



Hamburg - local division

UPC_CFI_730/2025 Decision of the Court of First Instance of the Unified Patent Court, issued on: 05/01/2026

HEADNOTES:

1. In principle, a party is always entitled to be represented before the EPO by a legal representative and a patent attorney jointly, i.e. by two authorised representatives, Art. 48(4) UPCA.
2. However, appeal proceedings under Rule 220.2 RoP concerning a specific procedural issue do not require the involvement of more than one authorised representative, R. 151.1 R.P.
3. The upper limit of reimbursable representation costs cannot be used for the assessment of costs in appeal proceedings under R. 220.2 R.P. concerning procedural sub-issues.
4. A party to the dispute must always be allowed to participate in an oral hearing before the UPC with at least one natural person and to incur the corresponding travel expenses.
5. Even if a party is successful in proceedings for the assessment of costs under Rule 150 of the Rules of Procedure, it must generally bear its own costs incurred in the cost proceedings.

KEY POINTS

Application for a cost decision, Rule 151 RoP; reasonable cost for representation, R. 152 RoP; Article 48(4) UPCA; appeal proceedings pursuant to Rule 220.2 RoP; ceiling of reimbursable costs.

HEADNOTES:

1. In principle, a party is always entitled to be represented before the UPC by a legal representative and a patent attorney jointly, i.e. by two representatives, Art. 48(4) UPC Agreement.
2. However, appeal proceedings under Rule 220.2 of the RoP concerning a specific procedural issue do not require the involvement of more than one legal representative, Rule 151.1 of the RoP.
3. The upper limit of reimbursable representation costs cannot be used for the assessment of costs in appeal proceedings under Rule 220(2) RoP concerning procedural sub-issues.
4. A party to the dispute must always be allowed to participate in oral proceedings before the UPC Agreement with at least one natural person and to incur the corresponding travel expenses.

- Even if a party is successful in proceedings for the assessment of costs under Rule 150 of the RoP, it must generally bear its own costs incurred in the cost proceedings.

KEY POINTS

Application for costs to be fixed, R.151 RoP; reasonable costs of representation, R. 152 RoP; Art 48 (4) UPC Agreement; appeal proceedings pursuant to R. 220.2 RoP; upper limit of reimbursable representation costs.

CLAIMANT

Nera Innovations Ltd.

(Claimant) - Suite 23, The Hyde Building, The Park, Carrickmines - 18 - Dublin - IE

Represented by Dr Thomas Adam

DEFENDANT

1. Xiaomi Communications Co., Ltd.

(Defendant) - No. 019, 9th Floor, Building 6, Yard 33, Xierqi Middle Road, Haidian District - 100085 - Beijing - CN

Statement of claim served on 23/08/2024

Represented by: Eva Acker

2. Xiaomi Inc.

(Defendant) - No. 006, 6th floor, Yard 33, Middle Xierqi Road, Haidian District - 100089 - Beijing - CN

Statement of claim served on

23/08/2024 Represented by: Eva Acker

3. Xiaomi Technology Netherlands B.V.

(Defendant) - Prinsens Beatrixlaan 582 - 2595BM - The Hague - NL

Statement of claim served on

25/04/2024 Represented by: Eva Acker

4. Xiaomi Technology Germany GmbH (Defendant)

- Niederkasseler Lohweg 175 - 40547 - Düsseldorf - DE

Statement of claim served on

25/04/2024 Represented by: Eva Acker

PATENT IN DISPUTE

Patent no.	Owner
EP2642632	Nera Innovations Ltd.

SUBJECT OF THE APPLICATION

Application for assessment of costs (R.151) for the appeal proceedings pursuant to R. 220.2 RoP.

