

Procedural Order (R.158 RoP)(II)
of the Court of First Instance of the Unified Patent Court
Issued on 18 March 2026
Concerning EP 3 107 487 B1

HEADNOTES

1. While the place of incorporation and registration of the claimant could be a relevant factor in assessing a request for security, its relevance should be determined by establishing whether "*similar or identical*" guarantees are in place for recognising and enforcing a UPC costs order in the foreign (non-EU/EEA) state (cf. *Chint v JingAO* headnotes). Therefore, this factor is relevant to the decision of whether or not to grant security, rather than to the decision on the amount of the security.
2. When arguing that the recognition and/or enforcement proceedings of UPC costs orders are "*unduly burdensome*" in the relevant state, based on the alleged *duration* of these proceedings, the Court requires a standard/reference to assess these arguments. Assessing whether the duration leads to proceedings to be "*unduly*" (i.e. "*excessive*" or "*unreasonable*") burdensome implies a standard/reference in the sense of proceedings being not burdensome or "*duly*" (i.e. "*acceptable*" or "*reasonable*") burdensome.
3. While the duration of the enforcement proceedings might, based on the provided evidence, not be sufficient to establish "*undue burden*" of enforcement, it could be taken into consideration when examining the facts and circumstances in the assessment of legitimate concerns regarding the recoverability of a costs order related to the claimant's financial position.
4. When setting the security amount, consideration should be given to the costs likely to be incurred by introducing the counterclaim for revocation (if there is no indication that the defendants would have initiated a stand-alone revocation action had they not been confronted with the infringement action).
5. A witness statement that does not align with R. 175.2 RoP is not invalid, but this has an impact on the weight that should be attributed to such evidence.

KEYWORDS

- Request for Security (Art. 69(1) UPCA and R. 158 RoP)
- Witness Statement (R. 175.2 RoP)

APPLICANTS REQUEST SECURITY FOR COSTS (DEFENDANTS INFRINGEMENT ACTION)

- (1) GC AESTHETICS PARENTCO LIMITED
- (2) NAGOR LIMITED
- (3) GC AESTHETICS MANAGEMENT LIMITED
- (4) GC AESTHETICS (DISTRIBUTION) LIMITED
- (5) GC AESTHETICS (France) SAS
- (6) EUROSILICONE SAS
- (7) GC AESTHETICS ITALY S.R.L.
- (8) GC AESTHETICS GmbH
- (9) GC AESTHETICS SPAIN, S.L.U.
- (10) GLOBAL CONSOLIDATED AESTHETICS (UK) LIMITED



UPC_CFI_1357/2025 - UPC_CFI_629/2026

- (11) GC AESTHETICS HOLDINGS LIMITED
- (12) GC AESTHETICS FINANCE LIMITED
- (13) ROMED N.V.

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Separately as “*Defendant (1 to 13)*”
Defendants 1-12 as “*GC AESTHETICS*”
Defendant 13 as “*ROMED*”

RESPONDENT REQUEST SECURITY FOR COSTS (CLAIMANT INFRINGEMENT ACTION)

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PATENT AT ISSUE

Number	Proprietor(s)
EP 3 107 487 B1	ESTABLISHMENT LABS S.A.

LANGUAGE OF THE PROCEEDINGS:

English

SUBJECT MATTER:

Request Security for Costs (R. 158 RoP)

PANEL - LOCAL DIVISION

Presiding Judge (Judge-Rapporteur):
Legally Qualified Judge:
Legally Qualified Judge:
Technically Qualified Judge:

Samuel Granata
Carine Gillet
Marije Knijff
Paolo Gerli

DECIDING JUDGES:

Order issued by the panel

INTRODUCTORY NOTE ON THE LISTED LABS EXHIBITS

In its “*Response to the Request for an Order that the Claimant provide security for costs*”, submitted on 30 January 2026, LABS listed its exhibits as follows:

EXHIBIT	DOCUMENT NAME
EXHIBIT LABS1	Written statement from Mr Batalla
EXHIBIT LABS2	Status Table for Hague Judgment Convention (2019)
EXHIBIT LABS3	Unpublished and unaudited accounts as of 31 December 2025 ("FY25")
EXHIBIT LABS4	Auditor's report and financial report for FY24
EXHIBIT LABS5	Written Statement from Mr Denhoy

