Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

CMS no ACT_551054/2023, Provisional measures

ORDER

of the Court of First Instance of the Unified Patent Court
Local Division Helsinki
Delivered on 29 April 2026
concerning EP 3295663

HEADNOTES:

If a provisional measures application has become devoid of purpose and hence there is no longer need to adjudicate on it, the Court shall dispose of it based on R. 360 RoP and on the request of the parties the Court shall make a cost decision and can take into account the outcome of the case on the merits if that is known.

KEYWORDS:

Provisional measures, no need to adjudicate (R. 360 RoP), costs.

APPLICANT (HEREINAFTER AIM SPORT):

AIM Sport Development AG
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Replacing AIM Sport Vision AG based on the decision of the UPC Local Division Helsinki on 26 February 2024.

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DEFENDANTS (HEREINAFTER TGI OR THE DEFENDANTS):

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2. **TGI Sport Virtual Limited (previously Supponor Limited)**
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PATENT AT ISSUE:

European patent n° **EP 3 295 663** (hereinafter referred to as the Patent)

DECIDING JUDGES:

This decision has been issued by
Petri Rinkinen, presiding judge and judge-rapporteur
Samuel Granata, legally qualified judge
Mélanie Bessaud, legally qualified judge
Eric Augarde, technically qualified judge

1 PROCEDURAL BACKGROUND OF THE CASE

1. The infringement case UPC_CFI_214/2023 was initially lodged by AIM Sport on 5 July 2023 together with a preliminary injunction (PI) application (CMS no ACT_551054/2023), which is subject of this order. A preliminary objection concerning the infringement action as well as objection to the competence and jurisdiction of the Court along with a response to the preliminary injunction application was lodged by TGI (at that time Supponor) on 18 August 2023. The Court heard the preliminary objection and the preliminary injunction case in an oral hearing on 20 September 2023, allowed the preliminary objection and dismissed the infringement action as well as the preliminary injunction lodged by AIM Sport based on lack of competence and jurisdiction. Written decision was issued on 20 October 2023.

2. AIM Sport filed an appeal to the Court of Appeal (CoA), which decided on 12 November 2024 to set aside the decision of the Helsinki Local Division and referred the actions back to the Helsinki Local Division.

3. AIM Sport indicated at that time that there was no purpose to continue the preliminary injunction application and that action was discontinued at that time.

4. The Helsinki Local Division decided on 18 November 2024 that the cost applications filed so far shall not be decided before e.g. the Infringement Action UPC_CFI_214/2023 is decided.

5. The parties informed the Court in the interim conference of case UPC_CFI_214/2023 that all costs applications filed earlier need not be adjudicated as long as the deadlines that were met with those applications are considered to be met. New submissions relating to the costs concerning also the costs of the preliminary injunction application (CMS no ACT_551054/2023) in principle were filed on 3 and 13 March 2026 by both parties.

6. The parties also agreed in the interim conference that there is no need to give a decision on the preliminary injunction application but they disagreed what are the grounds for this.

7. The infringement action UPC_CFI_214/2023 brought by AIM Sport has been decided on the same day as this preliminary injunction case. The infringement action was dismissed.

2 PARTIES REQUESTS

8. AIM Sport requests

   - that the Court decides that there is no need to adjudicate on the preliminary injunction application CMS no ACT_551054/2023 because it has become devoid of purpose and disposes the application and
   - that the Court orders that TGI shall bear the costs of the preliminary injunction application CMS no ACT_551054/2023.

9. TGI requests

   - that the Court proceedings are terminated and
   - that the Court orders that AIM Sport shall bear the costs of the preliminary injunction application CMS no ACT_551054/2023.

3 SUMMARY OF THE PARTIES POSITIONS

3.1 AIM SPORT'S POSITION

10. AIM Sport's application for the preliminary injunction has become devoid of purpose through TGI's conduct i.e. the preliminary objection which was rejected by the Court of Appeal. Therefore, the Court should decide that there is no need to adjudicate the PI application under R. 360 RoP and dispose the application.