DECIDING JUDGE

judge-rapporteur

Dr Schilling

BRIEF DESCRIPTION OF THE FACTS:

1. In its order of 24 April 2024, the local division rejected the Claimant's application to effect service on defendants 1) and 2) via their German branch, Xiaomi Technology Germany GmbH, Niederkasseler Lohweg 175, 40547 Düsseldorf (UPC_CFI_173/2024, ORD_22417/2024). The local division had stated that, since defendants 1) and 2) are based outside the territory of the contracting states of the UPC Agreement and these companies have neither their registered office, their central administration or principal place of business nor their own permanent or temporary establishment in the contracting states of the UPC Agreement, service must be effected in accordance with Rules 273 and 274 of the RoP. These provisions require at least one initial attempt at service in accordance with Rule 274.1 (a) (ii) and (iii) of the RoP.
2. The claimant lodged an appeal against this on 7 May 2024 in accordance with Rule 220.2 of the RoP. In its order of 6 August 2024 (UPC_CoA_205/2024, APL 24585/2024, GRUR-RS 2024, 28964), the Court of Appeal dismissed the Claimant's appeal after oral proceedings, upheld the order of the local division and left the decision on costs in the relevant appeal proceedings to the final decision of the Court of First Instance.
3. In its decision of 10 July 2025 (UPC_CFI_173/2024), the local division ordered the following in section IV. on the costs:

The Claimant shall bear the court costs of the infringement action. The Claimant shall bear 20% of the court costs of the counterclaim; otherwise, the defendants shall bear the court costs of the counterclaim. The parties shall bear their own costs, with the exception of the costs associated with the appeal proceedings in case No. UPC_CoA_205/2024, APL 24585/2024 concerning the service of the statement of claim, which shall be borne by the Claimant.

4. The decision is not yet final.
5. In the present proceedings for the assessment of costs, the defendants request, in their document of 11 August 2025, that the costs of representation in the appeal proceedings APL_24585/2024 UPC_CoA_205/2024, which are to be borne by the Claimant in accordance with the final decision of the local division, be assessed and that the Claimant be ordered to pay the costs of the proceedings for the assessment of costs. They also seek reimbursement of the proportionate costs of the counterclaim to be borne by the Claimant.
6. They also request the statements and evidence listed in the table on page 5 of the document, which are highlighted in grey or marked as confidential in the application for the assessment of costs (marginal numbers: 2, 3, 12, 16; exhibits FBD-CD 1 and 2) be classified as confidential in accordance with Rules 262.1 and 2 RoP.
7. They argue that they submitted a statement on the partial withdrawal of the Claimant's appeal in the appeal proceedings on 30 May 2024 and a response to the appeal on 3 June 2024. Further costs were incurred in preparation for the oral hearing on
6. June 2024 and participation in the oral hearing. Due to the

Due to the legal complexity of the issue of service, it was necessary to instruct a team of three solicitors to represent the applicant in the appeal proceedings.

8. They argue that the Claimant should bear 20% of the court fees for the counterclaim for annulment in accordance with the decision on costs. They further argue that the Claimant should be ordered to pay the entire costs of the proceedings for the assessment of costs.
9. In his order of 18 August 2025, the judge-rapporteur pointed out that the maximum limit for the legal costs to be set cannot be based on the total value of the dispute before the Court of First Instance, because the only procedural issue at stake in the appeal proceedings was the form of service of the statement of claim. In addition, an appropriate reduction of the cap should be considered, as the case concerned exclusively the partial issue of service. He further pointed out that the application under point 1 only covers the costs of the appeal proceedings, but that the document also seeks a proportionate reimbursement of the court fees incurred in the counterclaim for annulment. There is likely to be no legal basis for the cost assessment proceedings *themselves* to be able to request a cost assessment.
10. The claimant opposed the application and argued that it was partially unfounded and should therefore be dismissed to the extent that it was unfounded. It argued that the permissible cost ceiling should be significantly reduced in this specific case. The subject matter of the appeal proceedings was only a narrowly defined procedural legal issue, namely whether the action could be served on a German branch of a defendant located outside the UPC Agreement Member States. This procedural question is irrelevant for the assessment of the value in dispute, which is regularly based on the economic interest of the Claimant. The decisive factor for the value in dispute is usually questions of patent law, such as interpretation and infringement, as well as licensing or exhaustion issues, which were not at issue here.
11. It believes that it is doubtful that three lawyers incurred representation costs in the amount claimed for a manageable workload of a total of 15 pages of substantive reasoning and a two-hour hearing on a specific procedural legal issue. According to the principle of production, the defendant, as the applicant, bears the burden of proof and presentation for the amount of its costs.
12. Rule 152.1 of the RoP opens up the sole possibility of claiming reimbursement of representation costs in the main proceedings. However, the Rules of Procedure of the UPC do not provide for the reimbursement of representation costs incurred in the context of the independent cost assessment procedure under Rule 150 et seq. of the RoP.
13. Furthermore, in point 1 of their application, the defendants had only requested the assessment of costs for the appeal proceedings (APL_24585/2024 UPC_CoA_205/2024). Insofar as they also seek reimbursement of the court fees advanced for the counterclaim for annulment (CC_42059/2024 UPC_CFI_424/2024), there is no legal basis for this on the basis of the current application.
14. The claimant does not raise any objections to the confidentiality applications. APPLICATIONS BY THE PARTIES:
15. The applicant defendants then request in their document of 8 September 2025 that