In its "(...) Reply to the Defendants' Rejoinder on Security for Costs" submitted on 8 March 2026 Exhibit LABS5 (written statement from Mr. Denhoy) seems to be replaced by the second written statement from Mr. Batalla (Batalla 2):

EXHIBIT	DOCUMENT NAME
EXHIBIT LABS1*	Written statement from Mr Batalla (Batalla 1)
EXHIBIT LABS2*	Status Table for Hague Judgment Convention (2019)
EXHIBIT LABS3*	Unpublished and unaudited accounts as of 31 December 2025 ("FY25")
EXHIBIT LABS4*	Auditor's report and financial report for FY24
EXHIBIT LABS5	Second Written Statement from Mr Batalla (Batalla 2)
EXHIBIT AB-2	Supplementary exhibit showing examples of case types included in Mr Salas' Exhibit MS-5
EXHIBIT LABS6	Second Written Statement from Mr Denhoy (Denhoy 2)
EXHIBIT LABS7	Earnings Conference Call transcript showing FY25 financial performance

As the Court was not informed (or requested) that the earlier Exhibit LABS5 should be retracted and for structuring references to LABS's exhibits the following exhibit numbering will be used hereafter:

EXHIBIT LABS1	Written Statement from Mr. Batalla (Batalla 1)
EXHIBIT LABS2	Status Table for Hague Judgement Convention (2019)
EXHIBIT LABS3	Unpublished and unaudited accounts as of 31 December 2025 (FY25)
EXHIBIT LABS4	Auditor's report and financial report for FY24
EXHIBIT LABS5	Written Statement form Mr. Denhoy (Denhoy1)
EXHIBIT AB-2	Supplementary exhibit showing examples of case types included in Mr. Salas' Exhibit MS-5
EXHIBIT LABS6	Second Written Statement from Mr. Batalla (Batalla 2)
EXHIBIT LABS7	Second Written Statement form Mr. Denhoy (Denhoy2)
EXHIBIT LABS8	Earnings Conference Call transcript showing FY25 financial performance

I. REQUEST AND PROCEDURAL BACKGROUND

- On 7 January 2026 the Defendants submitted a R. 158 RoP request (request for security for costs) in (action) UPC_CFI_1357/2025 requesting as follows:

57.1 The Claimant is ordered to provide security in the amount of EUR 1,200,000 within a period of 21 days for the costs of the proceedings and other costs pursuant to Rule 158.1 RoP either by way of a cash deposit paid into the bank account of the UPC or, alternatively, a bank guarantee issued by a bank licensed in the European Union.

57.2 In the event the Claimant fails to comply with the above and provide the ordered security within the time stated, a decision by default may be given pursuant to Rule 355 RoP.

2. By preliminary procedural R. 158 RoP Order (I), issued on 9 January 2026, the Court invited LABS to submit its comments on the mentioned request by 30 January 2026. The Court set such date taking into consideration (i) the request from LABS that it needed sufficient time to address the “*complex factual and financial matters, including evidence regarding the potential enforcement of any UPC costs order in Costa Rica and the claimant's financial position*” and (ii) the fact that the specific request mentioned the deadline for complying to a granted request to be set on 21 days after issuance of the R. 158 RoP order which would practically imply a date after the deadline for submitting the Statement of Defence and (possible) Counterclaim for Revocation. After submitting these submission costs would already have been made by the Defendants.
3. On 30 January 2026, the Court received (redacted and unredacted) comments from LABS, together with a “*Confidentiality Request under Art. 58 UPC, R. 262 and R. 262A RoP*”. The Court issued a R. 262 RoP and R. 262A RoP order on 16 February 2026.
4. On 16 February 2026, a communication was issued by the Judge-Rapporteur:
 - (a) setting an agenda for further comments:
 - For the Defendants: 27 February 2026.
 - For LABS: 6 March 2026.
 - (b) informing the parties that a (provisional) date (13 March 2026) was reserved for a possible virtual hearing (on the request introduced by LABS to consider such a hearing). Parties would be informed regarding the necessity of such hearing at the latest on 10 March 2026 at 6 pm (CEST).
5. On 16 February 2026 the Defendants submitted their Statement of Defence *together* with a Counterclaim for Revocation (UPC_CFI_629/2026). In their earlier R. 158 RoP request the Defendants had referred to its *intention* to submit a Counterclaim for Revocation. Therefore, in assessing the R. 158 RoP request the Court will disregard (earlier) arguments and counter-arguments relating to the legal implications of such *intention*.
6. On 2 March 2026 the Court issued a communication stating that the date for LABS to respond to the timely (i.e. 27 February 2026) submitted “*rejoinder*” by the Defendants was extended until 9 March 2026 and this due the fact that the unredacted (confidential) version of this rejoinder was only made accessible to LABS after the Defendants had mailed it on 2 March 2026 and the confidentiality-code in the CMS was changed by the Sub-Registry from “HC” to “R” on 3 March 2026.
7. The request for an additional extension introduced by LABS on 6 March 2026 and this due to annual leaves of the in the request named persons was dismissed on the same date.
8. On 10 March 2026, the Court communicated to the parties that it did not deem a virtual hearing necessary.

