



Munich local division

UPC_CFI_293/2025

UPC_CFI_868/2025

Decision

of the Court of First Instance of the Unified Patent Court,

Munich local division

issued on 22 June 2026

CLAIMANT AND COUNTER-DEFENDANT

Nokia Technologies Oy, represented by its President Patrik Hammarén, Karakaari 7, 02610 Espoo, Finland,

represented by:

Christian Harmsen and Dr Tobias Wilcke, Attorney-at-laws, Bird & Bird LLP, Carl-Theodor-Straße 6, 40213 Düsseldorf.

DEFENDANTS AND COUNTER-CLAIMANTS

1. **Acer, Inc.**, represented by its legal representatives, 15 8F, 88, Sec. 1, Xin Tai 5th Rd., Xizhi, New Taipei 221, Taiwan,
2. **Acer Computer GmbH**, represented by its managing directors Emmanuel Pierre Marie Fromont, Tai-Chi Shih, Wilfried Thom and Robert Perenz, Kornkamp 4, 22926 Ahrensburg,
3. **CPYou B.V.**, represented by its legal representatives, Europalaan 89, 5232BC 's-Hertogenbosch, Netherlands,

represented by:

Dr Thomas Lynker, Attorney-at-law; Evelyn Höfer, Attorney-at-law; Christian Werner, Attorney-at-law, Taliens, Amalienstraße 67, 80799 Munich.

PATENT AT ISSUE

European Patent No. EP 2 661 892

PANEL/CHAMBER

Second Panel of the Munich Local Division

JUDGES

This decision was issued by the presiding judge Dr Daniel Voß (judge-rapporteur), the legally qualified judge Dr Georg Werner, the legally qualified judge Dr Walter Schober and the technically qualified judge Eric Augarde.

LANGUAGE OF THE PROCEEDINGS

German

SUBJECT MATTER OF THE PROCEEDINGS

Action for infringement and counterclaim for annulment – applications under Rule 265.1 of the RoP and Rule 370.9(b)(i) of the RoP.

FACTS

- 1 The claimant is bringing proceedings against the defendants for infringement of the European patent with unitary effect EP 2 661 892 (UPC_CFI_293/2025). The defendants have brought a counterclaim for revocation of the patent at issue (UPC_CFI_868/2025). The date for the oral hearing was set for 17 June 2026. The written procedure was concluded on 12 June 2026, and the interim proceedings were due to end on 15 June 2026.

APPLICATIONS

- 2 In a document received on 12 June 2026, the claimant requests that the

withdrawal of the claim be permitted and

that 50 per cent of the court fees paid be refunded to her.
- 3 The defendants consent to the withdrawal of the claim.
- 4 In a document received on 15 June 2026, they request that

- that the withdrawal of the counterclaim seeking the annulment of EP 2 661 892 be permitted and that the counterclaim proceedings be declared terminated by order;
- to order the proportionate reimbursement of 40 per cent of the court fees paid in respect of the counterclaim – namely 40 per cent of EUR 15,000 = EUR 6,000 – to the counterclaimant

- 5 The claimant agrees to the withdrawal of the claim.
- 6 The parties have stated that no applications for costs will be made and that, as an out-of-court settlement regarding costs has been reached, a decision on costs may be dispensed with.

REASONS FOR THE ORDER

- 7 The authorisation of the withdrawal of the claim is based on Rules 265.1 and .2 of the RoP. The orders regarding the reimbursement of costs are based on Rule 370.9(b) of the RoP, in the version applicable since 1 January 2026 (hereinafter: 'the new version').

I.

- 8 The withdrawals of the claims are to be permitted.

1.

- 9 Pursuant to Rule 265.1 of the RoP, the claimant may apply to withdraw their claim provided that no final decision has yet been made on the claim. The court shall decide on the application after hearing the other party. The application for withdrawal shall not be granted if the other party has a legitimate interest in the court deciding on the claim. This provision applies to both claims and counterclaims.

2.

- 10 Neither party has asserted a legitimate interest within the meaning of Rule 265.1 of the RoP in a decision on the merits. Nor is any such interest otherwise apparent. Rather, the defendants have consented to the withdrawal of the infringement claim and the Claimant has consented to the withdrawal of the counterclaim.

II.

- 11 The legal consequence of allowing the withdrawal of the claim, pursuant to Rule 265.2(a) and (b) of the RoP, is that the proceedings are declared to be terminated and the decision is entered in the register.

12 Furthermore, pursuant to Rule 265.2(c) of the RoP, the Court must make a decision on costs in accordance with Part

I, Chapter 5 of the Rules of Procedure. Although, in view of its wording, the provision explicitly refers only to the rules governing the procedure for the assessment of costs, i.e. to the rules

150 et seq. of the RoP, the Court must (also) issue a decision on the basis for costs within the meaning of Article 69 of the UPC Agreement in the event of the withdrawal of a claim (Munich LD, decision of 11 October 2024, UPC_CFI_300/2023 – MSG v EJP). This decision must be issued ex officio; no separate application by the parties is required. However, any agreement between the parties or an out-of-court settlement regarding costs must be taken into account in the decision on costs. If the parties state that they do not wish to apply for a decision on their costs, this may be taken into account in the order for costs. Such a statement is generally to be understood as meaning that no reimbursement of costs is to take place between the parties and that each party is to bear its own costs. This is the case here.

