



UPC_CFI_2070/2025
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 27/05/2026
(R.158 RoP Security for costs)

RESPONDENT (CLAIMANT in the main proceedings)

BMS Innovations, LLC
1900 K Street, NW, Suite 725,
Washington, D.C 20006,
United States of America

Represented by Christian DEKONINCK & Laura
COUCKE,
Taylor Wessing and other representatives from
that law firm

APPLICANTS (DEFENDANTS in the main proceedings)

1-BYD Company Ltd
No. 3009, BYD Road, Pingshan,
Shenzhen, Guangdong Province,
518100, People's Republic of China

2-BYD Auto Co., Ltd
No.1 Qinling Avenue West,
Caotang, Science and Technology Industry Base
Xi'an,
Shaanxi, 710311, People's Republic of China

3-BYD Europe B.V.
Gravelandseweg 256,
3125 BK, Schiedam,
Kingdom of the Netherlands

4-BYD France SAS
8 rue Leonard de Vinci,
60000 Beauvais, France

5-BYD Automotive GmbH
Albert-Dulk-Str. 9,
70327 Stuttgart, Germany

6-BYD Mobility GmbH
Albert-Dulk-Straße 9,
70327 Stuttgart, Germany

Represented by Anne-Charlotte LE BIHAN, Thierry
LAUTIER, Laurent LABATTE, Eva KESSI,
BIRD & BIRD AARPI and other representatives
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PATENT AT ISSUE

Numéro de brevet *Titulaire(s)*

EP2937706

BMSI

DECIDING JUDGE

Judge-rapporteur

Carine Gillet

LANGUAGE OF PROCEEDINGS: English

ORDER

1. On 19 December 2025, BMS Innovations LLC (hereafter “BMSI”) brought an infringement action, before the Paris Local Division, against BYD Group entities, domiciled in China (Defendants 1 and 2), in the Netherlands (Defendant 3), in France (Defendant 4), in Germany (Defendants 5 and 6) and in the United Kingdom (Defendant 7).
2. On 14 April 2026, the judge-rapporteur issued an order on preliminary objection, rejecting the alleged lack of jurisdiction of the Paris Local Division, except for Defendant 7 (BYD UK), domiciled in the UK.
3. On 05 May 2026, BYD filed an application for security for costs, pursuant to R. 158 RoP, requesting the Court to:
In view of Article 69(4) of the Unified Patent Court Agreement,
In view of Rule 158 of the RoP,
In view of the supporting exhibits,
 1. ORDER BMS Innovations, LLC to provide security for the legal costs and other expenses incurred and to be incurred by BYD (Defendants 1 to 7), in the amount of EUR 400,000, within three weeks from the date of service of the upcoming order;
 2. ISSUE a decision by default against BMS Innovations, LLC if it fails to provide the ordered security within the time period specified by the Court, dismissing all claims of BMS Innovations, LLC and holding it liable for BYD’s legal costs (Defendants 1 to 7).
4. On 26 May 2026, BMSI requests that:
 - (a) the Court limit BYD's requests as follows:
 - the Court to order BMSI, within 7 (seven) weeks of the date of service of the order, to provide security for legal costs and other expenses incurred and to be incurred by BYD in the amount of EUR 300.000 (three hundred thousand).
 - (b) if the Court is considering refusing BMSI's request above, an oral hearing by videoconference.

GROUNDINGS FOR THE ORDER

I. On the application for security for costs

5. BYD states that there is a legitimate and real concern, on the likely unduly burden to enforce a costs order against BMSI, if the claimant would be unsuccessful in its action, as BMSI has not disclosed publicly neither any information that would allow its financial capacity to be verified, apart from the fact that it owns a portfolio of patents sold to it by LG Energy Solutions or LG Chem Ltd, nor any elements on its liquid assets. BMSI seems to be in a similar situation as a non-practicing entity and should be treated as such. Given to BYD, BMSI is a financially empty shell, that could easily file for insolvency.
6. BMSI is willing to pay security for costs.

Legal framework

7. The court of appeal held that “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. 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. 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” (CoA, UPC_CoA_221/2024, 09 July 2025, *Audi AG-Network System technology*).

In the case at hand

8. BMSI does not challenge the facts and reasons given by BYD, on its financial situation and does not dispute that it is required to pay security for costs.

II. On the amount of security for costs

9. With regard to the amount of the security and in view of the value of the infringement claim, currently set at 4 million euros, BYD states that it was compelled to file a counterclaim for revocation, the value of which could amount to 6 million euros. The total value of the claim, when the two aforementioned amounts are added together, would be 10 million euros, representing a threshold for recoverable costs of 800,000 euros, to which must be added the fees already paid for the counterclaim of revocation (26.500 euros). The security for costs must represent a fair portion of the ceiling for recoverable costs, at least 50 % or more of the ceiling considered for recoverable representation costs.