11. The main reason for the preliminary injunction was to avoid commercial harm to AIM Sport from a UEFA bidding round that was in progress in September 2023. The hearing of the application for the preliminary injunction was scheduled prior to the next stage in the UEFA bidding round, which would in turn have enabled any preliminary injunction granted to take effect before the harm occurs. However, the long duration of the appeal of the opt-out decision resulted in bidding decisions being made by UEFA according to their timetable and thus the "window of opportunity" for a preliminary injunction in September 2023 was lost, through no fault of AIM Sport.

12. Nevertheless it will be necessary for the Court to decide how costs should in principle be dealt with.

13. AIM Sport's primary position is that each party should bear its own costs. There is no decision on who was the successful party in relation to the merits of the preliminary injunction application, and it would be inappropriate to re-litigate the preliminary injunction. Due to these exceptional circumstances, the Court should order under Art. 69(2) UPCA that each party bears its own costs in this regard.

14. In the alternative, the Court's decision in the main infringement action should determine the cost allocation for the preliminary injunction in accordance with Art. 69(1) UPCA. In that case, there should be no separate ceiling for preliminary injunction costs.

15. TGI's position to the contrary regarding the ceiling is based on Section 5b of the Scale of ceilings for recoverable costs adopted by the Administrative Committee on 24 April 2023. AIM Sport argues that Section 5b concerns standalone applications for interim relief, which are not followed by an infringement action on the merits. AIM Sport's application for interim relief was accompanied by a main infringement action, and thus, Section 5b is not applicable in the present case.

3.2 TGI'S POSITION

16. TGI has submitted that – although they are of the opinion that the correct procedural way of terminating the preliminary injunction proceedings would be a dismissal – it is ultimately of no interest to TGI how the preliminary injunction proceedings are terminated as long as they are terminated and AIM Sport bears the costs of these proceedings. Therefore, subject to AIM Sport being ordered to bear the costs of the preliminary injunction proceedings, TGI would also be open to a termination of the proceedings by way of disposal based on the proceedings having become devoid of purpose. TGI is of the view that AIM Sport would also be obliged to bear the costs of the preliminary injunction proceedings if these proceedings are disposed of instead of dismissed.

17. TGI's primary position regarding the costs is that they are entitled to their costs of the preliminary injunction proceedings irrespective of the result of the main proceedings

because no preliminary injunction had been granted by the time AIM Sport abandoned the claim for such preliminary injunction.

18. A separate ceilings for recoverable representation costs must be set for the preliminary injunction proceedings. The ceiling of EUR 800,000 must be set based on a value of the dispute of EUR 9.9 million (66% of value of the Infringement Action EUR 15 million based on section 5b of the Scale of ceilings for recoverable costs adopted by the Administrative Committee on 24 April 2023.

19. As can be derived from the Order of the Court of Appeal dated 28 November 2025 in the case Barco v. Yealink, the Court of Appeal also takes the approach that the cost reimbursement for preliminary measures proceedings is to be treated separately from the cost reimbursement for the proceedings on the merits. In that order the Court of Appeal issued a separate cost decision in principle with respect to the preliminary measures proceedings despite pending parallel infringement proceedings on the merits (UPC_CoA_317/2025, 28 November 2025, Barco v. Yealink).

4 GROUNDS FOR THE DECISION

20. As the parties have agreed in the interim conference that there is no need to issue a decision on the preliminary injunction (PI) application, this is also accepted by the Court. At the same time the parties have requested a cost decision in principle of the PI application. In order to do that also the value of the PI application shall be decided.

21. AIM Sport refers to R. 360 RoP and request that the Court disposes the action as it has become devoid of purpose and that there is no longer any need to adjudicate on it.

22. TGI has, conditionally, agreed with this approach.

23. The Court notes that based on UPC case law R. 360 RoP can also be used *mutatis mutandis* relating to provisional measures procedures (see e.g. LD Munich, 19.12.2023, UPC_CFI_249/2023, Meril v. Edwards Lifesciences). According to the LD Munich order there is “an unintended regulatory gap in this respect; the consequences of the case becoming moot in proceedings concerning the issuance of provisional measures are not expressly regulated in the Rules of Procedure” (translation from German by the Court). The Court of Appeal accepted the LD Munich approach in its decisions (orders) concerning the appeals of that LD Munich order (UPC_COA_4/2024, 18 January 2024; UPC_COA_2/2024, 15 February 2024 and UPC_COA_2/2024, 4 October 2024).