III.

13 Consequently, no court fees are to be reimbursed to the claimant or the defendants.

1.

14 In the present case, Rule 370.9 of the RoP, in the version applicable since 1 January 2026, applies because the withdrawals of the claims were filed only after 31 December 2026 and thus after the new provision came into force.

15 The Court of Appeal has clarified in four decisions that the date on which the application to withdraw the claim is filed is decisive in determining which version of Rule 370.9 of the RoP applies. If that date falls after 31 December 2025, the new legal position applies (CoA, UPC_CoA_257/2025, decision of 9 January 2026; UPC_CoA_895/2025, decision of 6 March 2026; UPC_CoA_896/2025, decision of 6 March 2026; UPC_CoA_15/2026, decision of 9 March 2026).

16 Against this background, the panel is unable to concur with the dissenting view of the Mannheim local division (decision of 27 March 2026, UPC_CFI_1390/2025) and sees no need to allow the appeal.

2.

17 Owing to the applicability of Rule 370.9 of the RoP, as in force since 1 January 2026, the defendants cannot claim a refund of fees simply because Rule 370.9 of the RoP does not provide for a basis for a refund in the circumstances of the present case. The application for leave to withdraw the counterclaim was not filed by the defendants until 15 June 2026, and thus after the conclusion of the written procedure on 12 June 2026. The grounds for reimbursement under Rule 370.9(b) of the RoP do not apply. There are no grounds for a refund in the event of the claim being withdrawn before the conclusion of the interim proceedings. In this respect, the defendants are merely appealing to the old version of the Rules of Procedure, which is not applicable here.

3.

- 18 Although the claimant withdrew the infringement action before the conclusion of the written procedure, meaning that a refund under Rule 370.9(b) of the RoP might be considered, the Court exercises the discretion granted to it under Rule 370.9(e) of the RoP and refuses to refund the fees.
- 19 Under Rule 370.9(e) of the RoP, the Court may, in exceptional cases, taking into account in particular the stage of the proceedings and the party's conduct during the proceedings, refuse to grant the refund payable under sub-paragraphs (b) and (c).
- 20 In accordance with the spirit and purpose of the rules on reimbursement, and taking into account the stage of the proceedings and the party's conduct, an exceptional case is to be deemed to exist in any event where the pleadings provided for by law in the written procedure have been exchanged and all deadlines for filing pleadings have expired, so that the written procedure need only be formally concluded, and the judge-rapporteur's substantive preparations for the hearing have already progressed significantly (see also Hamburg local division, Order of 28 May 2026, UPC_CFI_1125/2025 – Avago v Renault). This is because the refund rule under Rule 370.9(b) of the RoP is intended to provide an incentive to withdraw the claim as early as possible, thereby relieving the court of the workload associated with preparing for the hearing, which is time-consuming, labour-intensive and therefore costly.
- 21 This is the case here. Formally, the written procedure had not yet been concluded. In particular, the claimant had submitted an application under Rule 36 of the RoP, which meant that the written procedure was not concluded until 12 June 2026. By that date, however, the technical judge had already issued his preliminary opinion (votum) on the proceedings. The judge-rapporteur had also drawn up his opinion, with the exception of the final remarks on the competition law objection, which had not been finalised, partly because of the document still to be received. Given that the hearing was due to take place in less than a week, the claimant could not have expected that withdrawing the claim on the final day of the written procedure would have relieved the court of its burden in accordance with the purpose of Rule 370.9(b) of the RoP. The fact that this outcome is consistent with the spirit of Rule 370.9 of the RoP is also demonstrated by the fact that the defendants, under the same circumstances as the Claimant and with a delay of only two working days, also withdrew their counterclaim for annulment, but are not entitled to reimbursement of costs due to the formal conclusion of the written procedure in the meantime.

IV.

- 22 The amount of the value in dispute set for the counterclaim for annulment is justified by the 'Guidelines for the determination of court fees and the ceiling on recoverable costs' issued by the Administrative Committee on 24 April 2023. According to

paragraph 2(b)(2)(ii) thereof, the value of a counterclaim for annulment should be equal to the value of the infringement claim plus up to 50 per cent. The infringement claim was assessed at a value of EUR 1,000,000.00. The higher value of the counterclaim has no impact on court costs, as the court fees for the counterclaim for annulment correspond to those for the infringement claim, with a fee ceiling of EUR 20,000.00.

ORDER

1. The withdrawal of the infringement action (UPC_CFI_293/2025) and the counterclaim for a declaration of invalidity (UPC_CFI_868/2025) is granted.
2. The proceedings referred to in paragraph 1 are hereby declared to be terminated.
3. This decision is to be entered in the register.
4. No reimbursement of costs shall be made in the infringement proceedings or the counterclaim proceedings. Each party shall bear its own costs.
5. The value in dispute is set at EUR 1,000,000.00 for the infringement action and at EUR 1,500,000.00 for the counterclaim for a declaration of invalidity.
6. The parties' further applications are dismissed.

Dr Daniel Voß (presiding judge)	
Dr Georg Werner (Legally qualified judge)	
Dr Walter Schober (Legally qualified judge)	
Eric Augarde (Technically qualified judge)	

On behalf of the Deputy-Registrar	
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