

Decision
of the Court of First Instance of the Unified Patent Court
issued on 2 February 2026
concerning EP 2 697 391 B1

Headnote:

1. Costs incurred in PI proceedings are reimbursable separately, even though the decision on the reimbursability of these costs is to be taken in a uniform cost procedure following the proceedings on the merits. Therefore, the ceilings for the PI proceedings and the proceedings on the merits must be determined separately (follow up to UPC_CFI_121/2025 (LD Düsseldorf), Decision of 22 April 2025, Headnote 2 – Ortovox v Mammut).
2. If the costs of the PI proceedings are reimbursable separately within a ceiling that applies specifically to these proceedings, this also means that the costs of both the PI proceedings and the main proceedings are capped by the applicable ceiling. It is inadmissible to mix the costs of the PI proceedings with those of the proceedings on the merits, or to shift them from one proceeding to the other, even if the results of the PI proceedings may be used in subsequent proceedings on the merits.
3. In the event of partial success, the applicable ceiling shall correspond to the proportion of success of the party seeking cost recovery. Accordingly, in a first step, the reimbursable representation costs must be determined based on the quota set by the Court in accordance with Art. 69 UPCA in conjunction with R. 118.5 RoP. In a second step, the ceiling, which is also reduced in accordance with the quota set by the Court, must then be applied.

Keywords:

Cost decision; PI proceedings; proceedings on the merits; ceiling; no shift of costs

Claimant:

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represented by: Attorney-at-law Prof Dr Tilman Müller-Stoy, Attorney-at-law Dr Martin Drews, Patent attorney Dr Axel Berger, Prinzregentenplatz 7, 81675 Munich, Germany

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DEFENDANT:

Curio Bioscience Inc., 4030 Fabian Way, Palo Alto, CA 94303, USA, represented by its CEO Dr Stephen Fodor, *ibid*,

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PATENT AT ISSUE:

European patent n° EP 2 697 391 B1

PANEL/DIVISION:

Panel of the Local Division in Düsseldorf

DECIDING JUDGES:

This decision was issued by Presiding Judge Thomas acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: ART. 69 UPCA, R. 150, R. 151, 152 RoP – Procedure for cost decision

SUMMARY OF THE FACTS:

1. The Claimant has brought an action against the Defendant for infringing European patent EP 2 697 391 B1 (hereinafter: "patent in suit"), with proceedings being conducted under file number UPC_CFI_140/2024 (ACT_15774/2024). The proceedings on the merits were preceded by proceedings for the order of provisional measures (UPC_CFI_463/2023, ACT_590953/2023, hereinafter: "PI proceedings").
2. In its decision dated 16 June 2025, the Court found an infringement of claim 14 of the patent in suit, issued an injunction on that basis and ordered the Defendant to recall and destroy the infringing products, provide information and to compensate the Claimant for damages. The action was dismissed in all other aspects. Regarding costs, the Court ordered that the costs of the PI proceedings and the proceedings on the merits shall be borne by the Claimant

in an amount of 30 % and by the Defendant in an amount of 70 %. The value in dispute of the PI proceedings was set at € 2,000,000 and the value of the infringement action at € 3,000,000. No appeal against this decision is pending.

3. On 16 July 2025, the Claimant filed an application for a cost decision.
4. The claimed costs are composed as follows:

Recoverable representation costs main infringement action	400.000 EUR
Recoverable representation costs PI proceedings	+ 200.000 EUR
Court fees main infringement action	+ 31.000 EUR
Court fees PI proceedings	+ 11.000 EUR
Sum	642.000 EUR

70% of 642.000 EUR are **449.400 EUR**.

5. According to the Claimant, this calculation is based on the assumption that first the representation costs are to be capped by the ceilings for recoverable costs and then, in a second step, the quotes to be reimbursed are calculated from these recoverable costs. Should the Court, however, understand the ceiling differently in the sense that first the quote of 70 % to be applied to the total amount of representation costs before applying the ceiling, Claimant requests payment based on the following calculation:

70% of representation costs main infringement action	EUR
70% of recoverable representation costs PI proceedings	+ EUR
Subtotal	EUR

This subtotal is then to be capped by the cumulative ceilings of 600.000 EUR.

Recoverable representation costs in total	600.000 EUR
70% of court fees main infringement action	+ 21.700 EUR
70% of court fees PI proceedings	+ 7.700 EUR
Sum	629.400 EUR

6. For details of the calculation, reference is made to Claimant's written pleading dated 16 July 2025.

INDICATION OF THE PARTIES REQUESTS:

7. The Claimant requests

to determine the costs outlined below and to order the Defendant to pay € 449,400 in total to the Claimant.

