



Reference no.:
UPC_CoA_887/2025

Order
of the Court of Appeal of the Unified Patent Court
on a R. 265 RoP application and the determination of the value in dispute
issued on 3 March 2026

APPELLANTS (DEFENDANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. **Industriebeteiligungs- und Beratungs GmbH**, Pyrmonter Straße 78, 32676 Lügde, Germany
2. **BEGA-Consult Internationale Handelsagentur GmbH & Co KG**, Siemensstraße 2, 32676 Lügde, Germany
3. **BEGA BBK Sp. z o.o. sp. K**, Poznańska 113A, PL 62-052 Komorniki, Poland
4. **NEG Novex Großhandelsgesellschaft für Elektro- und Haustechnik GmbH**, Chenover Straße 5, 67117 Limburgerhof, Germany

(hereafter “**Bega**”)

represented by Dr. Volkmar Henke, BARDEHLE PAGENBERG Partnership mbB, and other representatives of the same firm

RESPONDENTS (APPLICANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. **Washtower IP B.V.**, Enschedesestraat 300, 7552 CN – Hengelo, The Netherlands
2. **Washtower B.V.**, Enschedesestraat 300, 7552 CN – Hengelo, The Netherlands

(hereafter “**Washtower**”)

represented by Peter van Schijndel, attorney at law, HOYNG ROKH MONEGIER

PATENT AT ISSUE

EP 3 522 755

LANGUAGE OF THE PROCEEDINGS

English

PANEL AND DECIDING JUDGES

Panel 1a

Klaus Grabinski, President of the Court of Appeal
Emmanuel Gougé, legally qualified judge and judge-rapporteur
Peter Blok, legally qualified judge
Michel Abello, technically qualified judge
Paolo Crippa, technically qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Court of First Instance of the Unified Patent Court, The Hague local division, dated 11 September 2025
- Reference numbers:

ORD_36708/2025
ACT_25599/2025
UPC_CFI_479/2025

FACTS AND REQUESTS OF THE PARTIES

1. On 28 May 2025, Washtower filed an application for provisional measures against Bega with The Hague Local Division (hereafter “The Hague LD”) requesting inter alia an order prohibiting the infringement of the patent at issue. The Hague LD granted provisional measures and an order to provide information against Bega in all UPC Member States (impugned order of 11 September 2025).
2. On 13 August 2025, Bega filed a revocation action against EP 3 522 755 before the Central division of Milan (UPC_CFI-742/2025). On 29 October 2025 Washtower filed an action against Bega for infringement of the patent before The Hague LD (UPC_CFI-1339/2025).
3. Bega brought an appeal against the impugned order.
4. On 6 February 2026 Washtower filed an application to withdraw their action for provisional measures under R. 265 RoP and filed requests concerning costs, damages as well as the value in dispute. In additional submissions in response to a procedural order, Washtower confirmed that they consent that Washtower bear the costs of first and second instance of the provisional measures proceedings, and that, pursuant to R. 213.2 RoP, they will be held to compensate damages of the enforced provisional measures (Washtower submissions of 13 February 2026).
5. On 10 February 2026 Bega filed their Statement on the R. 265 RoP application following which they (i) agree to the withdrawal of the action for provisional measures, both at first instance and on appeal, subject to the condition that Washtower bear the costs of the proceedings for provisional measures with the CFI and in the appeal proceedings, and (ii) request that the Court of Appeal determine, pursuant to R. 213.2 RoP, that Washtower has to provide an appropriate compensation for any injury caused to Bega by the provisional measures. In additional comments, Bega requested the value in dispute in the proceedings for provisional measures to be set at € 667.000 or, in the alternative, to a range between € 500.001 and € 1.000.000 (Bega Statement on value in dispute of 16 February 2026).
6. Washtower and Bega consented to decide the present appeal, including the R. 265 RoP application and other pending issues (cost compensation, enforcement damages and value in dispute), without an oral hearing.

GROUNDS

7. As long as there is no final decision in an action, a claimant may apply to withdraw his action (R. 265.1 RoP first sentence). If withdrawal is permitted, the Court shall (a) give a decision declaring the proceedings closed; (b) order the decision to be entered on the register; and (c) issue a costs decision in accordance with Part 1, Chapter 5 (R. 265.2 RoP).
8. On application by Washtower and with the agreement of Bega, the Court of Appeal permits the withdrawal of the action for provisional measures, both at first instance (UPC_CFI_479/2025) and on appeal (UPC_CoA_887/2025) and will declare the proceedings closed.

