



Local Division Munich
UPC_CFI_617/2025

HEADNOTES

A bank guarantee provided by a Defendant, as part of an objection of compulsory licence under antitrust law, as security for any potential licence payment obligations towards the Claimant and thus to avert an injunction claim asserted by the Claimant (“FRAND security”), does not, in principle, relieve the Claimant of the obligation to provide security for costs, even if the amount of the bank guarantee exceeds the amount of the security for costs.

Neither does the bank guarantee constitute a valuable asset of the Claimant to which the Defendant may have recourse for recovery of his costs, nor does the provision of the bank guarantee allow the conclusion that the Defendant is obliged to pay licence fees to the Claimant against which he could set off a claim for recoverable costs.

Order
of the Court of First Instance of the Unified Patent Court
Local Division Munich
issued on 23 April 2026

CLAIMANT (APPLICANT)

Advanced Standard Communication LLC, 675 Town Square Blvd., Suite 200, Garland, Texas 75040, USA, represented by its Manager, Mr. Jeremy Pitcock,

represented by: Dr Michael Schneider, Philipp Neels, Dr Désirée Heintz and Dr Ludger Eckey, Eisenführ Speiser, Gollierstraße 4, 80339 Munich.

DEFENDANTS (RESPONDENTS)

1. **XIAOMI Inc.**, No. 006, floor 6, Building 6, Yard 33, Middle Xierqi Road, Haidian District, Beijing, China, represented by the managing director Mr. Lei Jun,
2. **XIAOMI Communications Co., Ltd**, #019, 9th Floor, Building 6, 33 Xi'erqi Middle Road, Haidian District, Beijing China, represented by the legal representative Mr. Qu Heng,
3. **XIAOMI Technology Netherlands B.V.**, Prinses Beatrixlaan 582, WTC The Hague Toren E, 5e etage, 2595BM 'S-Gravenhage, Netherlands, represented by the managing director Xiaojun Mao,
4. **XIAOMI Technology Germany GmbH**, Niederkasseler Lohweg 175, 40547 Düsseldorf, Germany, represented by the managing directors En Lin and Dong Wang,

represented by: Dr Andreas von Falck and Oliver Bäcker, Hogan Lovells International LLP, Dreischeibenhaus 1, 40211 Düsseldorf.

PATENT AT ISSUE

European Patent n° EP 3 016 464 B1

PANEL/DIVISION

Panel 2 of the Local Division Munich

DECIDING JUDGE/S

This Order has been issued by the Presiding Judge Dr Daniel Voß (Judge-Rapporteur), the Legally Qualified Judge Dr Georg Werner, the Legally Qualified Judge Rute Lopes and the Technically Qualified Judge Alessandro Sanchini.

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Patent infringement – panel review of an order for security for costs, Rule 333.1 RoP

SUMMARY OF FACTS

- 1 The Claimant is suing the Defendants for alleged patent infringement. The Defendants have raised the objection of compulsory licensing under antitrust law ('FRAND objection') in their Statement of Defence (SoD). In this context, on 30 January 2026, they provided the Claimant with a bank guarantee as security for any potential licence payment obligations towards the Claimant. Furthermore, the Defendants have filed a Counterclaim for revocation. In addition, they have applied for an order requiring the Claimant to provide security for costs.
- 2 The Defendants requested
 - I. that the Claimant be ordered to provide, within two weeks from the date of service of the order, security in an amount of EUR 600.000 for the costs of the proceedings and other costs incurred and to be incurred by the Defendants and that the Claimant may have to bear (Art. 69 para. 4 UPCA; R. 158.1 RoP); and
 - II. in the event that Claimant fails to provide adequate security within said time, a decision by default against the Claimant in accordance with R. 355 RoP be issued (R. 158.5 RoP).and in the alternative:
 - I that the Claimant be ordered to provide, within a time limit to be set by the Local Division Munich, adequate security for the costs of the proceedings and other costs incurred and to be incurred by the Defendants and that the Claimant may have to bear (Art. 69 para. 4 UPCA; R. 158.1 RoP); and
 - II. in the event that Claimant fails to provide adequate security within the time stated, a decision by default against the Claimant in accordance with R. 355 RoP be issued (R. 158.5 RoP).
- 3 The Claimant requested
 - I. that Defendants' request for a security of costs of March 19, 2025, App_13506/2025, is rejected,and in the alternative:

- II. that Claimant be ordered to provide, within a reasonable time limit to be set by the Local Division Munich, which should not be less than 8 weeks, of the service of the order, an adequate security for the legal costs and other expenses pursuant to Rule 185.1 RoP in an amount to be set by the Local Division Munich, which should not be higher than EUR 200.000,00, by way of deposit on the UPC account dedicated for security deposits, alternatively by way of bank guarantee provided by a bank licensed in the EU, to be chosen by Claimant.

