

UPC_CFI_723/2025
Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 6 November 2025

APPLICANT:

Align Technology, Inc., 410 North Scottsdale Road, Suite 1300, Tempe, Arizona 85288, United States

Represented by: John Brunner, European Patent Attorney and registered UPC Representative, and
Agathe Michel-de Cazotte, Avocat à la Cour in Paris, Toque W12 and registered UPC Representative,
each of Carpmaels & Ransford LLP, One Southampton Row, London, WC1B 5HA, United Kingdom

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DEFENDANTS:

1. Angelalign Technology Inc., Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands

2. Angelalign France Technology SASU, 147 Avenue de Malakoff, 75116 Paris, France

3. Europe Angelalign Technology B.V., Herikerbergweg 292, 1101 CT Amsterdam, the Netherlands

4. Angelalign Technology (Germany) GmbH, Wankelstrasse 60, 50996 Cologne, Germany

5. Italy Angelalign Technology S.R.L., Corso Vercelli 40, Milan CAP 20145, Italy

6. Shanghai EA Medical Instruments Co., Ltd., Room 601-603, No. 500 Zhengli Road, Yangpu District, Shanghai, China

Represented by: Arno Riße and Felix Beck, Rechtsanwälte and UPC Representatives,
Arnold Ruess Rechtsanwälte Part mbB, Königsallee 59a, 40215
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Ulrich Storz, European Patent Attorney, and Wanze Zhang,
Rechtsanwältin, Michalski Hüttermann & Partner Patent-anwälte mbB,
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EUROPEAN PATENT No. EP 4 346 690 B1

PANEL/DIVISION: Panel of the Local Division in Düsseldorf

DECIDING JUDGES

This order was issued by Presiding Judge Thomas, legally qualified Judge Dr Schumacher acting on behalf of legally qualified Judge Dr Thom, legally qualified Judge Visser acting as judge rapporteur and technically qualified Judge Dr Papa.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: R. 209.1(a) RoP – Application for provisional measures
R. 158.1 RoP – Security for legal costs

Summary of facts and procedure

1. By document dated 15 August 2025, the Applicant has commenced an Application for provisional measures against the Defendants.
2. By order dated 15 August 2025, the Defendants were invited to lodge an Objection to the Application for provisional measures within one month of service of the Application.
3. Upon request by the parties, by order dated 23 September 2025, the Application for provisional measures was deemed served upon Defendants 1 and 6 as of 23 September 2025 and the time limit for filing an Objection to the Application for provisional measures for all Defendants was set on 23 October 2025.
4. On 23 October 2025, the Defendants filed an Objection to the Application for provisional measures.
5. By order dated 27 October 2025, inter alia, the date for the oral hearing was set and the parties were given the opportunity to submit further written submissions.

Requests

6. In the Objection to the Application for provisional measures the Defendants inter alia request that:

VI. The Applicant is ordered to provide security for legal costs and other expenses incurred to the Defendants in the amount of EUR 400,000 (four hundred thousand euros) either by way of deposit on the UPC account dedicated for security deposits, alternatively by way of bank guarantee issued by a bank licensed in the European Union to be chosen by the Applicant within six weeks from the date of service of this order.

7. In summary, the Defendants argue:

- R. 158.1 RoP applies to proceedings concerning provisional measures.
- The Applicant is located in the United States and thus outside the territory of the member states of the UPCA and the European Union. The same considerations that justify an order for enforcement security apply to the security for legal costs.
- As recognized by the Munich Local Division, proceedings for the recognition and enforcement of a foreign damages award in the United States incur considerable legal costs which, even if successful, could be non-reimbursable by the Applicant in the present proceedings (cf. LD Munich, Order of 27 August 2024, UPC_CFI_74/2024 – Hand Held Products v. Scandit, p. 60). Against this background, provision of adequate security should be ordered.
- The amount of security should be set at half the amount of the ceiling of recoverable costs applicable to the value of in dispute, in line with the court's established case law on this question.
- Based on the value in dispute of EUR 12,000,000 indicated by the Applicant, the applicable ceiling is EUR 800,000. Consequently, the security should be set at EUR 400,000.

8. The Applicant has filed a response to the request for security for legal costs on 3 November 2025. The Applicant requests that the Court rejects the request for security for costs and orders that the Defendants pay the Applicant's costs associated with the response to the request for security.

9. In summary, the Applicant argues:

- The Defendants have not disputed the Applicant's financial position. Furthermore, the Applicant has sufficient financial means to reimburse the Defendants upon a costs order and has assets in many countries, including the European Union territory.
- The Defendants have not demonstrated that Applicant would be likely not to abide a costs order such that a need to enforce through a United States court would arise.
- There are no circumstances that would make recognition and enforcement difficult in this case.
- There is no established case law from the Court of Appeal on the enforcement of an order in the United States. Several UPC Local Divisions have already confirmed that United States courts recognise and enforce foreign and UPC decisions.
- The order by the LD Munich referred to by the Defendants does not apply in this case. This order relates to security for appropriate compensation for any injury pursuant to R. 211.5 RoP. The security for costs only concerns legal costs and other expenses.

