



Düsseldorf local division
UPC_CFI_1477/2025

Decision
of the Court of First Instance of the Unified Patent Court
issued on 9 April 2026
concerning EP 3 223 320 B1

Claimant:

Seoul Viosys Co., Ltd., legally represented by its authorised directors Chung-Hoon Lee and Young Ju Lee, 65-16, Sandan-ro 163 beon-gil, Danwon-gu, Ansan-si, Gyeonggi-do, 15429, Republic of Korea

represented by: Dr Bolko Ehlgen, Attorney-at-law, Dr Julia Schönbohm, Linklaters LLP, Taunusanlage 8, 60329 Frankfurt am Main, Germany

supported by: Patent Attorney Dr. Dipl.-Phys. Olaf Isfort, Schneiders & Behrendt, Huestraße 23, 44787 Bochum, Germany

email address: bolko.ehlgen@linklaters.com

defendant:

1. expert e-Commerce GmbH, legally represented by its managing directors Dr Stefan Müller and Michael Grandin, Bayernstraße 4, 30855 Langenhagen, Germany

represented by: Attorney-at-law Dr Dirk Jestaedt, law firm Krieger Mes & Graf von der Groeben Part mbB, Bennigsen-Platz 1, 40474 Düsseldorf, Germany

Electronic service address: info@krieger-mes.de

in association with: Patent Attorney Bernhard Ganahl, HGF Europe LLP, Neumarkter 18 Straße, 81673 Munich, Germany

2. expert klein GmbH, legally represented by its managing directors Jens Oerter and Thomas Jacob, Jägerstraße 32, 57299 Burbach, Germany

represented by: Attorney-at-law Dr Dirk Jestaedt, Krieger Mes & Graf von der Groeben Part mbB, Bennigsen-Platz 1, 40474 Düsseldorf, Germany

Electronic service address: info@krieger-mes.de

in association with: Patent Attorney Bernhard Ganahl, HGF Europe LLP, Neumarkter
Straße 18, 81673 Munich, Germany

PATENT AT ISSUE:

European Patent No. 3 223 320 B1

Panel/CHAMBER: Düsseldorf local division panel

JUDGES: This decision was made by Presiding Judge Thomas, acting as the judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: Proceedings for the assessment of costs – Art. 69 UPC Agreement, paras. 150, 151, 152 RoP

BRIEF SUMMARY OF THE FACTS:

1. The claimant brought proceedings against the defendants for infringement of European patent EP 3 223 320 B1 (hereinafter: the patent at issue), with the proceedings being conducted under file number UPC_CFI_483/2023. The defendants contested the use of the patent at issue. Furthermore, the second defendant filed a counterclaim for the revocation of the patent at issue (CC_3555/2024). The claimant opposed the counterclaim for revocation and, in the alternative, filed applications for amendment of the patent at issue.
2. In a decision handed down on 10 October 2024, the Düsseldorf local division, in response to the counterclaim for revocation brought by the second defendant, declared the patent at issue invalid for the territories of the Federal Republic of Germany, the French Republic, the Italian Republic and the Kingdom of the Netherlands, and dismissed the infringement claim.
3. An appeal lodged by the Claimant against this decision (UPC_CoA_762/2025 and UPC_CFI_773/2025) was dismissed by the Court of Appeal in a decision dated 5 November 2025. According to the Court of Appeal's decision, the Claimant is to bear the costs of the appeal proceedings.
4. On 7 November 2025, the defendants filed an application for the assessment of costs, seeking an order for the costs of the appeal proceedings.
5. In support of their application for the assessment of costs, the defendants submit that, at the suggestion of the Court of First Instance, the parties reached an agreement during the oral hearing at first instance whereby they mutually recognised a sum of €100,000 as recoverable for the costs of the claim and the counterclaim (legal representation costs). In addition, there are travel and accommodation costs as well as court fees. In the defendants' view, this agreement also applies to the appeal proceedings, which is why they also request that recoverable costs be assessed for this instance in the amount agreed at first instance.