- 4 The Defendants argued that the financial situation of the Claimant gave rise to serious concerns that orders for costs by the Court might not be recoverable at all. Based on publicly available data, it must be assumed that the Claimant has no valuable assets nor apparent financial reserves. Information on Claimant's financial situation or ownership is unknown. The value of Claimant's patent portfolio is uncertain. The Claimant has no revenue streams through license fees. It does not have any physical office space and is a simple shell company. Furthermore, the Defendants took the view that there was a likelihood that orders for costs made by the court against the claimant could only be enforceable in an unduly burdensome way in the State of Texas, US.
- 5 The Claimant was of the opinion that there was no evidence supporting Defendants' claim that Claimant's financial position was at least questionable. An "LLC" is a common corporate structure and the fact that Claimant's shareholders are unknown is irrelevant. The Claimant has also valuable assets in the form of its patent portfolio. The excerpts of the databases do not contain any indication that Claimant's financial position is anything other than good. The request for security of legal costs should be rejected for the reason alone that Defendants failed to establish any reasonable ground for their allegations. Furthermore, Defendants did provide a security to Claimant by way of bank guarantee as a "FRAND security" which exceeds any potential claim the Defendants may have against the Claimant for reimbursement of costs. The Claimant also took the view that an enforcement of a possible order for costs in the US would not have been unduly burdensome.
- 6 After the parties had been heard regarding the Judge-Rapporteur's intention to issue an Order for security for costs in the amount of EUR 300,000, the following Order dated 24 March 2026 was issued and served on the parties on 27 March 2026:
 1. The Claimant is ordered to provide security for legal costs and other expenses in respect of the infringement action and counterclaim for revocation to the Defendants in the total amount of EUR 300,000 (three hundred thousand euros).
 2. The security may be provided either by way of deposit on the UPC account dedicated for security deposits, alternatively by way of bank guarantee issued by a bank licensed in the European Union to be chosen by the Claimant.
 3. The security has to be provided within eight weeks from the date of service of this order. The Claimant is informed that if it fails to provide the aforementioned security within the time stated, a decision by default may be given, in accordance with Rule 355 RoP.

7 The Judge-Rapporteur found that Claimant's financial position gave rise to a legitimate and real concern that a possible order for costs might not be recoverable. The Defendants have demonstrated, to the best of their ability, that the financial position of the Claimant gives rise to such concerns, and the Claimant has neither contested the facts on which the Defendants' argument was based, nor has Claimant provided information about its financial position. Fact is, that Claimant can be operated as a pass-through entity, and, irrespective of the corporate structure, it has no tangible assets of any significant value and, apparently, no substantial financial resources or cash inflow either. According to the case law of the Court of Appeal, Claimant's patent portfolio as sole intangible asset does not give rise to any different valuation. With regard to the "FRAND security", the Judge-Rapporteur held that Claimant could not rely on it. It is impossible to predict whether, and to what extent, the Claimant has a claim against the Defendants for licence payments. The bank guarantee provided as "FRAND security" or any potential claim for licence payments is (at present) not a secured asset that could dispel concerns that a potential order for costs might not be recoverable. Taking into account the values of dispute of the Infringement action and the Counterclaim for revocation, as well as the corresponding ceiling, the Judge-Rapporteur considered an amount of EUR 300,000 to be an appropriate security for costs.

REQUESTS

8 With application for review of the Order of 24 March 2026, filed on 13 April 2026, Claimant now requests,

that the Order of 24 March 2026 is set aside and that Defendants' request for a security of costs of 19 March 2025 (App_13506/2025) is rejected;

in the alternative,

that the panel revises the Order of 24 March 2026 as follows:

1. The Claimant is ordered to provide security for legal costs and other expenses in respect of the infringement action and the counterclaim for revocation to the Defendants in the total amount of EUR 300,000 (three hundred thousand Euro), *unless Claimant, prior the expiration of the deadline ordered hereunder in Item 3. of this Order, provides proof of having secured a litigation insurance ("After The Event insurance") with anti-avoidance endorsement from an insurer licensed in the European Union in accordance with the criteria set out in the CoA's order of 18 February 2026 (UPC_CoA_890/2025).*
2. The security may be provided either by way of deposit on the UPC account dedicated for security deposits, alternatively by way of bank guarantee issued by a bank licensed in the European Union to be chosen by the Claimant.

