

**ORDER**  
**of the Court of Appeal of the Unified Patent Court**  
**issued on 7 April 2026**  
**concerning the applications for a stay of proceedings (R. 295 RoP)**  
**and security for costs (R. 158 RoP)**

HEADNOTES:

- 1) Art. 69 (4) UPCA permits an order for security for costs to be made only against the applicant, and not in its favour. An ‘applicant’ within the meaning of Art. 69 (4) UPCA is defined as the person who initiates legal proceedings by filing an application (Court of Appeal, 19 December 2025, UPC\_CoA\_622/2025, UPC\_CoA\_623/2025, *Hefei v Grundfos*, para. 10).
- 2) This means that, at first instance, there is no legal basis for granting a security for costs at the claimant’s request in an infringement action. The same applies to a claimant in a revocation action pursuant to Art. 32 (1)(d) UPCA (Court of Appeal, Order of 20 June 2025, UPC\_CoA\_393/2025, *AorticLab v Emboline*). The fact that the defendant has brought a counterclaim for revocation does not give the infringement claimant the right to request for security in respect of the costs of the counterclaim for revocation. Such a counterclaim for revocation is a direct consequence of the infringement action being brought by the claimant. An order requiring the defendant and the counterclaimant to provide security for costs would unduly prejudice his ability to defend himself (see *AorticLab/Emboline*, para. 30).
- 3) As the appellant initiates the appeal proceedings by lodging an appeal, the appellant is the applicant. Consequently, under Art. 69 (4) UPCA, only the respondent is entitled to request security for costs in the appeal proceedings. This generally applies even where the respondent is the claimant (Court of Appeal, 19 December 2025, UPC\_CoA\_622/2025, UPC\_CoA\_623/2025, *Hefei v Grundfos*, para. 12; see Court of Appeal, 30 October 2025, UPC\_CoA\_8/2025, *Oerlikon v Bhagat*, para. 17). If both parties lodge an appeal, each party may only request for security for costs in respect of the costs of the other party’s appeal. This also applies in the case of a cross-appeal (*Hefei v Grundfos* para. 12).
- 4) An exception to this applies where the defendant rightly asserts that there is a manifest error in the decision of the court of first instance. In such cases, only the defendant may require security for costs for the appeal proceedings (see *Hefei v Grundfos*, para. 13).

- 5) The conclusion of infringement proceedings does not lead to inadmissibility of a counterclaim for revocation, which was lodged during the pending infringement proceedings, and of a request for security for costs in the latter proceedings.
- 6) The issuing of a cost decision regarding costs incurred in the CFI proceedings pursuant to R. 150 RoP et seq. renders the request for security for costs inadmissible (see *Oerlikon v Bhagat*, para. 16).

KEYWORDS:

- admissibility counterclaim for revocation after conclusion of infringement proceedings,
- request security for costs/admissibility (R. 158, Art. 69(4) UPCA),
- stay of the proceedings (R. 295 (m) RoP)
- extension of time period (R. 9.3 (a) RoP)

APPELLANT (DEFENDANT IN THE COUNTERCLAIM FOR REVOCATION PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**Suinno Mobile & AI Technologies Licensing Oy**, Helsinki, Finland

(hereinafter 'Suinno')

represented by attorney at law Petri Eskola, Backström & Co Attorneys, Helsinki, Finland

RESPONDENT (CLAIMANT IN THE COUNTERCLAIM FOR REVOCATION PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**Microsoft Corporation**, Redmond, United States

(hereinafter 'Microsoft')

represented by Prof. Dr. Tilman Müller-Stoy, attorney at law, Bardehle Pagenberg, Munich, Germany

PATENT AT ISSUE

EP 2 671 173

PANEL AND DECIDING JUDGES

Panel 2

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Steven Kitchen, technically qualified judge

Udo Matter, technically qualified judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

Decision of the Paris Central Division of 7 January 2026 in the counterclaim for revocation proceedings UPC\_CFI\_433/2024 (CC\_43155/2024)