9. On 16 March 2026 the Court (LD Brussels) decided by R. 37 RoP order to hear the infringement action and the counterclaim for revocation together.

II. ARGUMENTS OF THE PARTIES

10. The Defendants, with reference to Art. 69(4) UPCA and R. 158 RoP, together with relevant case law, essentially argue as follows:

- As there is no precedent for enforcement of a UPC costs order in Costa Rica (being the place of incorporation and registration of LABS) the Court must examine the likelihood of successful enforcement on the basis of the facts and circumstances presented by the parties. The Defendants point out that:
 - Costa Rica, although being a signatory to the Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters (hereafter referred to the “*The Hague Judgement Convention*”), has neither been approved by the Costa Rican Congress nor been ratified by Costa Rica. Further, on a statutory level, the Defendants hold that Costa Rica is neither a member of any other international agreement governing the recognition and enforcement of UPC decisions and orders.
 - The process for recognition and enforcement of foreign court decisions and orders, being a two step-process, proves that the duration of actual enforcement could be estimated on four years (“*even assuming cooperation on the part of (LABS)*” and if no such cooperation could be established the timeframe required would even take longer). In later submissions this estimation was somewhat adjusted taking into consideration the different stages (based on Exhibit GCA-1 and Exhibit GCA-65).
- Based on the publicly available information the Defendants have serious concerns as to whether the Claimant will be able to satisfy any claims for reimbursement incurred by the Defendants. In their second submissions, after being presented non-publicly (confidential) information (i.e. Exhibit LABS3 and Exhibit LABS 4), the Defendants maintained their initial arguments. They argue, essentially, that
 - The financial situation of the mother company of LABS (not being part of these proceedings) is not relevant. And should it be relevant, it does not take away the concerns for the Defendants regarding the recoverability of costs.
 - The financial elements/arguments regarding LABS itself (i.e. cash and cash equivalents; amounts due from related parties; net inventories; property, plant and equipment; other properties and legal reserves) actually prove the concerns.
- The Defendants anticipate that the legal costs and expenses of the Infringement Action and the Counterclaim for Revocation will materially exceed the maximum recoverable costs permitted under the UPC Administrative Committee’s scale of ceilings for recoverable costs (24 April 2023) (hereafter referred to as the “*Ceilings Decision*”). Given that the infringement proceedings are valued at € 8 million, the applicable ceiling for recoverable legal costs across the Infringement Action and the Revocation Counterclaim will be € 1.2 million. Therefore, the Defendants seek security limited to that maximum recoverable amount.