6. As a precautionary and alternative measure, the defendants base their application for the assessment of costs on the costs actually incurred in the appeal proceedings, which they calculate as follows:

a) Rechtsanwaltskosten	
Durchsicht der erstinstanzlichen Entscheidung, umfassende Korrespondenz, Durchsicht der gegnerischen Berufungsbegründung und ausführliche Stellungnahme hierzu, Ausarbeitung der Berufungserwiderung und Einreichung (10. Oktober 2024 bis 12. Mai 2025), 37 Stunden à € 390,00	14.430,00 €
Auslagen	100,00 €
Weitere Bearbeitung der Angelegenheit, Vorbereitung der mündlichen Verhandlung und Wahrnehmung der mündlichen Verhandlung (12. Mai bis 11. Juli 2025), 32 Stunden à € 390,00	12.480,00 €
Verauslagte Fahrtkosten (häufig)	108,78 €
Übernachungskosten (häufig)	301,40 €
b) Patentanwaltskosten	
Durchsicht der erstinstanzlichen Entscheidung, umfassende Korrespondenz, Durchsicht der gegnerischen Berufungsbegründung und ausführliche Stellungnahme hierzu, Ausarbeitung der Berufungserwiderung und Einreichung (10. Oktober 2024 bis 12. Mai 2025), 28,1 Stunden à € 390,00	10.959,00 €
Auslagen	50,00 €
Weitere Bearbeitung der Angelegenheit, Vorbereitung der mündlichen Verhandlung und Wahrnehmung der mündlichen Verhandlung (12. Mai bis 11. Juli 2025), 29,2 Stunden à € 390,00	11.388,00 €
Verauslagte Fahrtkosten (häufig)	270,85 €
Übernachungskosten (häufig)	286,44 €

7. With regard to the supporting documents submitted to the file for travel and accommodation costs, reference is made to the bundle of annexes KM 1.

APPLICATIONS OF THE PARTIES:

8. The defendants request

that the claimant pay the first and second defendants, as joint creditors, a sum of €101,067.47.

9. The claimant requests,

to reject the defendant's claim for costs dated 7 November 2025 in so far as it seeks an amount in excess of €50,355.12.

FACTUAL AND LEGAL ISSUES:

10. In the Claimant's view, the costs of the appeal proceedings are recoverable only to the extent actually incurred, as the agreement reached at first instance regarding

the recoverability of costs did not cover the appeal proceedings.

11. Apart from that, the travel and accommodation costs stated would amount to only €948.12 based on the supporting documents submitted. However, the defendant has claimed an amount of €1,067.47.

REASONS FOR THE ORDER:

12. The admissible application for the assessment of costs, which was in particular submitted within the time limit, is only partially successful on the merits.

1. Principles

13. Pursuant to Section 69(1) of the UPC Agreement, reasonable and proportionate legal fees and other expenses of the successful party are, in principle, to be borne by the unsuccessful party, unless equity dictates otherwise. This applies up to a ceiling specified in the Rules of Procedure.
14. With regard to legal representation costs, this principle is laid down in Rules 152.1 and 152.2 of the RoP, which provide that the applicant is entitled to reimbursement of reasonable and proportionate legal representation costs. The Administrative Committee shall, with reference to the value of the claim, establish a scale of maximum amounts for reimbursable costs.
15. The costs of the proceedings are those actually incurred in the specific pending or contentious proceedings. These include, in particular, the costs listed in Rule 151(d) of the Rules of Procedure. Other costs are those which, although not incurred in the pending proceedings, are directly and closely related to them (see UPC_CFI_696/2024 (LD Munich, Chamber 2), decision of 19 March 2025 – MSG Maschinenbau v EJP Maschinenbau; UPC_CFI_363/2023 (Düsseldorf Regional Court), decision of 14 April 2025 – Seoul Viosys v Expert; UPC_CFI_16/2024, decision of 22 April 2025, para. 16 – Ortovox v Mammut; UPC_CFI_355/2023 (Düsseldorf Regional Court), decision of 9 July 2025, para. 21 – Fujifilm v. Kodak; UPC_CFI_657/2024 (LD Düsseldorf), decision of 2 February 2026, para. 20 – 10x Genomics v. Curio).
16. For the costs in question to be recoverable, they must, on the whole, be reasonable and proportionate. This is always subject to an assessment on a case-by-case basis. These criteria are intended to achieve the objectives set out in Articles 3 and 14 of Directive 2004/28: on the one hand, to ensure a high level of protection for European patents and, on the other hand, to prevent an injured party from being deterred from taking legal action to enforce their rights. Furthermore, they aim to ensure that the measures, procedures and remedies necessary for the enforcement of intellectual property rights are not unnecessarily costly (ECJ, 28 April 2022 – C-531/200 – NovaText v Ruprecht-Karls-Universität Heidelberg; ECJ, 28 April 2022 – 559/20 – Koch Media v Funke; ECJ, 28 July 2016 – C-57/15 – United Video Properties v Telenet; UPC_CFI_16/2024 (Düsseldorf Regional Court), judgment of 22 April 2025, para. 17 – Ortovox v Mammut; UPC_CFI_355/2023 (Düsseldorf Regional Court), judgment of 9 July 2025, para. 22 – Fujifilm v. Kodak; UPC_CFI_657/2024 (LD Düsseldorf), judgment of 2 February 2026, para. 21 – 10x Genomics v. Curio). This also applies to the defence.
17. Against this background, ‘reasonable’ essentially means ‘necessary’. From the perspective of a party acting reasonably and rationally, the decisive factor is whether the measure