Alternatively:

to determine the costs outlined below and to order the Defendant to pay € 629,400 in total to the Claimant.

8. The Defendant requests

to order the Defendant to pay € [...] overall for the PI proceedings and the main action.

Alternatively:

to order the Defendant to pay € [...] overall for the PI proceedings and the main action.

9. For details of Defendant's calculation, reference is made to the written pleading dated 13 August 2025.

POINTS AT ISSUE:

10. The Claimant is of the opinion that in the overall calculation for the representation costs in PI proceedings and the proceedings on the merits, the cost ceilings of each proceeding are to be added up to generate an overall ceiling for representation costs in both the PI proceedings and the proceedings on the merits. If a claimant does not reach the cost cap of the main proceedings solely because efforts relevant to the main proceedings were already undertaken as part of the PI proceedings and, when viewed in isolation, the cap in that context would not allow reimbursement, these efforts must still be considered in their entirety for cost reimbursement. According to the Claimant, the cost determination for the PI proceeding as well as the main infringement proceeding should reflect this unity of the PI proceedings and the proceedings on the merits. For this reason, the Claimant states that the representation costs for the PI proceedings and the proceedings on the merits should be considered as a single unit for which the combined ceilings for both apply. Therefore, the Claimant requests that the Court determine € 600,000 as to be recoverable representation costs for both proceedings together. Alternatively, the Claimants suggests that some of the costs incurred for the PI proceedings should be considered as "other expenses" in the main infringement proceedings, since they have not been incurred in the main proceedings, but are directly and closely related to it.
11. In addition to representation costs, the Claimant requests reimbursement of court fees paid by the Claimant for the PI proceedings and the proceedings on the merits, namely 70% of € 11,000 (PI proceedings) and of € 31,000 (proceedings on the merits).
12. The Defendant disagrees with the Claimant's suggestion that the cost ceilings of the PI proceedings and the proceedings on the merits are to be added together to create an overall ceiling of € 600,000 for the representation costs. In this context, the Defendant points out that the Court has set separate ceilings for the PI proceedings and the infringement action.

According to the Defendant, PI proceedings and proceedings on the merits are separate proceedings within the meaning of Art. 32(1) UPCA. Moreover, the Defendant argues that the Claimant's argument would apply to any main action that is preceded by an application for provisional measures. However, the Defendant is of the opinion that the rules and case law clearly do not envisage a joint ceiling, but rather call for separate ceilings. Finally, the Defendant criticises the Claimant's conduct of the proceedings, arguing that it went far beyond what was necessary in the PI proceedings.

GROUND FOR THE DECISION:

13. The Claimant's application for a cost decision is largely justified.

I. Admissibility of the Application for a cost decision

14. There are no concerns regarding the admissibility of the application for a cost decision. In particular, the application for a cost decision was lodged within one month of the decision on the merits being served, in accordance with R. 151 RoP. It was therefore submitted on time.

II. Decision on the merits

1. Principles

15. According 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 in accordance with the Rules of procedure.
16. For representation costs, this principle is specified in R. 152.1 and .2 RoP to the effect that the applicant shall be entitled to recover reasonable and proportionate costs for representation, whereby the Administrative Committee shall adopt a scale of ceilings for recoverable costs by reference to the value in dispute. Regarding expert costs, R. 153 RoP stipulates that the compensation for costs of experts of the parties exceeding the expenses referred to in R. 180.1 RoP shall be based on the rates that are customary in the respective sector, with due regard to the required expertise, the complexity of the issue and the time spent by the expert for the services.
17. The costs of the legal dispute are those that have actually been incurred in the specific pending or disputed proceedings. These include the costs listed in R. 151(d) RoP, in particular. Other costs are those that have not been incurred in the pending proceedings, but which are directly and closely related to them (see UPC_CFI_696/2024 (LD Munich, Panel 2), Decision of 19 March 2025 – MSG Maschinenbau v EJP Maschinenbau; UPC_CFI_363/2023 (LD Düsseldorf, Decision of 14 April 2025 – Seoul Viosys v expert; UPC_CFI_16/2024, Decision of 22 April 2025, mn. 16 – Ortovox v Mammut; UPC_CFI_355/2023 (LD Düsseldorf), Decision of 9 July 2025, mn. 21 – Fujifilm v Kodak).
18. To be eligible for reimbursement, the costs in question must be cumulative reasonable and appropriate, which is always a matter of individual assessment. These criteria are intended to safeguard the objectives set out in Art. 3 and 14 of the Directive 2004/28, namely to ensure a high level of protection for European patents and to prevent an injured party from being deterred from taking legal action to enforce its rights. They also aim to ensure that the measures, procedures and remedies necessary for the enforcement of

