

IMPUGNED DECISION AND ORDERS OF THE COURT OF FIRST INSTANCE

- Decision by default of the Court of First Instance of the Unified Patent Court, The Hague Local Division, dated 21 October 2025
- Orders of the Court of First Instance of the Unified Patent Court, The Hague Local Division, dated 19 December 2024 (Rule 275 RoP), 1 April 2025 (Rule 320 RoP), and 9 December 2025 (Rules 353 and 356 RoP)

Numbers attributed by the Court of First Instance: UPC_CFI_499/2024 ACT_48877/2024

FACTS AND PARTIES' REQUESTS

1. The appeal is directed against the decision of The Hague Local Division of 21 October 2025 in infringement proceedings concerning the patent at issue. The Local Division, by default decision, granted injunctive relief and ancillary measures in favour of the Respondent, awarded interim damages of EUR 50,000 and ordered the Appellant to bear the costs of the proceedings. The value of the action was set at EUR 500,000.
2. The decision followed earlier provisional measures proceedings between the same parties in which the Local Division had already granted a preliminary injunction and awarded Amycel, LLC interim costs in the amount of EUR 11,000.
3. By notice of appeal (filed on 22 December 2025) and Statement of grounds of appeal (filed on 20 February 2026), the Appellant seeks to set aside the first-instance decision and several procedural orders that preceded it, including the orders concerning service of the Statement of Claim and re-establishment of rights. It further requests that the infringement action be dismissed or, alternatively, remitted to the Court of First Instance. With its Statement of response (filed on 20 May 2026) the Respondent requests the Court of Appeal to reject, or hold inadmissible, the appeal and to order the Appellant to pay the legal costs and other expenses in these appeal proceedings.
4. By application dated 18 May 2026 the Respondent requests the Court to order the Appellant to provide security for legal costs and other expenses pursuant to Article 69(4) UPCA and Rule 158 RoP in the amount of EUR 56,000 or, alternatively, in an amount to be determined by the Court.
5. The Appellant requests that the application be dismissed.

GROUND FOR THE ORDER

Admissibility.

6. Pursuant to Art. 69(4) UPCA, the Court may, at the request of the defendant, order the claimant to provide adequate security for legal costs and other expenses incurred or to be incurred by the defendant which may have to be borne by the claimant.

7. The Court of Appeal has held that Art. 69(4) UPCA permits an order for security for costs only against the applicant and not in the applicant's favour (see orders of 28 April 2026, UPC_CoA_21/2026, *Suinno v Microsoft*; 9 December 2025, UPC_CoA_622/2025, *Hefei v Grundfos*; 30 October 2025, UPC_CoA_8/2025, *Oerlikon v Bhagat*; 20 June 2025, UPC_CoA_393/2025, *AorticLab v Emboline*). For the purposes of that provision, the "applicant" is the party that initiates the relevant proceedings by lodging the procedural act by which those proceedings are commenced.
8. Accordingly, at first instance, there is no legal basis for granting security for costs at the request of a claimant in infringement proceedings. The same applies to a claimant in a revocation action. The fact that a defendant has filed a counterclaim for revocation does not entitle the infringement claimant to seek security for costs in respect of that counterclaim, since the counterclaim is a direct consequence of the infringement action brought by the claimant and an order requiring the defendant to provide security would unduly prejudice its ability to defend itself.
9. In appeal proceedings, the appellant initiates the proceedings by lodging the appeal and is therefore to be regarded as the applicant within the meaning of Art. 69(4) UPCA. Consequently, as a general rule, only the respondent may request security for costs in appeal proceedings, irrespective of whether that respondent was the claimant or the defendant before the Court of First Instance. The same principle applies where both parties appeal or where a cross-appeal is lodged.
10. In the present case, Amycel, LLC acts as respondent in the appeal proceedings brought by ██████████ and is therefore, in principle, entitled to seek security for costs pursuant to Art. 69(4) UPCA and R. 158 RoP.

Legal framework.

11. The purpose of security for costs under Art. 69(4) UPCA is to protect the opposing party against the risk that a future order for costs may not be recoverable or may be enforceable only in an unduly burdensome manner. Security for costs may therefore be ordered where the financial position of the claimant gives rise to a legitimate and real concern that such a risk exists (see also CoA orders of 17 September 2024, UPC_CoA_218/2024, *Volkswagen v NST*, and UPC_CoA_217/2024, *Audi v NST*).
12. The burden of substantiation and proof why an order for security for costs is appropriate in a particular case is on the applicant. Once the reasons and facts in the request have been presented in a credible manner, it is up to the opposing party 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 respondent to argue that and why a security order would unduly interfere with its right to an effective remedy.
13. In making that assessment, the Court must take into account all relevant circumstances and strike a fair balance between protecting the respondent against the risk of non-recovery and safeguarding the appellant's right of access to justice.
14. While the mere fact that a party is domiciled in another Member State, or that its financial situation is not fully known, is not in itself sufficient to justify an order for security for costs, proof of actual insolvency is not required. Nor is the Court required to establish that recovery of a future costs order will be impossible. It is sufficient that the circumstances objectively

demonstrate a genuine risk affecting the practical recoverability or enforceability of such an order.