BYD states that its request to set the security at 400.000 euros is a reasonable and proportionate minimum. Finally, BYD thinks that a deposit to a UPC's dedicated account, is appropriate and suggests the deposit be made, within a three-week time period, given that BMSI has had time since the request was made on 5 May 2026.

10. BMSI contests the amount being claimed, requesting that this sum be reduced to 300.000 euros and offers the payment within a time-period of seven weeks (instead of three weeks) of the date of service of the upcoming order. BMSI acknowledges that the value of the case includes the value associated with the main infringement action, as well as these incurred in relation to the revocation action, and that this total value—which serves as an indicator of the volume of legal work likely to be required—is taken into account when determining the amount of the security. According to the Guidelines (Art. 2(b)(ii) of the Administrative Committee's decision dated 23 April 2023), the value of the counterclaim is set at a maximum of 50% of the value of the infringement action and at this stage, the complexity of the infringement action and counterclaim for revocation is however not known yet. By opting for the higher value of the counterclaim, BYD can thus claim a higher security deposit. BMSI argues that the guarantee it provides is reasonable and proportionate, as it amounts to 50% of the recoverable costs if the value of the claim is set at 8 million euros, and to 37.5% if the value of the claim exceeds 8 million euros.

Legal Framework

11. The Court has a margin of discretion when deciding on a request for security costs.
12. The determination of an adequate amount of a security for costs can be best assessed once the existence and the scope of the proceedings can be seen (LD Brussels, UPC_CFI_1357/2025, 18 march 2026, *Establishment Labs SA-GC Aesthetics*).
13. In accordance with the guidelines for the determination of the court fees and the ceiling of recoverable costs, as adopted by the Administrative Committee, on 24 April 2023, when determining the value for applying the Rules on recoverable costs (Art. 2 (b) 2) (ii):
 - (1) ...
 - (2) In the absence of relevant information
 - (i) ...
 - (ii) the value of the revocation counterclaim may be assumed as being equal to the value of the infringement action (II.1. a), above) plus up to 50%.

In the case at hand

14. BYD, defendant in the main proceedings, was compelled to file a counterclaim for revocation of the opposed patent, in order to defend itself, in the context of infringement action initiated by BMSI. This will incur additional costs for him in connection with these proceedings.

15. It is not disputed by the parties, that the value of the case for assessment of the recoverable costs includes both the value of the infringement action and the value of the counterclaim for revocation, which is determined having regard to the value of the patent to be revoked (Art. 2 (b)(1) of the above mentioned guidelines) or alternatively, in case of absence of relevant information, the value of the revocation counterclaim may be set at a amount equal to the value of the infringement action, plus up to 50 %. Nor is it disputed that the security for costs is set, depending on the case, at between 50% and 100% of the value of the case.
16. However, since the value of the action will be determined at the interim conference, following the closure of the written proceedings, it is premature to assess the value of the action for revocation at its highest possible amount for the purpose of determining recoverable costs.
17. For this reason, it is proportionate and reasonable to take into account, at this stage of the proceedings, the value of the revocation action at the same amount as the value of the infringement action, i.e., a total amount of 8 million euros.
18. Thus, in accordance with the Administrative Committee on 23 April 2024, the ceiling for recoverable costs when the value of the proceedings is “up to and including 8,000,000 euros” is “up to 600,000 euros”. In consequence, BYD’s offer to pay a security for the costs at 50% of that ceiling, i.e. 300,000 euros, is justified and corresponds to an adequate amount of security.
19. BMSI has provided no grounds to justify the payment terms it is seeking. It is reasonable to order payment of the security within one month after the issuance of the present order, given that, as BYD rightly points out, BMSI has already been granted three weeks since the application was filed to raise the funds.
20. The request should therefore be granted, in accordance with the terms set forth in the operative part of this decision; the amount must be paid within one month of the date of the issuance of this order, into the UPC bank account dedicated to security deposits, which is the most appropriate.

FOR ALL THESE GROUNDS

The Judge-rapporteur, after having heard the parties,

-BMSI is ordered in case UPC_CFI_2070/2025 to provide security for EUR 300.000 (three hundred thousand) for the costs of the proceedings and other costs pursuant to Rule 158.1 RoP within a period of one month, by way of deposit on the UPC account dedicated for security deposits,

-BMSI is advised that a default judgment may be issued in accordance with Rule 355 RoP if security is not provided within the specified period (R. 158.4 RoP).

Issued on 27 May 2026

Carine Gillet, Judge-rapporteur

INFORMATION ON APPEAL

An appeal may be lodged in accordance with Art. 73 UPCA and R. 220.2 RoP (R. 158.3 RoP).

ORDER DETAILS

Date of issue: 27/05/2026

UPC number: UPC_CFI_2070/2025

Type of action: infringement action

Type of request: R.158 Security for costs