1. that the costs of the appeal proceedings to be borne by the Claimant be set at EUR [...] (EUR [...] of which are representation costs)
2. that the Claimant's obligation to bear the costs of the cost assessment proceedings be determined at the discretion of the court, including the costs already incurred, currently amounting to EUR [...], as well as any further costs that may still have to be determined retrospectively,
3. to set the costs of the counterclaim for annulment to be borne by the Claimant at EUR 3,800,
4. order the claimant to pay the amounts assessed to the defendant within the time limit set by the judge-rapporteur.

16. The claimant requests that

1. to dismiss the defendant's application under point 1 insofar as it relates to the determination of representation costs, due to a lack of evidence regarding their origin and amount, insofar as it relates to the determination of court fees in the amount of EUR 3,800.00 in the context of the nullity proceedings; and
2. to reject the defendant's application under point 2; in the alternative, to partially reject the defendant's applications under points 1 and 2 and to reduce the reimbursable costs appropriately at the court's discretion.

REASONS FOR THE ORDER:

17. The admissible application for the assessment of costs is only partially successful.

I. PRINCIPLES

18. Pursuant to Art. 69(1) of the UPC Agreement, the unsuccessful party shall, as a rule, bear the reasonable and proportionate legal costs and other expenses of the successful party, unless equity requires otherwise. The upper limit is determined in accordance with the Rules of Procedure.
19. According to Rules 152.1 and 151.2 of the RoP, the applicant is entitled to recover the reasonable and proportionate costs of representation. The Administrative Committee shall draw up a table of upper limits for recoverable costs based on the value of the dispute. The costs of the legal dispute include the expenses actually incurred in the specific pending or disputed proceedings. These include, in particular, the cost items listed in R. 151(d) of the RoP.
20. According to recital (1) of the Administrative Committee's decision of 24 April 2023 on the table of upper limits, Article 69 of the Convention restricts the general rule that the losing party shall bear the costs of the winning party by a series of exceptions. Article 69 of the Convention restricts the general rule that the losing party must bear the costs of the winning party by means of a series of principles which serve as important safeguards in the court's decision on costs by allowing exceptions to the general rule or limiting its application. The upper limit on recoverable representation costs is only one of the protective provisions against excessive cost recovery and is applied as a last resort in the court's decision on costs. First, only reasonable and proportionate legal costs and other expenses incurred by the successful party can be claimed from the unsuccessful party . In addition considerations of equity may

constitute an independent reason for the non-applicability of the general rule (https://www.unifiedpatentcourt.org/sites/default/files/upc_documents/d-ac_10_24042023_ceiling_d_for-publication.pdf).