3. The security has to be provided within eight weeks from the date of service of this *revised* order. The Claimant is informed that if it fails to provide the aforementioned security within the time stated a decision by default may be given, in accordance with Rule 355 RoP.

9 The Defendants request that

Claimant's Application to review the Order be dismissed.

ARGUMENTS OF THE PARTIES

- 10 Claimant states that it primarily applies for a review of the Order insofar as the Judge-Rapporteur rejected Claimant's request for rejection of Defendants' application, in particular Claimant's argument that the provision of security for costs is neither necessary nor justified in light of the "FRAND security" already provided by Defendants. In the Claimant's view, the Order does not adequately address the substance of its arguments on this point. In particular, given that Defendants have already provided the "FRAND security" in the form of a bank guarantee, there can be no legitimate concern that a potential cost order in favour of Defendants would be irrecoverable, or that enforcement of such an order would be impossible or unduly burdensome.
- 11 Claimant further argues that the Judge-Rapporteur did not sufficiently assess all relevant facts pertaining to Claimant's financial position. Defendants have failed to provide any evidence that would warrant a security order pursuant to Rule 158.1 RoP. Defendants' request rests almost entirely on the circumstance that Claimant is organised as an "LLC". However, this fact alone does not justify a security order. Rather, Claimant has demonstrated that there are no concrete facts or circumstances suggesting that it would be unable to satisfy a potential costs award in favour of Defendants.
- 12 In the alternative, Claimant's right and ability should be preserved to address Defendants' concerns regarding Claimant's financial position by taking out a Litigation insurance ("After The Event insurance", ATE) for the benefit of Defendants. Claimant intends to and is currently in the process of obtaining a suitable ATE insurance with an anti-avoidance endorsement in accordance with the case law of the Court of Appeal. This process could and was only started by Claimant once the CoA ATE Order had cleared the way for this hitherto unavailable instrument.
- 13 Defendants are of the opinion that the Judge-Rapporteur's Order is lawful and justified. They argue that the bank guarantee provided to Claimant has no impact on Claimant's financial situation. It is not a liquid asset available for Defendants to collect, particularly in the event of Claimant's defeat in the present proceedings. According to the Defendants, they have also sufficiently demonstrated that enforcement of a UPC order for costs in the State of Texas, USA would be unduly burdensome.

14 Defendants are further of the view that Claimant's alternative sets of requests is to be dismissed as well. Claimant has not brought forward any new facts or arguments that would require a reassessment or an amendment of the Order. It merely refers to an order of the Court of Appeal and states that it is currently in the process of obtaining an ATE insurance, which would remove the basis for an order for security for costs. However, Claimant is in fact seeking a "sign-off" and guidance from the Court on its unspecified plan to obtain a litigation insurance policy and to secure additional time. Claimant had ample time to make its case and to provide substantiated facts regarding its financial situation. ATE insurance is widely recognised as a highly complex mechanism in the United Kingdom in security for costs proceedings. Further, ATE insurances were already under discussion in the present forum since September 2024. Referring now to a Court of Appeal decision published in February 2026 cannot justify the requested amendment of the Order. Notably, unlike in the case decided by the Court of Appeal, Claimant has not provided any further details on its alleged plans, any term sheet, or even a concrete timeline. Consequently, the alternative request 1 is insufficiently specified. The Court of Appeal has not set out any binding requirements according to which ATE insurances would be generally sufficient to cover the interests of a defendant but has merely decided an individual case. A diligent case-by-case analysis is required to determine whether an insurance policy has been concluded and whether its specific terms and conditions are sufficient to justify the assumption that an order for costs may be recoverable. Finally, the request leaves open how and in which form Claimant intends to provide proof of having secured a litigation insurance.

GROUNDS FOR THE ORDER

15 Claimant's request for a review of the Order of the Judge-Rapporteur by the panel is admissible but unfounded.

I.

16 Claimant's request for a panel review is admissible.

17 Subject of the request is a case management order of the Judge-Rapporteur, R. 333.1 RoP. The request has been filed in due form and time in accordance with R. 333.1 and .2 RoP. In particular, Claimant lodged the application for the review of the Order within 15 days in accordance with Rule 333.2 RoP. This time limit expired on 13 April 2026, as the Order was served on 27 March 2026 in accordance with R. 271.1(c) 276.1, 300(a) RoP and the time limit, which would thus have ended on Sunday, 12 April 2026, was automatically extended to Monday, 13 April 2026, in accordance with R. 301.1 RoP.

II.

18 The Claimant's request to reject the Defendants' request for security for costs (main request) is dismissed. The Order dated 24 March 2026, issued by the Judge-Rapporteur on 27 March 2026, is lawful and appropriate.

