

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 28 April 2026
concerning an application to revoke or vary a
case management order
(R. 335, 336, 9.3 (a), 353 RoP)
on security for costs (R. 158 RoP)

KEYWORDS:

- Revocation of a security for costs order (R. 335, 336, 158 RoP, Art. 69(4) UPCA)
- Referrals under Art. 267 TFEU to the Court of Justice of the European Union
- Time extension (R. 9.3 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.
8. On 7 April 2026 the Court of Appeal ordered Suinno to provide a security for costs to Microsoft in an amount of EUR 600,000 either by deposit or bank guarantee issued by a bank licensed in the European Union, within 3 weeks from the date of service of this order and extended the time period for lodging the Statement of response until 19 June 2026 (hereinafter "security order").

PARTIES' REQUESTS

9. Essentially Suinno requests

- that the security order is revoked in its entirety, in the alternative that the security order is corrected so that no security is required, in the alternative the amount be lowered to EUR 3,000, in the alternative to EUR 6,000, in the alternative in the low tens of thousands, or EUR 60,000 as a maximum;
- the time limit for providing security, if any, be extended pursuant to Art. 9(3) RoP until a reasonable time after the requests in the application have been decided.
- Refer the following questions to the CJEU for a preliminary ruling:
 - 1) Is the interpretation of Art. 69(4) UPCA, according to which the applicant must provide security for the defendant's costs upon the defendant's request whenever it is uncertain whether the applicant will be able to pay the costs, compatible with EU law, specifically the Charter of Fundamental Rights, the Enforcement Directive, or the TRIPS Agreement?
 - 2) What other criteria should be taken into consideration especially in view of not requiring security despite a lack of financial resources of the applicant, in situations other than those of Art. 56-62 UPCA?
 - 3) Can the patent owner's right to appeal be denied solely based on lack of security of cost?

PARTIES' SUBMISSIONS

10. Essentially, Suinno submits the following.

- The security order is erroneous and in breach of Art. 69(4) UPCA, the Enforcement Directive and the Charter of Fundamental Rights of the European Union, specifically Art. 17 and 47 thereof.
- The purpose and content of Art. 69(4) UPCA is that a security for costs should be provided in the situations according to Art. 59-62 UPCA.
- A security for legal representation costs is an exception that should apply only in specific situations. For example, when one party causes the other party costs that are unrelated to resolving the substance of the action.
- The case law of the Court ignores that Art. 69(4) UPCA provides that the Court is obligated to consider the case in its entirety ("may order"). This involves considering the questions as to whether an infringement claim or validity defence prima facie appear well-founded, and the requested security commensurate in its amount to the substantive work required to resolve the matter on a bare minimum basis.
- The UPC and Court of Appeal (CoA) set the amount of security solely based on the ceiling, and what the world's richest entities may pay.
- Suinno remains the defendant. This action is solely driven by the counterclaimant Microsoft, after Suinno's infringement action was dismissed by a default decision. This appeal is no longer a consequence of the infringement action of Suinno, which was dismissed, but a sole choice of Microsoft. The reasoning of the security order is incorrect. After August 2025 Microsoft has not been a defendant, neither is Suinno a claimant. Suinno was forced to give up its sole claim.
- Art. 69 (4) UPCA refers to the applicant which is the original applicant for the purposes of appeal as well.

- In the cases referred to in the security order, Hefei and Aorticlab were alleged infringers and not defending a patent.
- In *AorticLab v Emboline* (para. 21), it is confirmed by the CoA that the Enforcement Directive does not support a security at the request of the claimant.
- The security order has multiple errors. Microsoft confirmed that the revocation counterclaim was continued of its sole initiative.
- The impugned order cannot be presumed correct. The CFI admits that factually they were misled by Microsoft (see cost decision points 8-10).
- Suinno did object to the amount of the security.
- The total costs to Microsoft will be less than Euro 6,000.
- The defendant has to show the incorrectness of the impugned decision, as Suinno did in the Grounds of appeal.