intellectual property rights are not unnecessarily costly (ECJU, 28 April 2022 – C-531/200 – NovaText/Ruprecht-Karls-Universität Heidelberg; ECJU, 28 April 2022 – 559/20 – Koch Media/Funke; ECJW, 28 July 2016 – C-57/15 – United Video Properties/Telenet; UPC_CFI_16/2024 (LD Düsseldorf), Decision of 22 April 2025, mn. 17 – Ortovox v Mammut; UPC_CFI_355/2023 (LD Düsseldorf), Decision of 9 July 2025, mn. 22 – Fujifilm v Kodak). This also applies for the legal defence.

19. Taking this into account, “reasonable” essentially means “necessary”. From the perspective of a reasonable and rational party, the decisive factor is whether the measure that incurred the costs was objectively necessary and appropriate for achieving the legitimate object of the proceedings. Therefore, the measure must be relevant to the pursuit or defence of legal rights (UPC_CFI_16/2024 (LD Düsseldorf), Decision of 22 April 2025, mn. 18 – Ortovox v Mammut; UPC_CFI_355/2023 (LD Düsseldorf), Decision of 9 July 2025, mn. 22 – Fujifilm v Kodak).
20. The focus of appropriateness is primarily on the amount of costs incurred. The costs incurred by the necessary measure must not be disproportionate. In particular, they must not exceed the value in dispute, the significance of the case, the difficulty and complexity of the relevant legal and factual issues, and the measure’s prospects of success. An *ex ante* assessment is also appropriate here (UPC_CFI_696/2024 (LD Munich, Panel 2), Decision of 19 March 2025, mn. 18 – 22 – MSG Maschinenbau v EJP Maschinenbau; see also UPC_CFI_363/2023 (LD Düsseldorf), Decision of 14 April 2025 – Seoul Viosys v expert; UPC_CFI_16/2024 (LD Düsseldorf), Decision of 22 April 2025, mn. 19 – Ortovox v Mammut; UPC_CFI_355/2023 (LD Düsseldorf), Decision of 9 July 2025, mn. 21 – Fujifilm v Kodak).

2. Reimbursability in the present case

21. Based on these principles, the Defendant has to reimburse the Claimant a total of €
22. As the Court has already decided, costs incurred in PI proceedings are reimbursable separately, even though the decision on the reimbursability of these costs is to be taken in a uniform cost procedure following the proceedings on the merits. Therefore, the ceilings for the PI proceedings and the proceedings on the merits must be determined separately (UPC_CFI_121/2025 (LD Düsseldorf), Decision of 22 April 2025, Headnote 2 – Ortovox v Mammut).
23. The background to this decision was a case in which the Defendant argued that PI proceedings and the proceedings on the merits constitute a uniform proceeding which is why only a single ceiling, namely that of the main proceedings, could apply. The Court did not follow this approach and considered the costs incurred in the PI proceedings to be separately reimbursable. This requires the determination of a separate ceiling for the PI proceedings (UPC_CFI_121/2025 (LD Düsseldorf), Decision of 22 April 2025, mn. 50 - 52 – Ortovox v Mammut).
24. However, if the costs in the PI proceedings are reimbursable separately within a ceiling that applies specifically to these proceedings, this also means that the costs of both the PI proceedings and the main proceedings are capped by the applicable ceiling. It is inadmissible to mix the costs of the PI proceedings and the proceedings on the merits or to shift them from

one proceeding to the other, even if the results of the PI proceedings may be used in subsequent proceedings on the merits. Rather, it is the applicant's responsibility to ensure that it remains within the ceiling during the PI proceedings. This is all the more true as only reasonable and proportionate legal costs and other expenses incurred by the successful party may be recovered by the unsuccessful party. Therefore, the ceiling on the recoverable representation costs is only one of the safeguards against undue cost recovery (Decision of the Administrative Committee of 24 April 2024 on the scale of recoverable cost ceilings, Preamble, Section 1 - D - AC/10/24042023_E, hereinafter "Administrative Committee's Decision"). Reaching the ceiling is therefore be the exception rather than the rule. In addition, the ceiling is based on the value of the proceedings in question. The Applicant has the power to influence the setting of this value by specifying a value that reflects its actual interest in the proceedings in question, and thus indirectly influence the ceiling, which covers its representation costs or at least for the most parts.

