

ORDER
of the Court of Appeal of the Unified Patent Court
concerning an application for leave to appeal against a cost decision (R. 221 RoP)
issued on 24 December 2025

APPLICANT (DEFENDANT IN THE PROCEEDINGS FOR COST DECISION BEFORE THE COURT OF FIRST INSTANCE)

Suinno Mobile & AI Technologies Licensing Oy, Fabianinkatu 21, 00130, Helsinki, Finland (hereinafter “**Suinno**”)
represented by Petri Eskola, attorney-at-law, Backström & Co Attorneys

RESPONDENT (APPLICANT IN THE PROCEEDINGS FOR COST DECISION BEFORE THE COURT OF FIRST INSTANCE)

Microsoft Corporation, One Microsoft Way, WA 98052-6399, Redmond, USA (hereinafter “**Microsoft**”)
represented by Prof. Dr. Tilman Müller-Stoy and Nadine Westermeyer, attorneys-at-law, BARDEHLE
PAGENBERG Partnerschaft mbB Patentanwälte Rechtsanwälte

PATENT AT ISSUE

EP 2 671 173

DECIDING JUDGE

Emmanuel Gougé, Legally qualified judge and Standing judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Decision of the Court of First Instance of the Unified Patent Court, Central Division, Paris
Seat, dated 6 November 2025
- Reference numbers: UPC_CFI_724/2025
 ACT_34440/2025

FACTS AND REQUESTS OF THE PARTIES

1. On 7 August 2025, Microsoft lodged an application for a cost decision, pursuant to R. 151 RoP, requesting that the Court determine the costs incurred in the infringement action proceedings registered as No. ACT_18406/2024 UPC_CFI_164/2024, including the related appeal proceedings registered as

APL_19133/2025 UPC_CoA_363/2025 (decision by default), APL_55849/2024 UPC_CoA_596/2024 (security for costs) and APL_53716/2024 UPC_CoA_563/2024 (legal representative of Suinno). The respective costs incurred by Microsoft Corporation have been determined in the amount of EUR 350,000.00 by the CFI, which ordered Suinno to pay these costs within three weeks from the date of service of its decision (impugned decision, 06 November 2025).

2. On 19 November 2025, Suinno lodged an application for leave to appeal, pursuant to R. 221 RoP, against the impugned decision, requesting the Court of Appeal to grant leave to appeal the impugned order and to amend the impugned order by lowering the awarded costs from EUR 300,000 to EUR 137,815.80.
3. By the same application for leave to appeal, Suinno asked the Court to grant suspensive effect regarding the impugned order pursuant to R. 223 RoP until the appeal has been decided. The application for suspensive effect was dismissed by the Order of the Standing judge issued on 24 November 2025.
4. On 24 November 2025, the Standing judge provided Microsoft with an opportunity to be heard about the application for leave to appeal. Microsoft submitted its comments, requesting that the application for leave to appeal filed by Suinno against the impugned decision be rejected and that Suinno bears the costs of the proceedings.

GROUND FOR THE ORDER

5. Pursuant 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 set in accordance with the Rules of Procedure.
6. The actual (or final) determination of the costs is subject to separate proceedings for cost decision pursuant to R. 150 RoP. In the proceedings for a cost decision before the Court of First Instance, the judge-rapporteur decides in writing on the costs to be awarded or apportioned in accordance with Art. 69(1) to (3) UPCA (R. 156.2 RoP).
7. The judge-rapporteur who decides on costs will typically have managed the case step by step throughout the various stages of the proceedings. The legal review on appeal is consequently limited to a marginal review of whether the judge-rapporteur's assessment of costs results in the successful party being compensated for legal costs and other expenses beyond what is reasonable and proportionate, or otherwise deviates from the principles inherent in Art. 69(1) UPCA, as specified in R. 150 et seq. RoP (CoA, Order of 3 July 2025, UPC_CoA_153/2025 APL_8639/2025, Tiroler vs SSAB).
8. R. 152.2 RoP provides that the Administrative Committee shall adopt a scale of ceilings for recoverable costs by reference to the value of the proceedings, thus ensuring the applicant can recover reasonable and proportionate costs for representation as set out under R. 152.1 RoP.
9. By reference to the Scale of ceilings for recoverable costs as adopted by the Administrative Committee of 24 April 2023, the Court of First Instance decided that the applicable ceiling is EUR 600,000.00 for a value of the infringement action set at EUR 5,000,000.00. Taking into account the ceiling established by the CFI, it can be considered that the awarded costs of EUR 350,000.00 are proportionate.
10. Moreover, pursuant to R. 370.6 RoP, the assessment of the value of the relevant action shall reflect the objective interest pursued by the filing party at the time of filing the action. In this respect, Suinno did not convince the Court of Appeal that the Court of First Instance was wrong in considering that the costs are "reasonable, as they relate to activities essential for the defence of the infringement claims, and do not exceed the necessary scope for that objective".

11. It is evident from the impugned order that the judge-rapporteur has made a thorough and detailed assessment of the costs considering in particular that costs claimed by Microsoft only on the basis of redacted versions of invoices of a law firm and costs relating to a request for file inspection proceedings were not recognized by the judge-rapporteur and that it is also noted in the impugned decision that the infringement action did not follow the ordinary course of procedure up to the holding of the oral hearing but was terminated earlier, following a decision by default by the Court of Appeal. Against this background, there are no indications that this assessment resulted in the successful party being compensated for legal costs and other expenses beyond what is reasonable and proportionate.
12. The fact that there are two applications for rehearing relating to the appeal proceedings APL_55849/2024 UPC_CoA_596/2024 and APL_19133/2025 UPC_CoA_363/2025 pending before the Court of Appeal is not relevant in the present case.

ORDER

Leave to appeal is denied.

This order was issued on 24 December 2025.

Emmanuel Gougé, Legally qualified judge and Standing judge