Grounds for the order

10. Pursuant to Art. 69(4) UPCA, at the request of the defendant, the Court may order the applicant to provide adequate security for the legal costs and other expenses incurred by the defendant which the applicant may be liable to bear, in particular in the cases referred to in Art. 59 to 62 UPCA. According to R. 158.1 RoP, at any time during proceedings, following a reasoned request by one party, the Court may order the other party to provide, within a specified time period, adequate security for the legal costs and other expenses incurred and/or to be incurred by the requesting party, which the other

party may be liable to bear. Where the Court decides to order such security, it shall decide whether it is appropriate to order the security by deposit or bank guarantee.

11. In the order of 9 July 2025 (CoA_431/2025 APL_23095/2025, Chint v Jingao, para 10 and 11) the Court of Appeal has ruled that 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 how likely it is that a possible order for costs by the Court may not be enforceable, or that enforcement may be unduly burdensome. The burden of substantiation and proof of why an order for security for costs is appropriate in a particular case is on the party applying for security for costs (CoA 17 September 2024, UPC_CoA_218/2024 APL_25922/2024, Audi v NST). To this end, the applicant shall not only provide evidence as to the foreign law applicable in the territory where the order is to be enforced, but also on its application (CoA 29 November 2024, UPC_CoA_548/2024 APL_52969/2024, Aarke v Sodastream). The Court of First Instance has a margin of discretion when deciding on a request for security for costs (CoA 17 September 2024, UPC_CoA_218/2024 APL_25922/2024, Audi v NST).
12. The Defendants have not argued that the financial position of the Applicant gives rise to a legitimate and real concern that a possible order for costs may not be recoverable. The first ground for ordering security therefore does not apply.
13. With regard to the second ground for ordering security - how likely it is that a possible order for costs by the Court may not be enforceable, or that enforcement may be unduly burdensome - the Defendants solely refer to the order of the Munich Local Division of 27 August 2024 (UPC_CFI_74/2024 (Hand Held Products v Scandit) p. 60). They submit that in this order the Munich Local Division recognized that proceedings for the recognition and enforcement of a foreign damages award in the United States incur considerable legal costs which, even if successful, could be non-reimbursable.
14. Paragraph VII.2 on p. 60 of the order of the Munich Local Division of 27 August 2024 reads:

Vorliegend hat die Antragsgegnerin im Termin, anders als die Antragsgegnerin in dem Fall 10x Genomics, vorgetragen, dass ein Verfahren auf Anerkennung und Vollstreckung eines ausländischen Schadensersatztitels in den Vereinigten Staaten von Amerika Prozesskosten in erheblicher Höhe verursache, die selbst bei Erfolg nicht vom Schuldner zu erstatten seien. Die Antragstellerin hat sich hierzu nicht geäußert. Dieser Vortrag der Antragsgegnerin gilt daher im vorliegenden Verfahren als unstreitig (Regel 171.2 VerFO). Da eine vollständige Kompensation des Unterlassungsschuldners geschuldet und sicherzustellen ist, sind derartige nicht erstattbare Prozesskosten, soweit sie in erheblicher Höhe anfallen, zu berücksichtigen. Dieser Gesichtspunkt führt vorliegend dazu, dass die Lokalkammer das ihr eingeräumte Ermessen dahingehend ausübt, eine Sicherheitsleistung anzuordnen.

[English (machine) translation:]

In the present case, unlike the defendant in the 10x Genomics case, the defendant argued at the hearing that proceedings for the recognition and enforcement of a foreign judgment for damages in the United States of America would incur substantial legal costs which, even if successful, would not be reimbursed by the debtor. The applicant did not comment on this. This submission by the respondent is therefore considered undisputed in the present proceedings (Rule 171.2 RoP). Since full compensation is owed to and must be ensured for the debtor, such non-reimbursable legal costs must be taken into account insofar as they are substantial. In the present case, this consideration leads the Local Division to exercise its discretion to order the provision of security.

15. As follows from this paragraph, pursuant to R. 171.2 RoP the Munich Local Division held the statement of fact of the defendant in that case to be true between the parties, since the applicant did not contest it. This cannot be equated to the establishment of facts beyond that specific case and the parties involved. With the mere referral to the order of 27 August 2024 the Defendants have not provided sufficient substantiation and proof of why an order for security for costs is appropriate in this case. The Defendants have not provided any evidence as to the foreign law applicable in the territory where the order is to be enforced, nor have they provided any evidence on the application of such law.
16. Already for the reasons above, the request can not be allowed.
17. A decision on the costs is not necessary at this stage. The costs of the request for security will be addressed in the further proceedings on the Application.

ORDER

18. The request for security for costs is dismissed.

Thomas, Presiding judge	Ronny Thomas Digital unterschrieben von Ronny Thomas Datum: 2025.11.06 09:50:49 +01'00'
On behalf of Legally qualified judge Dr Thom: Legally qualified judge Dr Schumacher	Jule Kathrin Schumacher Digital unterschrieben von Jule Kathrin Schumacher Datum: 2025.11.06 09:55:18 +01'00'

Visser, Legally qualified judge	Marjolein Jeanette Johanna Visser Signature numérique de Marjolein Jeanette Johanna Visser Date : 2025.11.06 10:20:15 +01'00'
Dr Papa, Technically qualified judge	Elisabet ta Papa Firmato digitalmente da Elisabetta Papa Data: 2025.11.06 10:15:29 +01'00'