21. As a starting point, in order for the costs to be eligible for reimbursement, they must therefore be reasonable and appropriate overall. This must always be assessed on a case-by-case basis. The objectives set out in Articles 3 and 14 of Directive 2004/28 must be ensured, namely to guarantee a high level of protection for European patents and to prevent an injured party from being deterred from taking legal action to enforce their rights (LD Hamburg, UPC_CFI_123/2024, decision of 1 August 2025 – Alexion vs Samsung, para. 20; LD Düsseldorf, UPC_CFI_363/2023, decision of 14 April 2025 – Seoul Viosys vs expert; UPC_CFI_16/2024, decision of 22 April 2025, para. 16 – Ortovox vs Mammut). They also serve to ensure that the measures, procedures and remedies for enforcing intellectual property rights are not unnecessarily costly (ECJ, 28 April 2022 – C-531/20). – NovaText v Ruprecht Karls University of Heidelberg; ECJ, 28 April 2022 – 559/20 – Koch Media v Funke; ECJ, 28 July 2016 – C-57/15 – United Video Properties v Telenet; LD Düsseldorf, UPC_CFI_16/2024, decision of 22 April 2025 Ortovox v Mammut, para. 17). These principles apply equally to the defence of rights.
22. Taking this into account, "reasonable" can essentially be defined as "necessary". For a reasonable and rational party, the decisive factor is whether the actions that caused the costs were objectively necessary and appropriate to achieve the legitimate objective of the proceedings (LD Hamburg, UPC_CFI_123/2024, decision of 1 August 2025 – Alexion vs Samsung, para. 21; LD Düsseldorf, UPC_CFI_16/2024, decision of 22 April 2025 Ortovox vs Mammut, para. 18). The determination of costs is not a question of whether an appeal was reasonable – which, as in this case, may be a matter for the Chamber to decide on the basis of the costs – but whether the expenses incurred in connection with it were objectively necessary and reasonable.
23. The focus of the assessment of appropriateness is primarily on the amount of the costs incurred. According to Rule 152.1, the costs of the action must also be proportionate, i.e. in reasonable relation to the matter at hand. In particular, care must be taken to ensure that they do not exceed the value of the claim, the importance of the case, the difficulty and complexity of the relevant legal and factual issues, and the prospects of success of the measure. An ex ante assessment must be made in this regard (LD Munich (Panel 2), UPC_CFI_696/2024, decision of 19 March 2025 – MSG Maschinenbau vs EJP Maschinenbau, paras. 18 – 22).

II. APPLICATION

24. In accordance with the above principles, the other expenses claimed by the defendants, such as proportionate travel and court costs, are reimbursable as requested, but the costs of legal representation are only reimbursable on a pro rata basis.
 1. Costs of representation in the appeal proceedings
 - a) Representation by legal representatives
25. In principle, a party is always entitled to be represented before the UPC by a legal representative and a patent attorney jointly, i.e. by two legal representatives, Art. 48 (4) UPC Agreement (cf. LD Hamburg, UPC_CFI_123/2024, decision of 1 August 2025 – Alexion vs Samsung, para. 24). While a higher number of legal representatives is also possible

While this may be appropriate in more complex proceedings, not least in order to comply with the strict time limits laid down in the Rules of Procedure, the opposite may also be true when dealing with purely procedural issues, as in the present case. As already pointed out in the order of 18 August 2025, the only procedural issue at stake in the appeal proceedings was the form of service of the statement of claim. For the defence of the defendants in the Claimant's appeal against the Chamber's decision in favour of defendants 1) and 2), an economically minded party would have been represented by *a single* solicitor rather than *three*. While the latter may have been appropriate in the main proceedings concerning the counterclaim for infringement and invalidity, together with applications for alternative amendment of the patent in suit, which is not to be decided here, the present appeal under Rule 220.2 of the RoP concerned only a specific procedural issue. The handling of this issue did not require the involvement of more than one solicitor. This is not altered by the fact that, to date, there has been no completely established legal practice of the UPC Agreement because other local divisions had followed a different practice, since the rules of the Hague Convention as such have been known and clarified for decades; it was only the ranking of individual rules in the UPC Agreement's Rules of Procedure that was in dispute. Nor can anything else be inferred from Art. 48 (4) of the UPC Agreement, since only a non-technical question was at issue here, so that the involvement of a patent attorney – which the Claimant did not claim anyway – was also not appropriate (cf. BeckOK PatR/Kiefer, 38th ed. 15.7.2023, UPC Agreement Art. 69 marginal no. 23).

