



Local Division Munich
~~**UPC-CFI-1510/2025**~~
UPC_CFI_1624/2025

Order
of the Court of First Instance of the Unified Patent Court
Local Division Munich
issued on 13 January 2026

Headnotes:

- 1) Where a cost ratio has been determined, both parties are required to lodge, within the time limit, an application for a decision on their respective costs, in accordance with Rule 151 of the Rules of Procedure.
- 2) Failure to comply with the time limit for an application for a cost decision pursuant to R. 151.1 of the Rules of Procedure can only be remedied by re-establishment of rights (R. 320 RoP) (UPC_CoA_618/2024).
- 3) In principle, due care within the meaning of Rule 320.1 of the Rules of Procedure includes knowledge of the legal system and the relevant decisions, in particular those of the Court of Appeal. A represented party must assume responsibility for any fault on the part of their UPC representative.
- 4) For that reason, inadequate knowledge of the law is generally not sufficient grounds for re-establishment of rights.

5) However, in the specific circumstances of the case at hand, the Applicant cannot be accused of misjudging the legal situation, despite being represented by a lawyer.

Keywords:

Re-establishment of rights in the context of a failure to observe a time limit for initiating a procedure for cost decision in the context of a cost ratio; dissenting opinion pursuant to Art. 36 of the Statute.

CLAIMANT

Heraeus Electronics GmbH & Co. KG

Heraeusstraße 12-14 - 63450 - Hanau

represented by: Paul Szynka (CBH)

DEFENDANT

Vibrantz GmbH

Gutleutstraße 215 - 60327 - Frankfurt am Main

represented by: Christian Paul (JONES DAY)

PATENT AT ISSUE

European Patent No. 3 215 288

PANEL/DIVISION:

Panel 1 of the Munich Local Division

PARTICIPATING JUDGES

This order was issued by the presiding judge Dr. Matthias Zigann as judge-rapporteur, the legally qualified judges Edger Brinkman and Tobias Pichlmaier and the technically qualified judge Graham Ashley.

LANGUAGE OF PROCEEDINGS

German

SUBJECT-MATTER

Application for re-establishment of rights according to Rule 320 RoP in the context of a failure to observe the time limit for initiating a procedure for cost decision according to Rule 151 RoP.

SUMMARY OF FACTS AND SUBMISSIONS OF THE PARTIES

On 10 October 2025, the Munich Local Division rendered the following decision regarding the infringement action and the counterclaim for revocation (UPC_CFI_114/2024 and UPC_CFI_448/2024):

1. There is an absolute bar to proceeding with the counterclaim for revocation insofar as, with regard to the German part of the patent at issue, the Federal Patent Court of Germany ruled with final effect in its judgment of 7 November 2023 on lack of patentability as grounds for revocation pursuant to Art. 138 (1) (a) and Art. 52 - 57 EPC. In other respects, there is no absolute bar to proceeding with the action.
2. European patent 3 215 288 is revoked with effect in the French Republic, the Italian Republic and Romania insofar as its subject-matter extends beyond the following wording of claims 1 to 8: [...]
3. In all other respects, the counterclaim for revocation is dismissed.
4. The infringement action is dismissed.
5. All other outstanding applications are rejected.
6. The Defendant shall bear 40 percent of the costs of the proceedings, and the Claimant 60 percent.
7. The amount in dispute in the infringement action is set at EUR 1 million.
8. The amount in dispute in the counterclaim for revocation is set at EUR 1 million.
9. The value of the proceedings is set at EUR 2 million.

In a written pleading dated 10 November 2025, the Defendant, as “Application document Claimant” in proceedings UPC_CFI_114/2024 and UPC-CFI-1510/2025 (ACD Defendant), filed the following application for a cost decision:

I. The Claimant shall pay the Defendant a total of EUR 213,687.92 within 21 days of service of this decision.

II. The court shall reimburse to the Defendant court fees in the amount of EUR 4,000.00.

In a written submission dated 19 November 2025, the Claimant, as “Application document Claimant” in proceedings UPC_CFI_114/2024 (infringement action) and UPC-CFI-1624/2025 (ACD Claimant), responded to that application. The end of that statement reads as follows:

“For the reasons set out above, applying the upper limit and the cost ratio, there remains a difference of 40,000, which the Claimant would have to reimburse to the Defendant. If, contrary to all of the above, the Court were to assume that the costs asserted under point 3, “Expenses”, are reimbursable, even only in part, the following costs of the Claimant would equally have to be taken into account in the context of the costs of the proceedings and apportioned between the parties within the framework of Art. 69 (2) UPCA in conjunction with R. 156 (1) sentence 2 RoP:”

Cost item	Amount
Legal opinion on the French right based on prior use	€ 11,762.67
Legal opinion on the Italian right based on prior use	€ 10,969.71
Scientific opinion from Prof. Dr. Eisele (NiB 25)	€ 6,750.00 (net)
Defendant’s travel and accommodation costs	€ 625.68 (net)
Total	€ 30,108.06

Finally, the Claimant requested that the procedure for cost decisions be stayed until the underlying decision becomes final.

On 1 December 2025, the Defendant replied in UPC_CFI_114/2024 that the Claimant's application for a cost decision was late and that the award of costs requested therein was precluded.

In response, the Claimant filed on 4 December 2025 an application for re-establishment of rights according to Rule 320 RoP in UPC-CFI-1624/2025 (ACD Claimant):

... as a precautionary measure, we request that the Claimant be granted re-establishment of rights pursuant to R. 320.1 RoP with regard to the time limit for the application for a cost decision according to R. 151 RoP, regarding the decision of the Court of 10.10.2025 (UPC CFI 114/2024 + UPC CFI 448/2024).

At the same time, we request that the following costs be set and reimbursed for the Claimant:

Representation costs: € 80,000

Court costs: € 15,000

Other costs: € 30,108.06

Total: € 125,108.06

By way of explanation for the failure to meet the deadline, the Claimant submits and credibly argues that their attorney of record did not note the time limit pursuant to Rule 151 RoP after receipt of the Decision of 10 October 2025, as said representative did not consider the time limit for a “mixed costs ratio” to be relevant. It was only in the evening of 2 December 2025, when the representative became aware of the Defendant’s submission of 1 December 2025, that they first had an indication that there could be preclusion or that the time limit might expire.

In UPC_CFI_114/2025, the Claimant filed a further written submission on 12 December 2025, in which they assert that the Defendant had not submitted a formally effective application for a cost decision because the submission was made as a “Claimant's application for a cost decision”.

By a pleading dated 15 December 2025, the Defendant in UPC-CFI-1624/2025 (ACD Claimant) argued that the Claimant's application for a cost decision was late and that re-establishment was unjustified. They also argued, separately, that the application for a cost decision should not be granted as to the amount.

GROUNDS

The Claimant's application for re-establishment of rights is admissible and well-founded.

I. On 6 June 2025 (UPC_CoA_618/2024), the Court of Appeal ruled that failure to comply with the time limit for an application for a cost decision pursuant to R. 151.1 RoP can only be remedied by re-establishment of rights (R. 320 RoP).

II. The full panel is called to decide on the matter.

According to the German language version of Rule 320.1 RoP, it is for the “maßgebliche Spruchkörper” - i.e. the “authoritative panel” - to rule on the re-establishment of rights. This could be understood as meaning that the judge-rapporteur, who pursuant to Rule 156.2 RoP is the sole deciding and therefore authoritative judge in the cost decision proceedings, must also decide alone on applications for re-establishment of rights in connection with the cost decision proceedings. However, the English language version refers to “the relevant panel of the Court” and the French language version to “la chambre de la Juridiction concernée”. In conjunction with Rule 1.2 RoP, this would indicate that it is the full panel that is competent.

According to Art. 33 (4) of the UPCA, the German, English and French texts are equally authentic. This is to be applied analogously to the Rules of Procedure. The three language versions of the Rules of Procedure were all adopted by the Administrative Committee of the Unified Patent Court with the same claim to validity. In the event of

differences in meaning, and by analogy with Art. 33(4) of the Vienna Convention on the Law of Treaties, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

The aim and purpose of the provision is to ensure justice in individual cases in the event of a loss of rights due to a no-fault failure to meet a deadline. It should be noted, on the one hand, that Rule 370.2 RoP does not provide for the possibility to appeal in such cases and, on the other hand, that the time limit missed in this case is the time limit for initiating a procedure for a cost decision. The time limit therefore relates to the interim period between the announcement of the decision on the merits by the full panel and the initiation of the procedure for a cost decision. However, the sole jurisdiction of the judge-rapporteur is provided only for the decision on the application for a cost decision. This purpose is best achieved by the English and French language versions. This is because the assessment of whether or not the party in question was at fault in missing the deadline, which assessment cannot be contested further, is made hereafter by the full panel and therefore with a higher degree of legitimacy. The “authoritative panel” is therefore the panel that issued the decision on the merits, in its full composition.