24. The Court is of the opinion that as time had passed when the PI application was returned to the Helsinki Local Division and the reason why the PI application was filed was already passed in time, there was no need for AIM Sport to continue such application. In such situation the application had become devoid of purpose and hence there is no longer need to adjudicate on it. It would be waste of Court’s resources if a party would be

obliged to continue such a PI application only in order to reserve the possibility to claim the costs.

25. At the same time, that chain of events cannot as such resolve which party should bear the costs of the PI application. AIM Sport has presented as a second line of arguments that the cost decision should be based on the outcome of the Infringement Action (UPC_CFI_214/2023). The Court agrees with that.

26. As the Court decided in infringement action UPC_CFI_214/2023 that the Patent is not infringed, the applicant i.e. AIM Sport will have to bear the costs of the PI application.

27. Pursuant to Art. 69(1) UPCA reasonable and proportionate legal costs and other expenses incurred by the successful party shall be borne by the unsuccessful party, up to a ceiling set in accordance with the Rules of Procedure. The application of Art. 69(1) UPCA is accepted by the Court of Appeal as being the general rule in cases where provisional measures are disposed based on R. 360 RoP (UPC_COA_2/2024, 4 October 2024, Meril v. Edwards Lifesciences). The Court refers to the reasoning presented in that Court of Appeal order and applies Art. 69(1) UPCA.

28. Based on R. 118.5 RoP a decision in principle on costs has to be made when deciding the case on merits.

29. The Court of Appeal has in its case law established that the costs of provisional measures shall be compensated individually outside of the case on the merits (e.g. UPC_CoA_317/2025, 28 November 2025, Barco v. Yealink and UPC_CoA_523/2024, 3 March 2025, Sumi Agro v. Syngenta). Hence AIM Sport will have to cover the costs of TGI in the preliminary injunction proceedings up to the accepted ceiling.

30. Based on the Scale of ceilings for recoverable costs adopted by the Administrative Committee on 24 April 2023, the ceiling for the costs is EUR 800,000 regardless of whether the value of the case is EUR 15 million, as the set value of the Infringement Action, or EUR 9 million as suggested by TGI. The Court considers that the ceiling suggested in the Administrative Committee's Scale of ceilings for recoverable costs, i.e. 66% of the value of the Infringement Action, shall be followed even though it literally does not apply in this situation when the Infringement Action has been lodged.

31. The Helsinki Local Division issued in the infringement action (UPC_CFI_214/2023) and provisional measures application (with CMS-number 551054/2023) a "final decision" on 20 October 2023 accepting in the provisional measures application TGI's challenge to the jurisdiction of the Court and dismissed the cases. AIM Sport appealed this decision and the Court of Appeal accepted the appeal on 12 November 2024 and returned the cases to the Helsinki Local Division. The cost for the appeal of that Helsinki Local Division decision has to be decided by this Court based on the Court of Appeal order dated 12 November 2024.

32. The Court of Appeal has ruled that “Rule 242.1 RoP is to be interpreted to mean that if the decision of the Court of Appeal is not a final order or decision concluding an action, the Court of Appeal, in the case at hand, will not issue an order for costs in respect of the proceedings at first instance and at appeal. However, the outcome of the appeal must be considered when, in the final decision on the action at hand, the Court determines whether and to what extent a party must bear the costs of the other party because it was unsuccessful within the meaning of Article 69 UPCA” (UPC_CoA_433/2023, 3 April 2024, Juul v. NJOY).

33. The Local Division Hamburg has on 11 February 2026 (UPC_CFI_274/2023, Fives v. REEL) decided that in a situation where the local division dismissed the case based on lack of jurisdiction and the Court of Appeal overturned the decision and returned the case to the local division (which situation is similar than in this provisional measures application at hand), it is the end result of the case that shall define who shall bear the costs of that procedure, unless there are certain specific reasons as identified in the decision to come to different conclusion.