b) Proportional reduction

26. The legal fees claimed are therefore to be reduced by two thirds to EUR [...]. However, further proof of the costs is not required. Pursuant to R. 156.1 RoP, the judge-rapporteur may request written proof for all costs claimed under this provision. The request for written proof is therefore at the discretion of the judge-rapporteur ("may"). The Claimant did object to the lack of supporting documents. However, in principle, a decision can be made in the cost assessment proceedings even without the submission of written evidence. The judge-rapporteur is only required to order the submission of relevant evidence in cases where the information on costs is not considered plausible and comprehensible (LD Hamburg, UPC_CFI_123/2024, decision of 1 August 2025 – Alexion vs Samsung, para. 25).

27. There was no reason to do so in the present case. The defendants provided sufficient information on the activities of their legal representatives, namely that they submitted a statement on the Claimant's partial withdrawal of the appeal in the appeal proceedings on 30 May 2024 and a response to the appeal on 3 June 2024, and that further costs were incurred for the preparation for the oral hearing on 6 June 2024 and participation in the oral hearing, i.e. including travel time. Against this background, the rate to be calculated for a solicitor is not objectionable and is reasonable in terms of both reason and amount.

c) No application of the upper limit

28. The upper limit for reimbursable representation costs is not applicable in the case in dispute and does not justify a higher reimbursement of solicitor's fees in this case. As explained, the upper limit set by the Administrative Committee is only one of the protective provisions against excessive reimbursement of costs and is to be applied as a last resort. Inappropriate expenses are therefore not reimbursable because the upper limit, even after an appropriate reduction, would be higher than the amount claimed. In the present case, it should again be noted that this administrative provision clearly does not deal with procedural appeals, but only with various

Legal proceedings (see Guidelines for determining court fees and the upper limit for reimbursable costs of 24 April 2024; https://www.unifiedpatentcourt.org/sites/default/files/upc_documents/d-ac_09_24042023_guidelines_d_for-publication.pdf).

29. It is therefore irrelevant that the value in dispute in the infringement proceedings, for which the statement of claim was served in the appeal under Rule 220.2 RoP, had been set by the Chamber at EUR 1.5 million. This is because the value of the appeal proceedings would in any case only amount to a fraction of this value. This is also evident from the fact that the court fee for proceedings of this kind according to Table IV in the schedule of fees amounts to EUR 1,500, which is only around eight per cent of the value of EUR 11,000, plus the additional value-dependent EUR 8,000 for the infringement action at issue.

2. Travel expenses

30. However, the application for reimbursement of travel expenses was granted. From the outset, the claimant only claimed the costs incurred for a lawyer and a natural person from the defendant's company and took into account the two other proceedings before the Court of Appeal, which were heard in parallel, as a mitigating factor. A party to a dispute must always be allowed to participate in an oral hearing of the UPC Agreement with at least one natural person and to incur the corresponding travel expenses (cf. BeckOK PatR/Kiefer, 38th ed. 15 July 2023, UPC Agreement Art. 69 marginal no. 35). In view of the fact that the expenses were already calculated on a pro rata basis at twice EUR [...], a further reduction was not to be made on grounds of fairness.

3. Court fees

31. Court fees paid in advance are refundable under R. 151 (d) of the RoP, depending on the decision on costs. In this case, according to the Chamber's decision on costs of 10 July 2025 in section IV, 20% of the court costs of the counterclaim were to be borne by the Claimant. The court fees paid by the defendants for the counterclaim are therefore reimbursable in this amount, i.e. EUR 3,800.00.