## LANGUAGE OF THE PROCEEDINGS

English

## SUMMARY OF FACTS

1. Suinno is proprietor of the patent at issue. Suinno lodged an infringement action against Microsoft before the Paris Central Division. Microsoft lodged a counterclaim for revocation.
2. The Central Division ordered Suinno to provide security for costs for the infringement proceedings. Due to Suinno's failure to pay the security for costs with regard to the infringement action, an application for a decision by default was filed by Microsoft and was ultimately granted by the Court of Appeal (12 July 2025, UCP\_CoA\_363/2025).
3. Following the (final) dismissal of the infringement action, on November 6, 2025 (UPC\_CFI\_724/2025) Suinno was ordered by the Central Division Paris to reimburse Microsoft for costs incurred in the infringement proceedings in the amount of EUR 350,000 within three weeks. Suinno lodged an application to grant leave to appeal pursuant to R. 221 RoP against the cost decision, which was denied by the Court of Appeal on 24 December 2025 (UPC\_CoA\_911/2025). To date, Suinno has made no payment to Microsoft.
4. The Central Division Paris denied the request for stay in the counterclaim for revocation proceedings with order of 30 September 2025, and the proceedings relating to the counterclaim for revocation continued. With the impugned decision, the Central Division revoked the patent at issue in its entirety with regard to the territories of the Contracting Member States in which it has effect and ordered Suinno to bear the costs of Microsoft in the counterclaim proceedings.
5. Suinno appealed the impugned decision.
6. On 24 March 2026, Microsoft filed an application for a stay of proceedings pursuant to R. 295 RoP and an application for security for legal costs pursuant to R. 158 RoP.
7. On 31 March 2026 (UPC\_CFI\_544/2026), the CFI determined the costs incurred by Microsoft Corporation in the counterclaim for revocation action proceedings to be EUR 300,000 and ordered Suinno to pay these costs within three weeks.

## *Parties' requests*

Microsoft requests that

Suinno be ordered to provide security for legal costs and other expenses incurred and/or to be incurred by Microsoft in the amount of EUR 1,200,000.-, alternatively EUR 600,000.-, within two weeks, alternatively within a time period to be specified by the Court, in any event in due time prior to the expiry of the time period for filing the statement of response pursuant to R. 235.1 RoP (R. 158.1 RoP);

Suinno be informed that if Suinno fails to provide the ordered security within the time

stated, a decision by default may be given in accordance with R. 355 RoP (R. 158.4 RoP);

a decision by default is issued against Suinno if Suinno fails to provide such security within the time specified by the Court (R. 158.5, 355 RoP), dismissing the appeal (UPC\_CoA\_21/2026);

the appeal proceedings UPC\_CoA\_21/2026 be stayed until Suinno has reimbursed Microsoft of reimbursable costs pursuant to the decision of the Court of First Instance (Central Division – Paris Seat) of November 6, 2025, in the cost proceedings UPC\_CFI\_724/2024, ACT\_34440/2025 and has provided security for costs in the appeal proceedings UPC\_CoA\_21/2026;

in the alternative:

the appeal proceedings UPC\_CoA\_21/2026 be stayed until Suinno has provided security for costs in the appeal proceedings UPC\_CoA\_21/2026;

in the further alternative:

the deadline to file a Statement of response to the grounds of appeal in the appeal proceedings UPC\_CoA\_21/2026 be extended by a period equivalent to the time until a final decision is made on the present applications.

8. Essentially, Suinno requests that the Court of Appeal dismiss Microsoft's requests.

#### PARTIES' SUBMISSIONS

9. Essentially, Microsoft submits the following.

- Suinno has repeatedly proven and admitted lacking financial resources to fulfil a possible claim for cost reimbursement.
- Despite Microsoft being the counter "claimant", Microsoft still is to be considered the defendant in the context of R. 158 RoP.
- Microsoft is to be protected against an insolvent claimant and appellant who initiated the first instance proceedings and the appeal proceedings, without having sufficient means to compensate Microsoft for the legal costs incurred by the proceedings.
- Microsoft suggests that Suinno be ordered to provide a security equal to the maximum amount of reimbursable costs as set out in Administrative Committee's scale of ceilings for recoverable costs, and for both first instance proceedings as well as the present appeal proceedings (600,000 for each instance).
- It is in the interest of proper administration of justice that these appeal proceedings are not continued until Suinno has reimbursed Microsoft for the costs determined by the Central Division for the infringement proceedings and provided security for costs in these appeal proceedings.
- Suinno continues to raise further financial resources in order to lodge ever new unfounded legal remedies, thereby generating further unsecured costs for Microsoft that are unlikely to be recoverable in the end. This is unacceptable.
- Microsoft acknowledges that, according to the Preamble 7 RoP, proceedings shall be conducted in a way which will normally allow the final oral hearing on issues on infringement and validity at first instance to take place within one year. However, already this Preamble contains limitations ("normally") and recognizes that the duration of proceedings can vary.
- Furthermore, the RoP shall be applied and interpreted on the basis of the principles of proportionality, flexibility, fairness and equity (Preambles 2, 4, 5).