This result is in line with the order issued by the Hamburg Local Division on 2 June 2025 (UPC_CFI_58/2024). There, too, the full panel decided on the re-establishment of rights after the deadline according to Rule 151 RoP had been missed.

III. The application for re-establishment of rights is admissible in the opinion of the majority of the panel. In particular, it was filed within the one-month limit stipulated in Rule 320.1 RoP. The omitted act, specifically the filing of the Claimant’s application for a cost decision, was carried out at the same moment and the procedural fee was paid. Furthermore, the reason for the missed deadline was credibly presented as being due to the legal assessment that, due to the

offsetting situation, the Claimant, as the net payer, did not have to submit their own application for a cost decision.

The application for re-establishment of rights is also admissible, as this legal assessment is incorrect.

It is the opinion of the majority of the panel that, where a cost ratio has been determined, both parties are required to lodge, within the time limit, an application for a decision on their respective costs. This is because, within the meaning of Rule 151 RoP, where a cost ratio has been determined both parties are “successful” as they may claim reimbursement of the respective proportion of costs from the other party.

By contrast, it is the opinion of the majority of the panel that the possibility for the other party to comment, as set out in Rule 156.1 RoP and referred to by the Claimant and the dissenting opinion, is limited to raising objections to the cost items listed by the applicant party. However, such objections cannot form the basis for offsetting the other party’s own regularly incurred cost items. Whether there is an exception for unnecessary costs within the meaning of Art. 69 (3) of the Agreement can be left open in the present case. This is because the cost items claimed by the Claimant are regular costs and not costs within the meaning of Art. 69 (3) of the Agreement.

Accordingly, even if their statement of 19 November 2025 could be regarded as a separate application for a cost decision, the Claimant still missed the application deadline of 10 November 2025.

IV. The Claimant's application for re-establishment of rights is – exceptionally – well-founded.

Where a party has failed to observe a time limit set by these Rules or the Court for a cause which, despite all due care having been taken by the party, was outside his control and the non-observance of this time limit has had the direct consequence of causing the party to lose a right or means of redress, the relevant panel of the Court may upon the request of that party re-establish the right or means of redress. (Rule 320.1 RoP).

The standard of care is to be interpreted autonomously. The requirement of “all due care” (“gebotene Sorgfalt”/“toute la vigilance nécessaire”) is in principle met if the party has taken all reasonable precautions to enable it to meet the deadline and the deadline was ultimately missed for a reason beyond the party's control (see LD Hamburg, decision of 2 June 2025, UPC_CFI_58/2024 - Lionra v Cisco).

In principle, this includes knowledge of the legal system and the relevant decisions, in particular those of the Court of Appeal. A represented party must assume responsibility for any fault on the part of their UPC representative.

Although inadequate knowledge of the law is therefore generally not sufficient grounds for re-establishment of rights, the Claimant – exceptionally – cannot be accused of misjudging the legal situation in the specific circumstances of the case at hand, despite being represented by a lawyer.

This is because it is not immediately clear from the Rules of Procedure that, where a cost ratio has been determined, both parties are required to lodge, within the time limit, an application for a decision on their respective costs. As the dissenting opinion also points out, there has to date been no clear and established case law of the Unified Patent Court on this issue:

In proceedings before the Hamburg Local Division, to which the Defendant referred, both parties filed an application for a cost decision following an initial decision on costs with an identical 60/40 cost split. However, the Claimant filed their application late. The Claimant has credibly set out that they had implemented an adequate system for standardized deadline control and monitoring, which is based on the four-eyes principle and is monitored at least on a random sample basis by the attorney of record. The Claimant has credibly argued that, despite the four-eyes principle, the failure to enter the deadline for the application for costs was inadvertently not noted. In that case, re-establishment of rights was granted to the Claimant (see LD Hamburg, decision of 2 June 2025, UPC_CFI_58/2024 - Lionra v Cisco). The decision assumes merely incidentally that the Claimant's application for a cost decision was also necessary.