Legal costs

9. Regarding legal costs, considering that all parties agree that Washtower shall be the parties to bear the costs for the proceedings on provisional measures in the CFI and appeal proceedings, the Court will issue a respective order pursuant to Art. 69 UPCA and R. 265.2(c) RoP.

Damages

10. Considering that the parties have agreed that, pursuant to R. 213.2 RoP, Washtower shall provide appropriate compensation for any injury as a result of the provisional measures granted in the impugned order, the Court will order accordingly.

Value in dispute

11. Pursuant to Art. 69.1 UPCA, reasonable and proportionate legal costs and other expenses incurred by the successful party shall be borne by the unsuccessful party up to a ceiling set in accordance with the Rules of Procedure. 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. On 24 April 2023, the Administrative Committee adopted such a scale of ceilings and issued Guidelines for the determination of the court fees and the ceiling of recoverable costs ("the Guidelines"). An amended version of the Guidelines entered into force on 1 January 2026.
12. When determining the value in dispute in order to assess the level of recoverable costs in an action for provisional measures, the Guidelines (II.5(b)) suggest that, in case of the application for interim relief which is not followed by an infringement action on the merits, the value of an application for interim relief for determining the level of the recoverable costs should be calculated at 66% of the value calculated in accordance with the suggested approach for determining the value in accordance with Section II.1(b) of the Guidelines, which refers to the suggested approach laid down under II.1(a) of the Guidelines concerning the determination of the value for applying the Rules of Procedure on Court fees. This means that the value of an application for provisional measures pursuant to Art. 62 UPCA is 66% of the value of a permanent injunction pursuant to Art. 63 UPCA calculated in accordance with Section II.1(a) of the Guidelines.
13. Although in the present case, an infringement action (UPC_CFI_1339/2025) was filed following the application for interim relief, considering that the method of determining a value-based fee should be as simple as practically possible (Guidelines, Principles, I.1), and also considering that the Court of Appeal is required to order a cost decision in the proceedings for provisional measures as a consequence of the withdrawal of that action (R. 265.2(c) RoP), the Court of Appeal will apply the suggested approach proposed under II.5(b) of the Guidelines by analogy.
14. In the present case, the parties agree that the value in dispute in the infringement action should be set at € 1,000,000. This value concerns however the entire infringement action, comprising an injunction claim, as well as a damage claim and a claim for compensation derived from the provisional protection conferred by the published application for the patent. Considering that the patent application was published in 2019 and the patent was granted in 2025 and will expire in 2037, and that the value of a claim to awarding damages in principle is only 50% of the value of an injunction claim (II.1(a)(3)(i) of the Guidelines), the value of the permanent injunction constitutes the main part of the value of the infringement action, which the Court considers reasonable to be set at 80% of said value. The value of Washtower's application for provisional measures must therefore be set at € 530,000 (a rounded 66% of 80% of € 1,000,000).
15. The fact that, according to Washtower, the provisional measures were aimed at preventing market disruption during a short period of time, i.e. only for the period between the decision in preliminary measures and the decision in the main proceedings, or the appeal in the preliminary measures, and should thus lead to a value

lower than the value determined for the infringement action, is already reflected in the reduction resulting from the 66% calculation method set forth under II.5(b) of the Guidelines and applied by the Court.

ORDER

The Court of Appeal:

- permits the withdrawal of the appeal and declares the proceedings closed;
- orders that this decision shall be entered on the Register;
- orders that Washtower shall bear the costs for the first instance and appeal proceedings;
- orders that Washtower shall provide Bega with appropriate compensation for any injury caused by the provisional measures ordered by The Hague LD in the impugned order;
- determine the value in dispute in the first instance and appeal proceedings at € 530,000.00.

This order was issued on 3 March 2026.

Klaus Grabinski, President of the Court of Appeal

Emmanuel Gougé, legally qualified judge and judge--rapporteur

Peter Blok, legally qualified judge

Michel Abello, technically qualified judge

Paolo Crippa, technically qualified judge