- It is neither cost effective nor fair to continue the proceedings and incur additional costs, the reimbursement of which is more than uncertain and will in fact be frustrated.
- In view of Suinno's persistent refusal to secure any cost reimbursement claims, let alone reimburse fixed costs, and Suinno's repeated pleading of financial inability to reimburse costs in the claimed and determined amount, Microsoft cannot be referred to an execution of costs orders issued or to be issued.
- In any event, the present proceedings should be stayed until Suinno provides security for legal costs.

10. Essentially, Suinno submits the following.

- The applicable provisions do not allow for the defendant of the revocation counterclaim to be required to provide security for the claimant's costs.
- R. 355.3 and 357.3 RoP do not provide for a default decision that could be given against the appellant in the present case, neither can an order for security be issued.
- As the infringement action is no longer pending, there is no apparent commercial motivation visible, except for the extracurricular intention to further injure Suinno's licensing business. Thus, for this reason the current application for security is not even a "reasoned request" within the meaning of R. 158.1 RoP, but on the contrary a baseless act of chicanery.
- The application for stay of proceedings is baseless and must be rejected. The grounds, *mutatis mutandis*, already presented by the CFI in its order of 30 September 2025 apply as such. If granted, the case would end up in an unresolved state, which is of course completely unacceptable to the defendant and patent owner, and against all principles of process of UPC as laid down in the UPCA and RoP.

## GROUNDS

### I. Security for Costs

#### *Admissibility of the request for security for costs regarding costs to be incurred in the appeal proceedings*

11. Microsoft's requests to order Suinno to provide security for costs is admissible insofar it relates to the costs to be incurred in the appeal proceedings.
12. According to R. 158.1 RoP, at any time during proceedings, following a reasoned request by one of the parties, 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 be incurred by the requesting party, which the other party may be liable to bear.
13. Pursuant to Art. 69(4) UPCA, which takes precedence over R. 158.1 RoP, 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.
14. Art. 69(4) UPCA permits an order for security for costs to be made only against the applicant, and not in its favour. An 'applicant' within the meaning of Art. 69(4) UPCA is defined as the person who initiates legal proceedings by filing an application (Court of Appeal, 19 December 2025, UPC\_CoA\_622/2025, UPC\_CoA\_623/2025, *Hefei v Grundfos*, para. 10).