19 The Panel concurs with the Judge-Rapporteur's view as set out in his Order of 24 March 2026. The objections raised by the Claimant are not convincing.

1.

20 In the Order of 24 March 2026, the Judge-Rapporteur has discussed the relevance of the "FRAND security" provided by the Defendants to the provision of a security for costs and correctly concluded that, at the time of the decision about Defendants request for cost security and even now, it is impossible to predict whether, and to what extent, the Claimant has a claim against the Defendants for licence payments and, consequently, the Defendants cannot be required to set off any later claims for reimbursement of costs against claims for licence payments as it is unclear whether such claims exist and, if so, to what extent.

21 A bank guarantee provided by a Defendant, as part of his objection of compulsory licence under competition law, as security for any potential licence payment obligations towards the Claimant and thus to avert an injunction claim asserted by the Claimant ("FRAND security"), does not, in principle, relieve the Claimant of the obligation to provide security for costs, even if the amount of the bank guarantee exceeds the amount of the security for costs. Neither does the bank guarantee constitute a valuable asset of the Claimant to which the Defendant may have recourse for the recovery of its costs, nor does the provision of the bank guarantee allow the conclusion that the Defendant is obliged to pay licence fees to the Claimant against which he could set off a claim for recoverable costs.

22 This principle is in line with the case law of the Court of First Instance (Local Division Munich, Order of 12 December 2025, CFI_525/2025 – Asus v Oppo; Order of 26 February 2026, CFI_498/2025 – Crystal Clear Codec v Oppo). Even if the Defendants made a (counter) offer to the Claimant during the license negotiations, this does not give rise to any claim against the Defendants that the Claimant could offset. No such offer has been accepted by the Claimant so far. Nor can it be assumed that the bank guarantee was intended to acknowledge a legal obligation to pay licence fees. The guarantee was provided, if anything, for the purposes of legal defence. Therefore, in view of the currently still open outcome of these proceedings, it must be assumed that it is not sufficiently certain that the Defendants will have to pay license fees to the Claimant. Nor can the Claimant rely on the principle that a "FRAND security" is to be provided for licences covering the entire portfolio. As far as can be seen, it has not yet been decided whether and to what extent the Defendants are obliged to pay any licence fees for any patent of the Claimant.

23 This is also reflected in the terms of the bank guarantee provided by the Defendants. According to these terms, [REDACTED]
[REDACTED]
[REDACTED] (see Exhibit HL-FRAND 29 confidential). So far, none of these conditions have been met, and it is not certain whether they ever will be.

2.

- 24 Insofar as the Claimant argues that the Judge-Rapporteur has not sufficiently assessed all relevant facts pertaining to Claimant's financial position, this is not correct. Claimant does not specify which facts the Judge-Rapporteur failed to assess. It merely argues that Defendants did not submit any evidence that would warrant an order for security for costs. However, this fails to recognise the principles established by the Court of Appeal regarding the burden of substantiation and proof.
- 25 As already set out in the Order of 24 March 2026, the burden of substantiation and proof why an order for security for costs is appropriate in a particular case is on the Defendant making such a request, but that – once the reasons and facts in the request have been presented in a credible manner – it is up to the Claimant to challenge these reasons and facts in a substantiated manner, especially since that party will normally have knowledge and evidence of its financial situation. It is for the Claimant to argue that and why a security order would unduly interfere with its right to an effective remedy (Court of Appeal, Order of 17 September 2024, UPC_CoA_217/2024 – NST/Audi; Order of 9 July 2025, UPC_CoA_431/2025 – Chint/JingAO; Order of 30 October 2025, UPC_CoA_8/2025 – Oerlikon/Bhagat; Order of 18 February 2026, UPC_CoA_890/2026– Syntorr/Arthrex).
- 26 It follows from this that a Defendant is only required to present reasons and facts to the extent that they are known to him or that he can reasonably ascertain them. In the present case, the Defendants asked the Orbis database, a database on private company financials, ownership and linages, and the State of Delaware's full registry listing and stated that "according to all available data from public sources, it is to be assumed that Claimant has no valuable assets nor apparent financial reserves." It is therefore incorrect when Claimant says that the Defendants' request rests almost entirely on the circumstance that Claimant is organized as a limited liability company under Delaware law. This is merely one part of Defendants' argument – albeit a substantial one – alongside the other grounds on which they seek to substantiate their doubts regarding Claimant's financial position. In his Order of 24 March 2026, the Judge-Rapporteur therefore rightly points out that it is undisputed that, apart from the information provided by the Defendants, no further information about Claimant's financial position is publicly available, and that the Claimant has not challenged Defendants' conclusions based on these facts in a substantiated manner. Claimant has not put forward any argument why its financial position does not give rise to serious concerns that a possible order for costs might not be recoverable. Even now, the Claimant neither presents specific facts nor submits documents that shed light on his financial position. Claimant solely refers to the "FRAND security" which – as already mentioned – it cannot successfully rely on.