11. LABS in its responses, with reference to Art. 69(4) UPCA and R. 158 RoP, together with relevant case law, counter-argues the above and structures its comments/arguments as follows:

- **Operational and financial strength:** (LABS) (...), is the core manufacturing entity of Establishment Labs Holdings Inc. (“ELSA”) and a revenue-generating, active business. It holds substantial inventories, property, plant, and equipment, and benefits from consolidated cash balances and intercompany funding mechanisms that provide strong liquidity to meet its financial obligations, including any adverse cost awards ordered by any court of competent jurisdiction which, of course, includes the UPC. Interim financial results and public filings confirm ongoing revenue growth, operational momentum, and a strategic plan to achieve cash-flow positive status.
- **Robust financial reporting:** (LABS’S) consolidated financial statements, including ELSA, have been audited by independent auditors who issued unqualified opinions, confirming that the reported financial position, results of operations, and cash flows fairly represent the group’s financial reality. Historical losses reflect strategic investment rather than financial distress.
- **Costa Rica enforcement:** Costa Rica is a stable jurisdiction with established procedures for the recognition and enforcement of foreign judgments. There is no evidence that enforcement of a potential UPC costs award would be unduly burdensome, and the Defendants have presented only speculative assertions regarding supposed difficulties in foreign enforcement.
- **Disproportionality:** The Defendants requested security of €1.2 million is excessive, covering both the ongoing infringement action and a speculative counterclaim that has not been filed, as well as the rest of the procedure, without providing any credible support for why such a cost should be awarded. This amount is not in line with precedent of the Court of Appeal of the UPC, and, as explained below, not warranted in the circumstances of the situation at hand.

To support its arguments regarding its financial situation, LABS introduced (i.a.) written statements by Mr Denhon (Exhibits LABS5 and LABS7) and confidential information (Exhibits LABS3 and LABS4). To support its arguments regarding the enforcement of UPC costs orders in Costa Rica, LABS provided written statements by Mr Batalla (Exhibits LABS1 and LABS6, with supplementary exhibits).

III. GROUNDS

III.A. Legal Framework and UPC case law

12. When assessing the request for security, the following legal provisions apply:

Art. 69 (4) UPCA:

“At the request of the defendant, the Court may order the applicant to provide adequate security for the legal costs and other expenses incurred by the defendant which the applicant may be liable to bear, in particular in the cases referred to in Articles 59 and 62.”

R. 158.1 RoP:

“At any time during proceedings, following a reasoned request by one party, the Court may order the other party to provide, within a specified time period, adequate security for the legal costs and other expenses incurred and/or to be incurred by the requesting party, which the other party may be liable to bear. Where the Court decides to order such security, it shall decide whether it is appropriate to order the security by deposit or bank guarantee”.

13. The broader legal framework and interpretation of the aforementioned provisions has been clarified in the following orders (without being exhaustive):

- UPC CoA Order of 29 November 2024, UPC_CFI_548/2024 (*Aarke v. Sodastream*)
- UPC CoA Order of 12 July 2025, UPC_CoA_596/2024 (*Suinno Mobile v. Microsoft*)

- UPC CoA Order of 18 February 2026, UPC_CoA_890/2025 (*Syntorr v. Arthex*). In this order the relevant previous orders by the CoA have been referred to: CoA Order of 20 June 2025, UPC_CoA_393/2025, *AorticLab v Emboline*; CoA Order of 17 September 2024, UPC_CoA_217/2024, UPC_CoA_219/2024, UPC_CoA_221/2024, *AUDI AG v. Network System Technologies LLC*; CoA Order of 9 July 2025, UPC_CoA_431/2025, *Chint v JingAO*; CoA Order of 30 October 2025, UPC_CoA_8/2025, *Oerlikon v. Bhagat*).
- LD Munich UPC_Cfi_525/2025 (dated 12 December 2025) (*ASUS v. Guangdong a.o.*)

(this case-law will be referred to hereafter by using the parties' name in the indicated orders)