34. According to the Art. 1(3) of the Administrative Committee Scale’s of ceilings for recoverable costs dated 24 April 2023 the ceiling shall be applied to each instance of the Court proceedings regardless of the number of parties, claims or patents concerned. The Court notes that this document does not take any stand whether it is meant to take place in a situation where the Court of Appeal proceedings are just a step in between the First Instance proceedings.

35. The Court adopts the approach taken by the Local Division Hamburg i.e. that the end result of the provisional measures application shall define who shall bear the costs of that application. Hence it is AIM Sport who shall bear the costs of the PI application. Nevertheless based on the Court of Appeal decision in case UPC_CoA_433/2023 (see above) AIM Sport shall not be responsible for the cost of TGI concerning the appeal to the Court of Appeal as AIM Sport was successful on that appeal. Hence AIM Sport shall bear the costs of the Court of First Instance procedure up to the ceiling of EUR 800,000.

36. Concerning the appeal of this order, the Court notes that according to R. 363.2 RoP “Where the decision is taken by the Court of First Instance pursuant to Rules 360, 361 and 362 it is a final decision within the meaning of Rule 220.1(a)”. This would mean that R. 224.1(a) RoP would be applied and the appeal should be lodged within two months of the service of the decision.

37. As the Court is applying R. 360 RoP *mutatis mutandis* (see above para. 23), the Court notes that there are also reasons to find that the appeal should not follow the R. 363.2 RoP but instead the appeal should be lodged based on the rules governing provisional measures in general. Hence the appeal time would be 15 days based on R. 220.2 RoP. In this respect the Court notes that the Court of Appeal stressed in the case (UPC_CoA_500/2023, 26 April 2024, AIM Sport v. Supponor) i.e. in the appeal of the decision of 20 October 2023 of this local division in this very case that the appeal times in provisional measures

applications are based on R. 220.1(c) RoP and that it is the responsibility of the party to file appeal in time.

38. Nevertheless the Court of Appeal found in the appeals relating to the above Munich local division case (UPC_CFI_249/2023), which was also a provisional measures application and was disposed based on R. 360 RoP, that it was to be considered a final decision within the meaning of Rule 220.1(a) RoP, pursuant to Rule 360 and 363.2 RoP (UPC_COA_4/2024, 18 January 2024, para. 1; UPC_COA_2/2024, 15 February 2024, para. 2; and not challenged in the final order UPC_COA_2/2024, 4 October 2024). Hence application of R. 360 and 363.2 RoP even when disposing provisional measures applications leads to the application of R. 220.1(a) and 224.1(a) RoP and hence to the appeal time of two months.

ORDER

1. The Court disposes the preliminary injunction application CMS no ACT_551054/2023.

2. The value of the preliminary injunction proceedings is set to EUR 9.9 million.

3. The reasonable and proportionate legal costs and other expenses incurred in the Court of First Instance by the successful party of the preliminary injunction proceedings, i.e. TGI, up to the ceiling of EUR 800,000 shall be borne by the applicant i.e. AIM Sport.

Delivered on 29 April 2026

NAMES AND SIGNATURES	
Petri Rinkinen Presiding judge and judge-rapporteur	Petri Rinkinen Allekirjoittaja Petri Olavi Rinkinen Päivämäärä: 2026.04.29 10:07:01 +03'00'
Samuel Granata Legally qualified judge	Samuel Rocco M Granata Digitally signed by Samuel Rocco M Granata Date: 2026.04.29 08:35:31 +02'00'
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On behalf of the registry	Digitally signed Nåhls Mikko Erik Jonas 2026-04-29 09:13:20 +0200 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet

Information about appeal

An appeal against the present Order may be lodged at the Court of Appeal, by any party which has been unsuccessful, in whole or in part, in its submissions, within two months of the date of its notification (Art. 73(1) UPCA, R. 220.1(a), 224.1(a), R. 360, R. 363.2 RoP).