which gave rise to the costs, was objectively necessary and appropriate to achieve the legitimate objective of the proceedings. The measure must therefore be relevant to the enforcement or defence of legal claims (UPC_CFI_16/2024 (Düsseldorf Regional Court), judgment of 22 April 2025, para. 18 – Ortovox v Mammut; UPC_CFI_355/2023 (LD Düsseldorf), decision of 9 July 2025, para. 22 – Fujifilm v Kodak; UPC_CFI_657/2024 (LD Düsseldorf), decision of 2 February 2026, para. 22 – 10x Genomics v. Curio).

18. The assessment of proportionality focuses primarily on the amount of the costs incurred. The costs arising from the necessary measure must not be disproportionate. In particular, they must not exceed the value of the claim, the significance of the matter, the difficulty and complexity of the relevant legal and factual issues, or the prospects of success of the measure. Here too, an ex ante assessment must be carried out (UPC_CFI_696/2024 (LD Munich, Chamber 2), decision of 19 March 2025, paras. 18–22 – MSG Maschinenbau v EJP Maschinenbau; see also UPC_CFI_363/2023 (Düsseldorf Regional Court), decision of 14 April 2025 – Seoul Viosys v Expert; UPC_CFI_16/2024 (Düsseldorf Regional Court), decision of 22 April 2025, para. 19 – Orto-vox v Mammut; UPC_CFI_355/2023 (Düsseldorf Regional Court), decision of 9 July 2025, para. 21 – Fujifilm v. Kodak; UPC_CFI_657/2024 (LD Düsseldorf), decision of 2 February 2026, para. 22 – 10x Genomics v. Curio).

2. Decision in the present case

19. On the basis of these principles, the defendant's application for the assessment of costs is successful only to the extent set out in the operative part.
20. Insofar as the defendants rely on the costs agreement reached at first instance to support their application, it is clear that this agreement does not cover the costs of the appeal proceedings, but merely covers the costs of the first instance. This is evident from the fact that the agreement in question was reached on the basis of the estimates of their first-instance costs submitted by the parties. Furthermore, at the time of this agreement, it was not foreseeable whether an appeal would take place at all, nor what costs were likely to be incurred in that regard. The defendants have failed to demonstrate why the agreement should nevertheless apply, with the same content, to the appeal proceedings. Nor do the defendants claim that a comparable agreement was reached in the appeal proceedings.
21. On this basis, the defendants may only claim reimbursement of the costs actually incurred and deemed reasonable.
22. The claimant has raised no objections to the legal and patent attorney's fees claimed by the defendants, totalling €49,407 (legal fees: €27,010; patent attorney's fees: €22,397). As these costs also fall within the reimbursement ceiling, there is no reason to deny or limit the recoverability of these costs.
23. The supporting documents submitted, together with the claimed and uncontested travel allowance, result in travel and accommodation costs for the solicitor and patent attorney totalling €2,087.04, which, in the present case, against the background of parallel proceedings heard by the Court of Appeal in conjunction with the present proceedings, are recognised on a 50/50 basis and thus in respect of an amount of €1,043.52.

DECISION AND ORDER:

1. The claimant is ordered to pay the defendants the sum of €50,450.52 **by 23 April 2026** to cover the costs of the appeal proceedings (UPC_CoA_762/2024 and UPC_CFI_773/2024).
2. In all other respects, the defendants' application for the assessment of costs is dismissed.

Issued in Düsseldorf on 9 April 2026 NAMES
AND SIGNATURES

Presiding Judge Thomas	
For the Deputy-Registrar	

INFORMATION ON APPEALS

A party aggrieved by a decision referred to in Rule 157 of the RoP may, within 15 days of service of the decision, file an application for leave to appeal with the Court of Appeal, Rule 221(1) of the RoP.

Information on enforcement (Art. 82 UPC Agreement, Art. 37(2) EPGs, R. 118.8, 158.2, 354, 355.4 RoP):

A certified copy of the enforceable decision shall be issued by the Deputy-Registrar on application by the enforcing party, Rule 69 of the Rules of Procedure.