



Action number:
UPC_CoA_302/2025
UPC_CoA_305/2025
PR-UPC-CFI-952/2026
PR-UPC-CFI-951/2026

Order
of the Court of Appeal of the Unified Patent Court
issued on 30 March 2026

APPLICANT AND APPELLANT (CLAIMANT IN THE INFRINGEMENT PROCEEDINGS AND COUNTER-DEFENDANT IN THE NULLITY PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Rematec GmbH & Co KG, Poststraße 10, 84378 Dietersburg, Germany

(hereinafter 'Rematec')

represented by: Dr Ulrich Blumenröder, Attorney-at-law, Grünecker PartG mbB

RESPONDENT AND RESPONDENT ON APPEAL (DEFENDANT IN THE INFRINGEMENT PROCEEDINGS AND COUNTER-CLAIMANT IN THE ACTION FOR ANNULMENT BEFORE THE COURT OF FIRST INSTANCE)

Europe Forestry B.V., Stegerdijk 13, 7737PT Stegeren, the Netherlands

(hereinafter '**Europe Forestry**')

represented by: Dr Michael Rüberg, Attorney-at-law, Boehmert & Boehmert Anwaltspartnerschaft mbB, Patent Attorneys, Attorney-at-laws

PATENT AT ISSUE:

EP 2 548 648

DECIDING JUDGE

Emmanuel Gougé, legally qualified judge and judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

German

CONTESTED DECISION OF THE COURT OF FIRST INSTANCE

- Decision of the Court of First Instance of the Unified Patent Court, local division

Mannheim, of 31 January 2025

- action number: UPC_CFI_340/2023
 ACT_576606/2023
 CC_7594/2024

FACTS OF THE CASE AND THE PARTIES' APPLICATIONS

1. On 27 September 2023, Rematec brought an action for infringement of the patent at issue before the Unified Patent Court, Mannheim local division ('LK Mannheim'). Europe Forestry contested the action and filed a counterclaim for revocation.
2. In the contested decision, the Mannheim LD dismissed the infringement action and declared the patent at issue invalid with effect for Germany, the Netherlands, Austria, Belgium, Bulgaria, Denmark, Finland, France, Italy, Portugal, Romania, Sweden and Slovenia.
3. On 31 March 2025, Rematec lodged an appeal against the contested decision.
4. By decision of 17 February 2026, the Court of Appeal of the Unified Patent Court ("Court of Appeal") set aside the decision at first instance, upheld the infringement claim in accordance with the alternative claim and dismissed the counterclaim for revocation.
5. With regard to costs, the Court of Appeal ruled as follows:
 - the defendant shall bear, for both instances, the court fees for the counterclaim for revocation and the costs incurred by the Claimant as a result of the counterclaim for revocation;
 - the defendant shall bear 80% of the court fees for the infringement action and the costs incurred by the Claimant as a result of the infringement action in both instances;
 - The claimant shall bear 20% of the court fees for the infringement action in both instances, as well as 20 % of the costs incurred by the defendant as a result of the infringement action.
6. On 17 March 2026, Rematec filed an application with the Court of Appeal for the assessment of costs pursuant to Rule 151 of the RoP, both in the appeal proceedings UPC_CoA_302/2025 and UPC_CoA_305/2025 and as separate applications under the action numbers PR-UPC-CFI-951/2026 and PR-UPC-CFI-952/2026.
7. Following a notice from the Registry dated 17 March 2026 and a request to remedy deficiencies via the Case Management System ("CMS"), in which Rematec was informed that the application for the assessment of costs must be submitted to the competent local division in Mannheim, Rematec amended its application by a document dated 18 March 2026 and requested that its application for the assessment of costs be forwarded to the judge-rapporteur of the first instance of the LD Mannheim with the instruction that the date of submission of the application to the Court of Appeal, i.e. 17 March 2026, be deemed the date of submission to the Court of First Instance ('CFI').
8. In parallel, on 18 March 2026, Rematec resubmitted the application for the assessment of costs to the Mannheim local division.

REASONS FOR THE ORDER

Commencement of proceedings for the assessment of costs before the CFI

9. The assessment of costs is the subject of a specific and separate procedure (R. 150 et seq. RoP), which also includes a specific appeal procedure (R. 157 and 221 RoP). As with most other

proceedings before the UPC, the proceedings for the assessment of costs therefore also commence before the CFI. The application for the assessment of costs must therefore be filed with the CFI, and the decision on this is taken by the judge-rapporteur of that instance (see Order of the Court of Appeal of 29 July 2024, UPC_CoA_1/2024, App_36394/2024, Hanshow v. VusionGroup).

10. This also applies where the application is made following an order or decision of the Court of Appeal and thus relates exclusively or in part to the costs of the appeal proceedings. The Rules of Procedure do not provide for any special procedure for the assessment of costs following an order or decision of the Court of Appeal. Therefore, the general procedure set out in R. 150 et seq. RoP also applies in this case. If, instead, the proceedings were to commence before the Court of Appeal, no appeal would be possible against the decision on costs, as provided for in R. 157 and 221 of the RoP (Order of the Court of Appeal of 29 July 2024, UPC_CoA_1/2024, App_36394/2024, Hanshow v. VusionGroup).
11. The Court of Appeal therefore has no jurisdiction over the application for the assessment of costs. The local division has jurisdiction to assess costs, even though the present application concerns the costs of the appeal proceedings.

12. It follows that it is not the Court of Appeal but the CFI that must decide whether the date of filing with the Court of Appeal is decisive.

Referral of the application

13. The application to refer the application for the assessment of costs to the CFI must be dismissed for the following reasons.
14. A referral of an action, an application or a matter may be ordered in the cases expressly provided for in the UPC Agreement (e.g. Art. 33(2) and (3) UPC Agreement: referral of an action and a counterclaim to the Central Chamber; Article 75: Referral back from the Court of Appeal to the CFI) or in the RoP (e.g. Rule 102 of the RoP: referral to the panel; Rule 238A: referral to the plenary session of the Court of Appeal). Neither the UPC Agreement nor the RoP contains any provision allowing the Court of Appeal to refer an application for a decision on costs to the CFI.
15. Nor are there any exceptional circumstances in the present case that could exceptionally justify a referral to the CFI. In contrast to the order of the Court of Appeal cited by Rematec (Court of Appeal 29 July 2024, CoA_1/2024, Hanshow Technology v. VusionGroup), in which the judge-rapporteur ordered the referral of the application to the CFI, taking into account the exceptional circumstance that 'this is the first application for a decision on costs following an order by the Court of Appeal and it is not clear from the UPC Agreement and the Rules of Procedure where the application is to be filed in such a situation', there are no exceptional circumstances in the present case that could justify the Court of Appeal issuing an order for the referral of the application to the CFI. The fact that the Court of Appeal does not have jurisdiction has since been clarified by the Court of Appeal (see para. 10 above).

ORDER

The application filed by Rematec with the Court of Appeal for the application for the assessment of costs to be referred to the CFI, with the instruction that the date of filing of the application with the Court of Appeal may be deemed to be the date of filing with the CFI, is dismissed.

This order was made on 30 March 2026.

Emmanuel Gougé, judge-rapporteur and legally qualified judge