This particular circumstance has not yet been conclusively dealt with in the literature either. The Defendant cited Plassmann in Tilmann/Plassmann, *Einheitspatent Einheitliches Patentgericht*, 1st Ed. 2024, R. 151, PARA. 2):

“Even if the successful party is referred to in the singular, there can be no doubt that the cost decision relates to the costs of all the successful parties, irrespective of whether they are on the same side or, in the event of partial success, on different sides of the dispute. If the infringement action and the counterclaim for revocation are both dismissed, then each of the two sides is both successful and unsuccessful, so each side can file an application”.

The commentary only mentions that, where a cost ratio has been established, both parties can submit an application, but not that they must submit an application, in order to maintain the possibility of offsetting as net payers.

As set out in Rule 320.7 RoP, this order cannot be challenged. However, publishing the dissenting opinion will make a valuable contribution to the discussion.

ORDER

1. At the Claimant's request, re-establishment of rights is granted to them in respect of the time limit for initiating proceedings for a cost decision.
2. This order cannot be challenged.

Dr. Zigann Presiding judge	
Brinkman Legally qualified judge	
Pichlmaier Legally qualified judge	
Ashley Technically qualified judge	
For the Deputy-Registrar	

DISSENTING OPINION PURSUANT TO ART. 36 OF THE STATUTE OF THE UNIFIED PATENT COURT:

Contrary to the opinion of the majority of the panel (hereinafter: the majority opinion), I would consider this application to be inadmissible due to a lack of legal interest. The Claimant (and Applicant in these re-establishment proceedings) is not seeking a cost decision for themselves (since they are net payers), but rather seeks only to assert their own cost reimbursement portion of 40% as a defence. It is my opinion that this should be admitted in the cost proceedings, thus making re-establishment of rights unnecessary and devoid of legal interest.

In my view, proper legal practice dictates that any defence should be taken into account by the Court unless expressly excluded (e.g. owing to a deadline for submission or a statute of limitation, which I will discuss later). See also Article 76(1) UPCA. In the case of apportionment of costs, this can also be derived from Rule 156.1 UPC RoP. This rule requires the judge-rapporteur to allow the unsuccessful party an opportunity to comment, “including any item of costs that should be apportioned or borne by each party in accordance with Article 69(1) to (3) of the Agreement”. The part quoted after “including” makes it possible, or even mandatory, to consider the costs imposed on or to be borne by each party, and thus also (i) the costs to be borne by the Defendants in the present case and (ii) the costs imposed on the Claimant. The reference in Rule 156.1 to Article 69 UPCA, in particular also to paragraph (2), also mentions any apportionment made, which includes the 40% imposed on the Claimant of its costs. For this reason, I also do not believe that the reference was to only the 60% apportionment on the Defendant. I see nothing in Rule 156.1 RoP or Article 69(2) UPCA to support such a narrow interpretation.

The majority of the panel interprets Rule 151 as prohibiting the Claimant/Applicant from asserting their 40% cost claim because the

deadline for filing the application has passed. I do not agree with that assessment. Rule 151 states that “where the successful party (...) wishes to seek a cost decision”, it must do so within one month of service of the decision. It is clear from the Rules of Procedure and Article 69 UPCA that a “cost decision” means a decision on the reimbursement of costs, i.e. an order to pay a certain amount of money. See also Rule 156.3 in particular. However, in this case the Claimant is not requesting a cost decision. They are not requesting payment. They are only requesting that their 40% portion be used as a deduction from the amount they have to pay to the Defendants (i.e. to be deducted from the Defendants’ 60% share), which corresponds to an estimated net amount of approximately EUR 40,000, which the Claimant therefore has to pay to the Defendants. In the present case, it is also only the Defendants (and not the Claimant) requesting a cost decision.

In addition, the majority opinion would mean that the parties would have to initiate proceedings for award of costs in practically every case in which there is a split allocation of costs, for fear of having to pay without getting anything back. This would be unduly burdensome for both the Court and the parties, and would run counter to Article 41(3) UPCA and the flexibility provided for in preamble 4 of the Rules of Procedure. I do not consider such a narrow interpretation of the regulations to be necessary.

Brinkman
Legally qualified judge