15. This means that, at first instance, there is no legal basis for granting a security for costs at the claimant's request in an infringement action. The same applies to a claimant in a revocation action pursuant to Art. 32(1)(d) UPCA (Court of Appeal, Order of 20 June 2025, UPC\_CoA\_393/2025, *AorticLab v Emboline*). The fact that the defendant has brought a counterclaim for revocation does not give the infringement claimant the right to request security in respect of the costs of the counterclaim for revocation. Such a counterclaim for revocation is a direct consequence of the infringement action brought by the claimant. An order requiring the defendant and the counterclaimant to provide security for costs would unduly prejudice his ability to defend himself (see *AorticLab/Emboline*, para. 30).
16. As the appellant initiates the appeal proceedings by lodging an appeal, the appellant is the applicant. Consequently, under Art. 69(4) UPCA, only the respondent is entitled to request security for costs in the appeal proceedings. This generally applies even where the respondent is the claimant (Court of Appeal, 19 December 2025, UPC\_CoA\_622/2025, UPC\_CoA\_623/2025, *Hefei v Grundfos*, para. 12; see Court of Appeal, 30 October 2025, UPC\_CoA\_8/2025, *Oerlikon v Bhagat*, para. 17). If both parties lodge an appeal, each party may only request for security for costs in respect to the costs of the other party's appeal. This also applies in the case of a cross-appeal (*Hefei v Grundfos* para. 12).
17. The purpose of security for costs does not mean that, irrespective of whether the defendant is the appellant, the defendant remains the defendant within the meaning of Art. 69(4) UPCA in appeal proceedings. The purpose of security for costs under Article 69(4) UPCA is to protect the opposing party from difficulties in enforcing a claim for reimbursement of costs. This opposing party's protection is necessary because it was involved in the proceedings not at its initiative, but at the initiative of the claimant, who has either insufficient means to compensate the defendant for the legal costs incurred by the proceedings or where a subsequent order for costs would be unenforceable, or could only be enforced in an unduly burdensome way. This does not apply in the same way to the appellant, who is free to decide whether to pursue the appeal proceedings and to actively assume the role of the party challenging the decision. Since, as a rule, the correctness of the impugned decision is presumed, it would be contrary to fairness and equity (paragraph 5 of the preamble to the Rules of Procedure) to require the respondent to provide security for costs in such cases. An exception to this applies where the defendant rightly asserts that there is a manifest error in the decision of the Court of First Instance. In such cases, only the defendant may require security for costs for the appeal proceedings (see *Hefei v Grundfos*, para. 13).
18. In accordance with the above principles, Microsoft is entitled to lodge a request under Art. 69(4) UPCA in respect to costs incurred in the appeal proceedings. Suinno has failed to demonstrate that the CFI's findings and considerations constitute manifest errors, i.e. factual findings or legal considerations which prove to be untenable already on the basis of a summary assessment (see Court of Appeal, 29 October 2024, UPC\_CoA\_549/2024, *Belkin v Philips*).

*Admissibility of the request for security for costs with regard to costs incurred in the CFI proceedings*

19. With regard to the costs incurred in the CFI proceedings the request is inadmissible.

20. A request for security for costs in proceedings before the Court of Appeal regarding costs already awarded by the CFI is not admissible (see *Oerlikon v Bhagat*, para. 16). The Court of Appeal noticed that, on 31 March 2026 (UPC\_CFI\_544/2026), the Central Division determined the costs incurred by Microsoft in the counterclaim for revocation action proceedings in EUR 300,000 and ordered Suinno to pay these costs within three weeks.
21. Even though the CFI did not award all the costs claimed by Microsoft, the issuing of a cost decision regarding costs incurred in the CFI proceedings pursuant to R. 150 RoP et seq. renders the request for security for costs inadmissible. Objections to the order for costs may only be raised in the context of an application for leave to appeal.

#### *Assessment in substance*

22. A security for costs incurred by Microsoft in the appeal proceedings shall be provided for the following reasons.
23. The Court, when exercising its discretion under Art. 69(4) UPCA and R. 158 RoP, must determine, in the light of the facts and arguments brought forward by the parties, whether the financial position of the claimant gives rise to a legitimate and real concern that a possible order for costs may not be recoverable and/or the likelihood that a possible order for costs by the Court may not, or in an unduly burdensome way, be enforceable (*Oerlikon v Bhagat*, para. 20; *Hefei v Grundfos*, para. 15).
24. There are several facts and arguments raised by Microsoft, and not denied by Suinno, which give rise to a legitimate and real concern that an order for costs in the appeal proceedings may not be recoverable, if the Court of Appeal decides to reject the appeal and orders Suinno to pay the costs of the proceedings.
25. Suinno has so far not paid the costs incurred in the infringement proceedings, which should have been paid to Microsoft within three weeks of service of the order of 6 November 2025.
26. As to its financial position, Suinno has not brought anything forward to negate Microsoft's assertion that Suinno has admitted lacking financial resources to fulfil a possible claim for cost reimbursement.
27. Suinno argues without success that after the infringement action is no longer pending, the request is not a "reasoned request" within the meaning of R. 158.1 RoP, but on the contrary a baseless act of chicanery. It is true that a counterclaim is only admissible in infringement proceedings. But it has an autonomous existence in the sense that the conclusion of the infringement proceedings does not lead to the inadmissibility of the counterclaim for revocation, which was lodged during the pending infringement proceedings, and of the request for security for costs in the latter proceedings. This follows from R. 265.2 RoP, second sentence. According to this rule, the withdrawal of an action by the claimant shall have no effect on any counterclaim in the action.