III.B. Assessment of the thresholds

14. The Defendants refer to the following thresholds aligning with the relevant legal provisions and the case-law based interpretation (cf. §19 *Syntorr v. Arthex*):
 - the likelihood that enforcement of a UPC costs order is unduly burdensome in Costa Rica;
 - the legitimate concerns that any future costs order in their favour may not be recoverable.
15. If one of these thresholds is met, taking into consideration the burden of proof on the Defendants, allowing LABS to challenge the reasons and facts argued (cf. § 20 *Syntorr v. Arthex*), the Court may, at its discretion, order security (cf. § 19 *Syntorr v. Arthex*). Therefore, the assessment is exclusive in the sense that a *combined* consideration of the two thresholds is insufficient if one of the thresholds has not been met.
16. Assessing a request for security implies balancing different fundamental rights (without being exclusive):
 - the right of access to justice and the right to (intellectual) property for LABS (both fundamental rights), and
 - the right to recover legal costs and other expenses incurred or to be incurred (relating to the fundamental right of property) in the country where the costs order needs to be enforced (relating to the right of access to justice and the right to a fair trial).
17. Before assessing the thresholds, the Court notes that it disregards the arguments regarding expected voluntary or involuntary compliance (i.e. willingness or unwillingness to reimburse costs). As stated in *Aarke v. Sodastream* (§22), the only relevant criterion is whether enforcement would be possible without undue burden, or whether there is a legitimate concern that any future costs order may not be recoverable.

III.B.1. Unduly burdensome enforcement procedures of UPC costs orders in Costa Rica

18. Both LABS and the Defendants provided expert evidence on the applicable Costa Rican law regarding the recognition and enforcement (and execution) of foreign judicial decisions, as well as on its application (see § 10 of *Chint v JingAo*, with reference to *Aarke v Sodastream*). The expertise of the respective experts, Mr Salas and Mr Batalla, being Costa Rican legal

practitioners (lawyers) with experience in the recognition and enforcement of foreign decisions in Costa Rica, is not disputed by any of the parties.

19. From the expert evidence, it appears that Costa Rica adheres to a (well-known) two-stage process when recognizing and enforcing foreign judicial decisions:
 - At the first stage, the UPC costs order should be recognised (i.e. also known as *exequatur* procedure) by the First Chamber of the Supreme Court of Costa Rica. The Defendants argue for an average term of 19 months, while LABS argues for 8 to 12 months.
 - At the second stage, enforcement proceedings should be initiated before the relevant district court in Costa Rica. The Defendants argue, if an appeal was introduced, for 36 to 42 months and LABS argues for 24 months.
20. Based on the sovereignty of states, any national court (thus also the UPC) should exercise caution when assessing another national (non-EU/EEA) legal framework and/or court system. If there is no legal or procedural framework in place for the recognition and enforcement of foreign judicial decisions, or if there is evidence of corruption and/or malfunction in the competent national (non-EU/EEA) court system, such an assessment might be straightforward. However, if a legal/procedural framework is in place and is systematically and correctly applied by the competent national (non-EU/EEA) court, caution should be exercised when assessing whether recognising and enforcing a UPC costs order to be “*unduly burdensome*”.
21. The actual assessment to be made is whether “*similar or identical*” guarantees are in place for recognising and enforcing UPC costs orders in the relevant (non EU/EEA) states (cf. *Chint v JingAO* headnotes).
22. It does not seem that the Defendants are arguing that the Costa Rican procedure for recognising and enforcing UPC costs orders is “*unduly burdensome*” due to a lack of legal or procedural framework, or a dysfunctional court system applying this framework. As such, it seems that “*similar or identical*” guarantees are in place in Costa Rica as in EU and EEA member states.
23. The Defendants essentially seem to argue that the time it takes to recognise and enforce a UPC costs order in Costa Rica is excessive and therefore “*unduly burdensome*”.
24. The difference in duration between the two stages (see §19) is due to different interpretations of the compiled court data on the recognition and enforcement of foreign judicial decisions in Costa Rica. It should be noted that neither party sought expert statistical advice on interpreting the data or the filters used to compile it. Therefore, the Court is faced with arguments based on a limited number of cases regarding recognition, or a larger number of cases regarding enforcement, but here the filters used are convincingly contested as they also seem to include actions that are not relevant to enforcement proceedings comparable to UPC

costs orders. Consequently, the Court holds that the compilation of the cases referred to in each stage is not suitable for drawing statistically viable conclusions.