III.

- 27 The impugned Order cannot be revised as requested in the alternative.
- 28 As the Claimant correctly points out, the existence of suitable ATE insurance coverage goes to the merits of an alleged need and application for the provision of cost security. However,

the Claimant has not yet taken out such an insurance. Nor is an order to provide security for costs an alternative, the obligation to which is waived by taking out appropriate ATE insurance.

29 ATE insurance is a contract containing a multitude of terms and conditions. It follows that taking out ATE insurance does not, in itself, dispel any concern that a possible order for costs may not be recoverable and/or eliminate the likelihood that a possible order for costs by the UPC may not, or in an unduly burdensome way, be enforceable. Rather, this depends on the terms and conditions of the ATE insurance policy. Nor has the Court of Appeal specified the conditions under which ATE insurance renders an order for security for costs unnecessary, but has instead assessed as to whether the Claimant has sufficiently substantiated the validity and the terms of the insurance policy in response to the Defendant's arguments (Court of Appeal, Order of 18 February 2026, UPC_CoA_890/2025, para. 28 – Syntorr/Arthrex). Accordingly, it depends on the terms of an ATE insurance policy and their interplay, the Defendant's objections to them, and the court's diligent assessment as to whether, in light of the terms of the ATE insurance, the Claimant's interest in the effective enforcement of its patent rights outweighs Defendant's interest in security for costs.

30 It follows that taking out ATE insurance as such – even with an anti-avoidance endorsement – is not adequate to automatically remove an obligation to provide security once it has been ordered. Any doubt about the terms of an ATE insurance policy raises the question of whether the Claimant is still obliged to provide security for legal costs. In the event of a dispute, the Court would have to decide whether the ATE insurance is suitable to dispel the concerns about Claimant's financial position. However, the Rules of procedure do not provide for this. Instead, the obligation to provide security for legal costs can only be fulfilled by means of a bank guarantee or a deposit (R.158.1 RoP), and the Court is only required to give a decision by default if such a security has not been provided (R. 158.4 RoP).

31 Even though Claimant is already in the process of negotiating the taking out of ATE insurance, the Court is not obliged to await the outcome of these negotiations and to make it possible to the Claimant to take out such insurance before ruling on the application for security for costs. The application has been pending for some time. The Claimant has had ample opportunity to take out ATE insurance. This opportunity did not arise solely as a result of the Court of Appeal's decision of 18 February 2026, but had already existed previously and had even been discussed before the Court of Appeal as early as September 2024 (see CoA, Order of 16 September 2024, UPC_CoA_301/2024 – ICPillar/Arm). In February 2026, the Court of Appeal merely recognised for the first time that such insurance must be taken into account when assessing Claimant's financial situation. Notwithstanding this, it is unclear why the Claimant has not yet succeeded in taking out ATE insurance, or whether and when this can still be expected at all.

IV.

32 The amount of the security for costs set by the Judge-Rapporteur is not challenged by the Claimant and does not give rise to any concerns.

33 As the order of 24 March 2025 is lawful and appropriate, and as an application under Rule 333 RoP has no suspensive effect, there is no need to amend or extend the deadline for providing security for costs.

V.

34 Leave to appeal is not granted. This Order is an individual decision considering the case law of the Court of First Instance and the Court of Appeal. The latter has already clarified the principles governing the burden of substantiation and proof for an application for security for costs. The assessment of FRAND security follows from the application of the principles established by the Court of Appeal regarding the requirement for security for costs. The same applies to ATE insurance. There is no divergence from the principles established by the other Divisions of the Court of First Instance and the Court of Appeal.

ORDER

1. The Claimant's request of 13 April 2026 is dismissed.
2. The Judge-Rapporteur's order of 24 March 2026, issued and served on 27 March 2026, is upheld.
3. Leave for appeal is not granted.

Dr Daniel Voß (Presiding Judge)	
Dr Georg Werner (Legally Qualified Judge)	
Rute Lopes (Legally Qualified Judge)	
Alessandro Sanchini (Technically Qualified Judge)	

Note

This document is a redacted version of the Order, with confidential information removed. It is valid without the signatures of the judges involved.