25. In the case at hand, this means that the ceiling of € 200,000 applies for all representation costs in the PI proceedings. This ceiling does not apply for "other expenses" like for example translation costs or the costs for the interpreter in the oral hearing. Such "other expenses" are reimbursable separately. However, since the travel expenses claimed by the Claimant as "other expenses" are only mentioned in general and unspecific terms, their eligibility for reimbursement as "other expenses" cannot be confirmed. Consequently, they are to be regarded as "representation costs" that can only be reimbursed within the ceiling. As the Claimant bears the burden of presentation and proof, it would have had the opportunity to provide further justification that the respective travel costs are not being subject to the ceiling. However, the Claimant failed to do so.
26. Pursuant to R. 152.2 RoP in conjunction with Art. 1(4) of the Administrative Committee's decision, if there is partial success, the applicable ceiling shall correspond to the proportion of success of the party seeking cost recovery. Accordingly, in a first step, the reimbursable representation costs must be determined based on the quota set by the Court in accordance with Art. 69 UPCA in conjunction with R. 118.5 RoP. In a second step, the ceiling, which is also reduced in accordance with the quota set by the Court, must then be applied.
27. The Defendant unsuccessfully objected to the travel costs of Mr [...] and Mrs [...] claimed for the travel and accommodation costs regarding the attendance at the oral hearing. The Claimant cannot be required that all of its party's representatives participate in the oral hearing online. Since the Claimant has limited its participation to two representatives, the number of party's representatives is within the usual range. Furthermore, the claimed expenses are neither disproportionate nor unreasonable. This applies to both the number of Claimant's representatives (two) and the travel expenses incurred by them and claimed in the present case (UPC_CFI_355/2023 (LD Düsseldorf), Decision of 9 July 2025, mn. 27 – Fujifilm v Kodak). Contrary to the Defendant's opinion, the party's travel expenses are not representation costs that are subject to the ceiling. Instead, these costs are „other expenses" that can be reimbursed separately. However, these costs must also be reduced based on the quote set by the Court. In the present case, this means that only 70 % are eligible for reimbursement.
28. Based on these principles, the amount to be reimbursed by the Defendants to the Claimant is calculated as follows:

a) *PI proceedings*

Representation costs	€
Reimbursement quota 70 %	€
Reimbursability taking into account the ceiling reducted by 30 %	€ 140,000.00
Other expenses, reimbursement quota 70 % (item "travel expenses" not taken into account)	€
Court fees, reimbursement quota 70 %	€ 7,700.00
Reimbursement amount PI proceedings	€

b) *Proceedings on the merits*

Representation costs	€
Reimbursement rate 70 %	€
Reimbursability taking into account the ceiling reducted by 30 % (€ 280,000.00)	€
Other expenses, reimbursement quota 70 % (item "travel expenses" not taken into account)	€
Travel costs of the party, reimbursement quota 70 %	€
Court fees, reimbursement quota 70 %	€ 21,700.00
Reimbursement amount proceedings on the merits	€

c) *Result*

Reimbursement amount PI proceedings	€
Reimbursement amount proceedings on the merits	€
Total amount of reimbursable costs	€

29. According to R. 156.2 RoP, the costs shall be paid within the period ordered by the judge-rapporteur. This is reflected in Section 2 of the operative part of this decision.

DECISION AND ORDER:

1. For the provisional measures proceedings (UPC_CFI_463/2023) and the subsequent proceedings on the merits (UPC_CFI_140/2024), the Defendant shall reimburse the Claimant for costs totalling € ...
2. The payment of the costs stipulated in Section 1 shall be made by 16 February 2026.
3. The Claimant's application for a reimbursement of costs is dismissed in all other aspects.

Issued in Düsseldorf on 2 February 2026

NAMES AND SIGNATURES

Presiding Judge Thomas	
For the Sub-Registrar	

INFORMATION ON APPEAL:

A party adversely affected by a decision referred to in R. 157 RoP may lodge an application for leave to appeal to the Court of Appeal within 15 days of service of the decision (R. 221.1 RoP).

INFORMATION ABOUT ENFORCEMENT (ART. 82 UPCA, ART. 37(2) UPCS, R. 118.8, 158.2, 354, 355.4 ROP):

An authentic copy of the enforceable decision or order will be issued by the Deputy-Registrar upon request of the enforcing party, R. 69 RegR.