



Action number:
UPC_CoA_302/2025
UPC_CoA_305/2025

Order
of the Court of Appeal of the Unified Patent Court
concerning an application pursuant to Rule 333 of the RoP
issued on 3 July 2026

APPLICANT AND APPELLANT (CLAIMANT IN THE INFRINGEMENT PROCEEDINGS AND COUNTER-DEFENDANT IN THE NULLITY PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Rematec GmbH & Co KG, Poststraße 10, 84378 Dietersburg, Germany

(hereinafter 'Rematec')

represented by: Dr Ulrich Blumenröder, Attorney-at-law, Grünecker PartG mbB

RESPONDENT AND RESPONDENT ON APPEAL (DEFENDANT IN THE INFRINGEMENT PROCEEDINGS AND COUNTER-CLAIMANT IN THE NULLITY PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Europe Forestry B.V., Stegerdijk 13, 7737PT Stegeren, the Netherlands

(hereinafter '**Europe Forestry**')

represented by: Dr Michael Rüberg, Attorney-at-law, Boehmert & Boehmert Anwaltspartnerschaft mbB, patent attorneys and Attorney-at-laws

PATENT AT ISSUE:

EP 2 548 648

DECIDING JUDGES

Klaus Grabinski, President of the Court of Appeal

Peter Blok, legally qualified judge

Emmanuel Gougé, judge-rapporteur and legally qualified judge

Max Tilmann, technically qualified judge

Gérard Myon, technically qualified judge

LANGUAGE OF THE PROCEEDINGS

German

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Court of First Instance of the Unified Patent Court, Mannheim local division, dated 31 January 2025
- action number: UPC_CFI_340/2023
 ACT_576606/2023
 CC_7594/2024

FACTS OF THE CASE AND THE PARTIES' APPLICATIONS

1. On 27 September 2023, Rematec brought an action for infringement of the patent at issue before the Unified Patent Court, Mannheim local division ("LK Mannheim"). Europe Forestry contested the action and brought a counterclaim for revocation.
2. In the contested decision, the Mannheim LD dismissed the infringement claim and declared the patent at issue invalid with effect for Germany, the Netherlands, Austria, Belgium, Bulgaria, Denmark, Finland, France, Italy, Portugal, Romania, Sweden and Slovenia.
3. On 31 March 2025, Rematec lodged an appeal against the contested decision.
4. By a decision of 17 February 2026, the Court of Appeal of the Unified Patent Court ("Court of Appeal") set aside the first-instance decision, upheld the infringement claim in accordance with the alternative claim and dismissed the counterclaim for revocation.
5. With regard to costs, the Court of Appeal ruled as follows:
 - the defendant shall bear, for both instances, the court fees for the counterclaim for revocation and the costs incurred by the Claimant as a result of the counterclaim for revocation;
 - the defendant shall bear, for both instances, 80 per cent of the court fees for the infringement action and the costs incurred by the Claimant as a result of the infringement action;
 - the claimant shall bear, for both instances, 20 per cent of the court fees relating to the infringement claim and the costs incurred by the defendant as a result of the infringement claim.
6. On 17 March 2026, Rematec filed an application with the Court of Appeal for the assessment of costs in accordance with Rule 151 of the RoP, both in the appeal proceedings UPC_CoA_302/2025 and UPC_CoA_305/2025 and as separate applications under the action numbers PR-UPC-CFI-0000951/2026 and PR-UPC-CFI-0000952/2026.
7. Following a notice from the Registry of the Court of Appeal dated 17 March 2026 and a request to remedy deficiencies via the Case Management System ("CMS"), in which Rematec was informed that the application for the assessment of costs must be lodged with the competent local division in Mannheim and that the application for the assessment of costs lodged with the Court of Appeal should be withdrawn, Rematec amended its application by a document dated 18 March 2026 and requested that its application for the assessment of costs be forwarded to the judge-rapporteur of the Mannheim LD, with the instruction that the date of submission of the application to the Court of Appeal, i.e. 17 March 2026, be deemed to be the date of filing with the Court of First Instance ('CFI').
8. At the same time, on 18 March 2026, Rematec resubmitted the application for the assessment of costs to the Mannheim local division.

