) and R. 141 to 144 RoP).
15. R. 125 RoP expressly provides that the determination of compensation pursuant to R. 213.2 RoP is included in the determination of the amount of damages that may be the subject of the separate proceedings provided for in Chapter 4 of Part 1 RoP. The fact that R. 213.2 RoP refers to R. 354.2 RoP, which in turn stipulates that R. 125 RoP shall apply *mutatis mutandis*, confirms that this chapter applies to the determination of the amount of compensation pursuant to R. 213.2 RoP.

16. One of the rules that apply to proceedings for the determination of damages is R. 132 RoP, which states that the applicant must pay the fixed fee and, where applicable, the value-based fee for the determination of damages in accordance with Part 6 RoP. Part 6 RoP includes R. 370.2 RoP, under which a fixed fee and a value-based fee shall be paid for an application to determine damages within the meaning of R. 132 RoP (R. 370.2(e) and 370.3 RoP). Accordingly, a party submitting a request to lay open books for the purpose of determining the amount of compensation pursuant to R. 213.2 RoP is liable for both the fixed fee and the value-based fee for the determination of damages. The applicable fees are specified in the Table of Fees adopted by the Administrative Committee pursuant to Art. 36(3) UPCA (R. 370.1 RoP).
17. For the same reasons, Bruker's view that the costs of its application for compensation are covered by the costs of the provisional measures proceedings is incorrect. Applications for the determination of the amount of compensation pursuant to R. 213.2 RoP are decided in separate proceedings governed by Chapter 4 of Part 1 RoP. Therefore, a separate fee is required.
18. Bruker's argument that R. 125 et seq. RoP relate to separate "quantum proceedings" and are thus not relevant to the proceedings for establishing 10x's liability for the damage caused by the provisional measures cannot succeed either. As considered above, Bruker in its application submitted a request for determination of the amount of compensation, in particular a request to lay open books within the meaning of R. 131.1(c) and R. 141 to 144 RoP. Bruker must pay the fee required for such "quantum proceedings". The fact that Bruker combined this request with a request to establish liability does not alter the assessment. Although Bruker was permitted to include such a request in its application for the determination of compensation, this does not entitle it to pay a reduced fee or no fee.
19. Bruker's contention that requiring a Court fee for its application for compensation violates the principle of legal certainty is unfounded. As set out above, the RoP and the Table of Fees provide a clear legal basis for the payment requirement.

#### *Appeal fee and costs*

20. Bruker's argument that requiring a Court fee for its appeal violates the principle of legal certainty must fail. The RoP and the Table of Fees provide a sufficiently clear legal basis for this fee requirement.
21. Pursuant to R. 370.5 RoP a fixed fee and, where applicable, a value-based fee shall be paid for an appeal pursuant to R. 220.1(a) RoP, such as the present appeal. The Table of Fees does not provide for a specific Court fee for an appeal pursuant to R. 220.1(a) RoP against a decision on an application for withdrawal of an application for determination of compensation pursuant to R. 213.2 RoP. In the absence of a specific fee, the applicable fee is that for the most comparable case according to the system of the Table of Fees (UPC CoA 2/2024, order of 15 February 2024, Meril vs Edwards). The appeal that is most comparable to the present one is an appeal pursuant to R. 220.1(a) RoP concerning an application to determine damages. This is because the Rules of Procedure treat applications to determine damages and applications to determine compensation pursuant to R. 213.2 RoP in the same way, and the decision on the application for withdrawal terminates the proceedings relating to the application for compensation. Bruker, in fact, paid the fee for an appeal pursuant to R. 220.1(a) RoP concerning an application to determine damages.

22. The Court of Appeal will refrain from issuing an order on the costs of the appeal proceedings, as requested by Bruker.

DECISION

The appeal is rejected.

This decision was issued on 1 October 2025.

Klaus Grabinski, presiding judge and President of the Court of Appeal

Peter Blok, legally qualified judge and judge-rapporteur

Emmanuel Gougé, legally qualified judge