Assessment.

15. The Respondent (Applicant in the application for security for costs) relies on a number of circumstances relating to the Appellant's financial position and conduct in previous UPC proceedings.
16. The Court notes that the Appellant has repeatedly relied on alleged financial hardship in earlier proceedings, including in support of requests concerning court fees and enforcement measures. Furthermore, despite being invited by the Court in earlier proceedings to substantiate its financial position by appropriate documentation, the Appellant did not provide the information requested.
17. The Court accepts that the refusal or failure to provide financial information does not by itself establish inability to satisfy a future costs order. Nor does the Court derive any adverse conclusion merely from the fact that the Appellant is a natural person carrying on business activities in Poland.
18. Furthermore, it is undisputed that amounts previously ordered by the UPC, including an award of costs and an order for interim damages, as well as court fees, have not been paid. The Court agrees with the Appellant that non-payment does not necessarily demonstrate inability to pay. It may also reflect a party's litigation strategy or disagreement with the underlying orders.
19. However, when considered together with the Appellant's repeated assertions of financial hardship, the absence of substantiating financial information despite previous requests by the Court, and the absence of evidence enabling the Court to assess the actual availability of assets for enforcement purposes, the continued non-payment of the amounts concerned constitutes a significant factor in the assessment.
20. Indeed, although the non-payment of sums previously awarded by the UPC is primarily a matter of enforcement, such conduct remains relevant when assessing whether there is a legitimate and real concern regarding the practical recoverability of a future costs order in the appeal proceedings.
21. Taken together, the circumstances identified above amount to sufficiently specific and concrete indicia giving rise to a legitimate and real concern that a future order for costs may not be recoverable or may be enforceable only in an unduly burdensome manner.
22. The Respondent must therefore be regarded as having adequately substantiated its request. It was then for the Appellant to provide sufficient information and evidence capable of dispelling those concerns.
23. However, beyond disputing the conclusions drawn by the Respondent and asserting that he owns assets in Poland, the Appellant has not provided objective information enabling the Court to assess the nature, value, availability or enforceability of those assets, nor has he otherwise substantiated that a future costs order could be satisfied without undue difficulty. Nor has he provided information sufficient to dispel the concerns arising from the circumstances identified above.

24. The Court is not persuaded by the Appellant's submission that the application must fail because the Respondent has not established insolvency, pending bankruptcy proceedings or unsuccessful enforcement measures. As set out above, Art. 69(4) UPCA does not require proof that recovery of a future costs order will be impossible. The relevant question is whether the circumstances of the case give rise to a legitimate and real concern that such an order may not be recoverable or may be enforceable only in an unduly burdensome manner.
25. Nor does the Court accept that the absence of prior enforcement attempts is decisive. The purpose of a security for costs order is preventive. A party seeking security is not required first to undertake enforcement measures in respect of existing claims and to demonstrate their failure. The Court may take into account all objective circumstances bearing on the likely recoverability or enforceability of a future costs order.
26. The Court therefore finds that the requirements of Art. 69(4) UPCA and R. 158 RoP are met and that, in the circumstances of the present case, an order requiring the Appellant to provide security for legal costs and other expenses is justified.

Amount of security.

27. The Respondent seeks security in the amount of EUR 56,000, corresponding to the ceiling for recoverable representation costs applicable where the value of the action is EUR 500,000.
28. The Court notes that the applicable ceiling for recoverable representation costs does not represent the amount that will automatically be awarded to the successful party at the conclusion of the proceedings. Rather, it establishes the maximum amount that may be recovered, subject to the Court's assessment under Art. 69 UPCA and the applicable Rules of Procedure.
29. In determining the amount of security, the Court must ensure adequate protection of the respondent's interests while at the same time respecting the principle of proportionality and avoiding an unnecessary restriction of the appellant's access to justice.
30. The appeal proceedings essentially concern legal and procedural issues. Having regard to the nature and complexity of those issues, the Court considers it unlikely that recoverable representation costs will reach the applicable ceiling.
31. In these circumstances, the Court considers that security in the amount of EUR 28,000 adequately protects the respondent's legitimate interests while avoiding an excessive burden on the Appellant. That amount corresponds to approximately fifty per cent of the applicable ceiling for recoverable representation costs and is proportionate to the scope and complexity of the appeal.
32. The Court therefore sets the amount of security at EUR 28,000.

Form and timing.

33. The security shall be provided either by a deposit into the account designated by the Court for securities or by an unconditional and irrevocable bank guarantee issued by a bank licensed within the European Union.

34. The security shall be provided within three weeks of service of this order.

ORDER

- i) Security for legal costs and other expenses shall be provided by [REDACTED] in the amount of EUR 28,000.
- ii) The security shall be provided either by way of a deposit into the Court's designated security account or by an unconditional and irrevocable bank guarantee issued by a bank licensed within the European Union.
- iii) The security shall be provided within three weeks of service of this order.
- iv) The parties are informed that, pursuant to Rule 158.5 RoP, if the security is not provided within the prescribed period, a decision by default may be given against the Appellant.

Issued on 2 July 2026.

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MARTIN Grabinski
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Klaus Grabinski, presiding judge and President of the Court of Appeal

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