### *Amount of security*

28. Microsoft suggests that Suinno be ordered to provide a security equal to the maximum amount of reimbursable costs as set out in Administrative Committee's scale of ceilings for recoverable costs (EUR 600,000).
29. Suinno did not object the suggested amount.

### *Form of the security and timing*

30. As to the form of the security, the Court of Appeal leaves it open to Suinno to provide the security either by deposit or by a bank guarantee issued by a bank licensed in the European Union.
31. The Court of Appeal considers a time period of 3 weeks from the date of service of this order appropriate.

### *Decision by default in case of non-compliance*

32. Pursuant to R. 158.5 RoP, if Suinno fails to provide the security within the time stated, the Court may give a decision by default pursuant to R. 355 RoP.

### *II. Stay of the proceedings*

33. The requests for stay are not successful.
34. According to R. 295 (m) RoP, the court may stay proceedings in any case where the proper administration of justice so requires.
35. In the present case, the Court does not find that an interest in the administration of justice exists in warranting a stay of proceedings. The Rules shall be applied and interpreted in accordance with Art. 41(3), 42 and 52(1) UPCA on the basis of the principles of proportionality, flexibility, fairness and equity (Preamble 2 RoP). Flexibility shall be ensured by applying all procedural rules in a flexible and balanced manner with the required level of discretion for the judges to organize the proceedings in the most efficient and cost-effective manner. Fairness and equity shall be ensured by having regard to the legitimate interests of all parties (Preamble 5 RoP). The Unified Patent Court has to ensure that proceedings are carried out in an expeditious way (see Preamble 7 RoP).
36. The protection of the defendant in CFI proceedings or the respondent in appeal proceedings in cases where the claimant does not have sufficient means to compensate the defendant for the legal costs incurred by the proceedings is generally adequately ensured by the order of security for costs. As a general rule, the financial circumstances of the claimant or appellant do not justify a stay of the proceedings unless the requirements of R. 311.1 or .2 RoP are met. That is fair. Regardless of their financial means, every party has the right to have the proceedings carried out in due time.

37. That additional costs may be incurred before the time period to provide security for litigation costs expires does not justify the stay of the proceedings until the security is provided. This circumstance must be considered when setting the time period for providing security for costs.
38. It follows that Microsoft's main request to stay the proceedings until Suinno has reimbursed Microsoft of reimbursable costs of the infringement proceedings has to be dismissed. Furthermore, these are costs related to the infringement proceedings, which have been concluded.
39. The same applies to the first auxiliary request for stay the proceedings until Suinno has provided security for costs.

### III. Extension of time period

40. Microsoft requests that the deadline to file a Statement of response to the grounds of appeal in the appeal proceedings UPC\_CoA\_21/2026 be extended by a period equivalent to the time until a final decision is made on the present applications.
41. According to R. 9.3 (a) RoP the Court may, on a reasoned request by a party extend a time period referred to in these Rules or imposed by the Court. The Court of Appeal exercises its discretion in this matter to grant this auxiliary request. Given the uncertainty as to whether Suinno can provide security for costs and the fact that Suinno has also failed to pay the costs of the infringement proceedings, it is, in this exceptional case, justified to extend the time period for filing the Statement of response, as requested.

### ORDER

The Court of Appeal

- I. orders Suinno to provide a security for costs to Microsoft in an amount of EUR 600,000 either by deposit or by a bank guarantee issued by a bank licensed in the European Union, within 3 weeks from the date of service of this order;
- II. informs Suinno that a decision by default maybe issued against Suinno, if Suinno fails to provide such security within the time specified by the Court (R. 158.5, 355 RoP), dismissing the appeal (UPC\_CoA\_21/2026).
- III. extends the time period for lodging the Statement of response until 19 June 2026.
- IV. rejects Microsoft's other requests.

Issued on 7 April 2026

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Steven Kitchen, technically qualified judge

Udo Matter, technically qualified judge