25. When arguing that the recognition and/or enforcement proceedings of UPC cost orders are "*unduly burdensome*" in Costa Rica, based on the alleged duration of these proceedings, the Court requires a standard/reference to assess these arguments. Assessing whether the duration leads to proceedings to be "*unduly*" (i.e. "*excessive*" or "*unreasonable*") burdensome implies a standard/reference in the sense of proceeding being "*duly*" (i.e. "*acceptable*" or "*reasonable*") burdensome. The Court lacks such standards/references, or at least the Defendants have not provided any.
 26. Regarding the recognition stage of UPC costs orders in Costa Rica (a stage which is not necessary for enforcement in EU/EEA member states (cf. Article 82 UPCA and Art. 71a of the Recast Brussels I Regulation (EU) No 1215/2012), and respecting the principles of international law (specifically, the sovereignty of states), a recognition stage is common legal reality in non-EU/EEA states for the recognition of UPC costs orders. As the Defendants have not provided any arguments in support of such a reference, the Court cannot assess whether the duration of the recognition stage for UPC costs orders in Costa Rica is excessive to the extent that it would result in "*unduly burdensome*" proceedings.
 27. Regarding the enforcement stage of UPC cost orders in Costa Rica, the Court notes that, even in EU/EEA states this stage is governed by the law of the EU/EEA member state in which enforcement should take place (cf. Article 82 UPCA and R. 354 RoP for UPC member states). Outside these territories, Article 41(1) of the Hague Judgment Convention states that, even for signatory states the procedure for enforcing judgments (after recognition) shall be governed by the law of the relevant signatory state. As the Defendants have not provided any arguments in support of this reference, the Court cannot assess whether the duration of the enforcement stage in Costa Rica (neither being a EU/EEA member state neither a state in which the *Hague Judgement Convention* has been ratified) for UPC costs orders is excessive to the point of resulting in "*unduly burdensome*" proceedings.
 28. As such the Court holds that the Defendants have not provided sufficient proof that the term for recognition and enforcement separately or as a whole would result in "*unduly burdensome*" UPC costs order enforcement proceedings in Costa Rica.
 29. As the Court does not consider the enforcement proceedings in Costa Rica to be "*unduly burdensome*" regarding UPC costs orders, the request for security based on this threshold is denied.
- III.B.2. Legitimate concern regarding the recoverability of costs order (the financial situation of LABS)
30. The ratio behind Art. 69(4) UPCA, in assessing the mentioned threshold, is the protection of a defendant against a claimant, who initiates an action, without having sufficient means to

compensate the defendant for the legal costs incurred in the proceedings the defendant was involved in at the initiative of the claimant (CoA Order of 20 June 2025, UPC_CoA_393/2025, *AorticLab v Emboline*, paras. 15 and 28). (§ 17 *Syntorr v. Arthex*)

31. In assessing “*sufficient means*”, the Court should consider the facts and circumstances based on the *actual* financial situation of LABS. Should facts and circumstances alter such assessment, the Defendants can at any stage during the proceedings, if necessary, (re-)introduce a request for security (cf. § 13 *Oerlikon v. Bhagat* with reference to UPC_CoA_328/2024, Order of 26 August 2024, *Ballinno BV v. Kinexon*, para 25 ff and Order LD Paris 27 December 2024 (*Microsoft v. Suinno*, UPC_CFI_164/2024) stating that an increase or modification of an earlier security order should be based on “*a change in material facts*”).
32. However, while LABS correctly argued that the (alleged) “*undue burden*” of enforcement in Costa Rica of UPC costs orders should not be assessed in light of its financial situation, the Court holds that the duration of the enforcement procedure could be a “*relevant factor*” in determining whether LABS's actual financial position gives rise to legitimate concerns that a potential costs order would be unrecoverable in the future (i.e. on the moment of enforcement). As such, where this duration alone might not be sufficient to establish “*undue burden*” (see above assessment § 18-29), it could be taken into consideration when assessing the facts and circumstances regarding the assessment of the concerns of the Defendants.
33. Before assessing the aforementioned concern, the Court confirms that it only considers the financial situation of LABS. The financial situation of a parent company or sister company that is not a party to these proceedings does not need to be considered (§ 21 *Aarke v. Sodastream*).
34. Further, and before going into the assessment of aforementioned concern, the Court notes that the statements made by Mr. Denhoy (Exhibit LABS5 and LABS7) are not in line with R. 175.2 RoP. The declarations lack that he is aware of his obligation to tell the truth and of his liability under national law in event of breach of this obligation. The statement that “*I believe them to be true, accurate, and complete in all material respects as at the date of this statement*” (cf. Exhibit LABS6) cannot be regarded as equal to the conditions set in mentioned rule. This as such does not result to the statement being invalid but has an implication on the weight which should be attributed to this evidence, which the Court holds limited.
35. As a first step when assessing the legitimate concern, the Court should (provisionally) assess the ceiling for recoverable costs in order to set them off against the financial means of LABS to comply with such a UPC costs order.
36. Although a counterclaim for revocation is considered to be a separate action in Art. 32(1)(e) UPCA, it is intrinsically linked to the infringement action (§ 25 *AorticLab v Emboline*), and this based on the fact that the system of the UPCA and the RoP, does not allow a defendant to challenge the validity of the patent by way of an invalidity defence in the infringement proceedings. A Defendant can only raise such a defence by lodging a separate counterclaim