4. Costs for representation in the cost assessment proceedings

32. According to the case law of the UPC Court of Appeal (decision of 6 June 2025, UPC_CoA_618/2024), proceedings for the assessment of costs under R. 150 et seq. of the RoP are summary proceedings decided by a judge-rapporteur. The Rules of Procedure do not provide for the award of reimbursement of additional costs attributable to cost assessment proceedings as such. This would give the parties an incentive to devote considerable resources to these summary proceedings. The Rules of Procedure do not provide for a decision on costs beyond those incurred in the cost assessment proceedings. Even if a party is successful in proceedings for the assessment of costs under Rule 150 of the RoP, it must, as a rule, bear its own costs incurred in the cost proceedings.

III. CONFIDENTIALITY REQUESTS

33. The applications for confidentiality under Rule 262.1 and 2 of the RoP had to be granted. It is established case law of the chambers of the UPC that information on the legal fees incurred constitutes confidential information within the meaning of this provision (see only ZK Paris, order of 8 September 2025, UPC_CFI_724/2025 – Microsoft vs Suinno Mobile, with further references).

ORDER:

1. The claimant shall reimburse the defendant EUR [...] for its representation by legal counsel in the appeal proceedings under case number UPC_CoA_205/2024, APL 24585/2024, as well as additional expenses in the amount of EUR [...] and additional costs incurred by the party in the amount of EUR [...].
2. The court costs to be reimbursed by the Claimant to the defendant for the counterclaim for annulment are set at EUR 3,800.
3. The further applications are dismissed.
4. Each party shall bear its own costs of the proceedings for the assessment of costs.
5. The claimant must pay the amounts assessed to the defendant within one month.
6. The following statements and pieces of evidence, which are highlighted in grey or marked as confidential in the application for the assessment of costs dated 11 August 2025, submitted in App_34587/2025 (pieces of evidence), are classified as confidential (Rule 262.2 RoP):

Marginal numbers: 2, 3, 12, 16, Annex FBD-CD 1 and Annex FBD-CD 2 (information regarding the defendant's costs)

7. It is ordered that the information subject to confidentiality under paragraph 6 shall be subject to an appropriate duty of confidentiality i.e. it must be treated as confidential by anyone who becomes aware of it as a result of their involvement in the present proceedings (as a party, representative, witness, expert, court official or in any other capacity) and may not be used or disclosed outside these court proceedings, unless they became aware of it outside the proceedings;
8. It should be noted
 - a. that the obligation of confidentiality pursuant to clause 6 shall continue to apply even after the conclusion of the court proceedings, unless the disputed information becomes known or readily accessible to persons from circles who normally have access to such information;
 - b. that the information to be treated as confidential in accordance with clause 6 must be treated as confidential by all persons who become aware of it as a result of their involvement in these proceedings (as a party, representative, witness, expert or in any other capacity) and that it may not be used or disclosed outside these proceedings unless they have become aware of it outside the proceedings;
 - c. that in the event of a culpable breach, the court may impose a recurring penalty payment on the obligated party for each breach and enforce it immediately;
9. The information referred to in point 6 shall be excluded from inspection of the files by third parties (Art. 58 UPC Agreement in conjunction with Rule 262.1(b), 262.2 RoP EPG); this also applies to the present order of the court insofar as information requiring confidentiality pursuant to point 6 is discussed directly or indirectly;

10. Before the publication of the grounds for the decision or other announcements, all information contained therein that falls under point 6 shall be excluded from disclosure in accordance with Rule 262.1(a).
262.2 RoP UPC Agreement to be redacted.

INFORMATION ON APPEALS

A party aggrieved by a decision referred to in R. 157 RoP may, within 15 days of service of the decision, file an application for leave to appeal with the Court of Appeal, R. 221 (1) RoP

ISSUED ON 5 JANUARY 2026

Stefan Schilling

Digitally signed by Stefan Schilling
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Legally qualified judge Dr Schilling

- judge-rapporteur -