GROUNDS

A. *Application to revoke the security order*

11. The application to revoke the security order is admissible but has no merit.
12. Pursuant to R. 335 RoP the power of the Court to make a case management order includes the power to vary or revoke such order. According to R. 336 RoP the Court may exercise its case management powers on the application by a party or of its own motion, unless otherwise provided. An order on security for costs pursuant to R. 158 RoP is a case management order (CoA, 14 January 2025, UPC_CoA_651/2024, *Total Semiconductor v Texas Instruments*, para. 14).
13. The reasons given by Suinno do not justify revoking the security order.

Requirements for a security order

14. Contrary to Suinno's opinion, Art. 69(4) UPCA does not only apply to cases referred to in Art. 59-62 UPCA. The reference to these cases in Art. 69(4) UPCA is not exhaustive, as is clear from the wording ("*in particular in the cases referred to Articles 59 to 62*"). Nor does Art. 69(4) UPCA suggest that the requirement to provide security for costs should be the exception.
15. The purpose of security for costs under Art. 69(4) UPCA is to protect the opposing party from difficulties in enforcing a claim for reimbursement of costs. This justifies to order security for costs if the financial position of the claimant/appellant gives rise to a legitimate and real concern that a possible order for costs may be recoverable and/or the likelihood that a possible order for costs by the UPC may not, or in an unduly burdensome way, be enforceable (see CoA, 17 September 2024, UPC_CoA_218/2024, *Volkswagen v Network*, para. 7). Suinno does not argue that these conditions are not met in this case.
16. There are also no concerns regarding the security order under the Enforcement Directive (Directive 2004/48/EC). It does not contain any provisions regarding security for legal costs. To avoid repetition, reference is made to the order of 20 June 2025 (UPC_CoA_393/2025, *AorticLab v Emboline*, para. 19).
17. Also the TRIPS Agreement does not contain any provisions regarding security for legal costs.

18. The Charter of Fundamental Rights also does not give rise to any concerns regarding security for legal costs. According to Art. 17(2) of the Charter intellectual property shall be protected. Pursuant to Art. 47 of the Charter everyone whose rights and freedoms guaranteed by law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. It is apparent from Art. 52(1) of the Charter that the right to effective judicial protection is not an absolute right and may be restricted, in particular in order to protect the rights and freedoms of others (CJEU, 19 December 2019, C-752/18, *Deutsche Umwelthilfe v Freistaat Bayern*, para. 44). The need to protect the opposing party from the risk of costs becoming irrecoverable justifies the requirement for security for costs. The interests of both parties must be weighed up within the scope of the court's discretionary decision.
19. With regard to the other arguments put forward by Suinno, reference is made to the grounds set out in the security in order to avoid repetition.

Amount of the security

20. In its reply to the application for security for costs, Suinno did not raise any specific objections to the amount of the security for costs. The newly put forward arguments are therefore belated and cannot justify a revocation of the security order pursuant to R. 335 RoP.

B. Referral to the CJEU

21. The CJEU has no jurisdiction to give a preliminary ruling where a legal situation does not come within the scope of EU law. Therefore, provisions of the Charter that may be relied upon by the Court cannot, of themselves, form the basis for such jurisdiction (see CJEU, Recommendations to national courts and Tribunals in relation to the initiation of preliminary ruling proceedings, para. 10). For there to be jurisdiction, the request for a preliminary ruling must concern a rule of EU law other than the Charter applicable to the case in the main proceedings.
22. It is beyond reasonable doubt that the EU law, the Enforcement Directive and TRIPS agreement, do not prevent the imposition of a security for costs order. For this reason alone, a referral to the CJEU is out of the question.

C. Extension of time period

23. There are also no grounds for extending the time period for providing security. Although the Court has the power to revoke or amend an order for security for costs under R. 335 RoP, applicants cannot usually rely on the Court granting an application for revocation or amendment. The application for an extension must be rejected.

ORDER

The Court of Appeal rejects Suinno's applications.

Issued on 28 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