for revocation. (§ 26 *AorticLab v Emboline*). As there are no indications that the Defendants would have introduced a stand-alone revocation action if not confronted with the infringement action, the counterclaim for revocation is considered the consequence of the infringement action by LABS and, as such, a defensive action (§ 29 *AorticLab v Emboline*) which undoubtedly will result to additional costs for the Defendants.

37. For the above reasons, the Court holds that the costs likely to be incurred by introducing the counterclaim for revocation should be considered when setting the security amount.
38. Referring to case-law of the UPC CoA (specifically § 27 *Oerlikon v. Bhagat* with reference to *Ballinno BV v. Kinexon*, para 33) the determination of an adequate amount of a security for costs for first instance proceedings can best be assessed once the existence and scope of these proceedings can be seen. At the moment the Court is confronted with an infringement action (Statement of Claim) and revocation action (Defence to the Statement of Claim including a counterclaim for revocation).
39. Regarding the actual (provisional) assessment of the ceiling, the Court takes as a starting point the value which LABS has attributed to the case (i.e. € 8.000.000). The actual assessment of the value of the action is situated during the interim conference (R. 104 (i) RoP with reference to R. 370.6 RoP) unless the valuation would be disputed at this stage (which it is not).

Based on the “*Guidelines for the determination of court fees and the ceiling of recoverable costs*” (hereafter referred to as “*Guidelines*”), and, specifically, in application of *Title II. Suggested Approaches - 2. Counterclaim for revocation and revocation action - b) determining the value for applying the Rules on recoverable costs - (2) in the absence of relevant information*), the value of the Counterclaim for Revocation should be set at € 8.000.000 + 50% (i.e. 12.000.000).

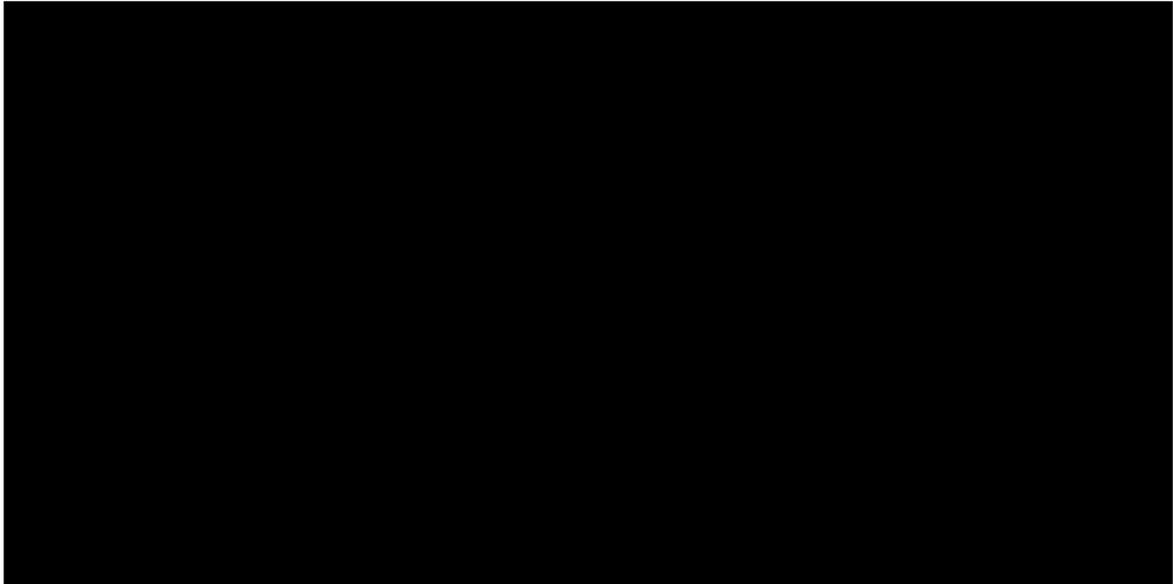
In application of the Guidelines (*Title II. Suggested Approaches - 2. Counterclaim for revocation and revocation action - b) determining the value for applying the Rules on recoverable costs (4)*) the value of the combined actions amounts to € 20.000.000.

As such the ceiling for recoverable costs should (provisionally) be set at € 1.200.000.

40. At this early stage of the proceedings, and having examined the statement of claim and the statement of defence, including the counterclaim for revocation, the Court sees no convincing reason to divert from the amounts based on the ceilings decisions, for example due to the complexity of the case.
41. As the ceiling for recoverable costs (provisionally) has been set at € 1.200.000, the Court holds that the financial situation of LABS gives rise to a legitimate concern [REDACTED]
[REDACTED]

[REDACTED]. This assessment is based on the following considerations:

[REDACTED]



42. For the above reasons the Court grants the request for security based on the sufficient proof of the threshold of “*legitimate concern regarding the recoverability of UPC costs order*”.

III.C. The amount of the security

43. With reference to § 23 *Suinno Mobile v. Microsoft* and in its discretion based on proportionality and equity the Court sets the amount for security on 50% of the applicable ceiling for recoverable costs (i.e. € 600.000).
44. The Defendants’ argument that their representatives would already have invoiced an amount “*(exceeding) one-third of the relevant combined ceilings for recoverable costs*”, is not substantiated and seems in line with the front-loaded system of the UPC. As such this argument does not convince the Court to increase the set amount.
45. While the place of registration of LABS could be a relevant factor, as mentioned in § 21, the relevance should be examined by assessing whether “*similar or identical*” guarantees are in place for recognising and enforcing a UPC costs order in Costa Rica, in order to determine whether a security should be imposed. Therefore, the relevance of this factor relates to whether security should be granted or not, rather than to the amount of security required.

III.D. Means of and timing for providing security

46. R. 158.1 (second sentence) RoP indicates that where the Court decides to order such security, it shall decide whether it is appropriate to order the security by deposit or bank guarantee. (§ 18 *Syntorr v. Arthex*). It should further be noted that LABS does not indicate any other means to provide a security (be it an existing insurance policy or a third party guarantee).

47. As such, LABS is given the option to provide security by depositing funds into an UPC account dedicated to security deposits, or by providing a bank guarantee from an EU-licensed bank.
48. Regarding the timing for providing the security, LABS did not bring forward any arguments to oppose the suggested deadline of 21 days following this order.

ORDER

1. ESTABLISHMENTS LABS SA is ordered in case UPC_CFI_1357/2025 and UPC_CFI_629/2026 to provide security in the amount of € 600.000 within a period of 21 days following this order for the costs of the proceedings and other costs pursuant to Rule 158.1 RoP by way of deposit on the UPC account dedicated for security deposits or alternatively by way of bank guarantee provided by a bank licensed in the EU.
2. Other requests relating to the R. 158 RoP application by Defendants are rejected.
3. ESTABLISHMENTS LABS SA is advised that a default judgment may be issued in accordance with R. 355 RoP if security is not provided within the specified period (R. 158.4 RoP).

Order issued on 18 March 2026 by the panel:

Samuel GRANATA Judge-Rapporteur Presiding Judge LD Brussels Legally Qualified Judge	
Carine Gillet Legally Qualified Judge	
Marije Knijff Legally Qualified Judge	
Mr. Paolo Gerli Technically Qualified Judge	

Information on Appeal

An appeal may be lodged in accordance with Art. 73 UPCA and R. 220.2 RoP (R. 158.3 RoP).