9. By order of 30 March 2026, the judge-rapporteur of the Court of Appeal dismissed Rematec's application, filed with the Court of Appeal, to refer the application for the assessment of costs to the Court of First Instance, with the instruction that the date of filing of the application with the Court of Appeal may be deemed to be the date of filing with the Court of First Instance.
10. On 14 April 2026, Rematec filed an application under Rule 333 of the RoP in appeal proceedings UPC_CoA_302/2025, requesting that the panel of the Court of Appeal review the order of 30 March 2026.
11. Following a request to remedy deficiencies via the Case Management System ("CMS"), in which Rematec was asked to file the application under Rule 333 of the RoP in appeal proceedings UPC_CoA_305/2025 as well, Rematec filed the application in those appeal proceedings on 20 April 2026.
12. In support of its application for review, Rematec essentially argues that the application of 18 March 2026 does not acknowledge that it was filed with the allegedly incorrect court. The application for referral merely sought an internal 'forwarding' of the application for the assessment of costs dated 17 March 2026 to the Court of First Instance, rather than submitting it to the Court of Appeal. Such a referral, understood in this way, is procedurally permissible, as the application for referral constitutes a submission to the 'court' made within the time limit, namely to the Unified Patent Court, since neither the UPC Agreement nor the Rules of Procedure provide for a clear allocation within 'the court'.
13. In its statement of 30 April 2026, Europe Forestry requests that the application for review be dismissed as inadmissible or, in the alternative, as unfounded, and that the costs incurred by it in this regard be ordered to be borne by Rematec.
14. In support of its case, Europe Forestry argues that the application for review was not lodged in due form within the time limit. Nor is the application admissible, it contends, because procedural orders under the Rules of Procedure are intended only for proceedings comprising procedural stages. The subject-matter of the application is inadmissible because Rematec's application seeks a declaration that the application for the assessment of costs relating to the appeal proceedings may also be validly lodged with the Court of Appeal.
15. In its defence of 7 May 2026, Rematec contested Europe Forestry's statement of 30 April 2026.

REASONS FOR THE ORDER

16. The application for review under Rule 333 of the RoP is admissible but must be dismissed as unfounded for the following reasons.
17. The Court of Appeal need not rule on the admissibility of the additional arguments put forward by Rematec in its document of 7 May 2026. Even if these arguments were admissible, they would not alter the Court's assessment of Rematec's application, as is apparent from the following reasoning.

Admissibility of the application pursuant to Rule 333 of the RoP

Timeliness of the application

18. Although Rematec lodged an application under Rule 333 of the RoP in the CMS on 14 April 2026 in the appeal proceedings UPC_CoA_302/2025, it is clear both from the explicit reference to both appeal proceedings

on the first page of its application for review, as well as from the content of that application, that it relates to both proceedings UPC_CoA_302/2025 and UPC_CoA_305/2025.

19. Following the Registry's request to remedy deficiencies, in which Rematec was asked to file the application under Rule 333 in the appeal proceedings UPC_CoA_305/2025 as well, Rematec also filed this application in the appeal proceedings UPC_CoA_305/2025 on 20 April 2026.
20. The application for review pursuant to Rule 333 of the RoP was therefore also filed within the time limit in the appeal proceedings UPC_CoA_305/2025.

Admissibility of the application under Rule 333 of the RoP

21. Under Rule 333 of the RoP, procedural decisions or orders made by the judge-rapporteur or the presiding judge shall be reviewed by the panel upon a reasoned application by a party.
22. The order issued by the judge-rapporteur did not bring the costs assessment proceedings to an end, as the judge-rapporteur merely took a procedural step with this order, namely to reject Rematec's request to refer the application for the assessment of costs back to the CFI.
23. Consequently, the order of the judge-rapporteur may constitute a procedural order which, pursuant to Rule 333 of the RoP, may be reviewed by the panel upon a reasoned application by a party.

The application is unfounded pursuant to Rule 333 of the RoP

Initiation of proceedings for the assessment of costs before the CFI

24. The assessment of costs is the subject of a specific and separate procedure (Rule 150 et seq. of the RoP), which also includes a specific appeal procedure (Rules 157 and 221 of the RoP). Like most other proceedings before the UPC, the procedure for the assessment of costs therefore also commences at the CFI. The application for the assessment of costs must therefore be lodged with the CFI, and the decision on it is taken by the judge-rapporteur of that instance (see Order of the Court of Appeal of 29 July 2024, UPC_CoA_1/2024, App_36394/2024, Hanshow v VusionGroup).
25. This also applies where the application is made following an order or a decision of the Court of Appeal and thus relates exclusively or in part to the costs of the appeal proceedings. The Rules of Procedure do not provide for any special procedure for the assessment of costs following an order or a decision of the Court of Appeal. Consequently, the general procedure set out in Rule 150 et seq. of the RoP also applies in this case. If, instead, the proceedings were to commence before the Court of Appeal, no appeal would be possible against the order on costs, whereas such an appeal is provided for in Rules 157 and 221 of the RoP (the order referred to above, Hanshow v VusionGroup).
26. The local division, and not the Court of Appeal, therefore has jurisdiction over the application for the assessment of costs, even though the present application concerns the costs of the appeal proceedings.
27. It follows, as the judge-rapporteur correctly noted in his order of 30 March 2026, that it is not the Court of Appeal but the CFI that must decide whether the date of filing with the Court of Appeal is decisive.

Referral of the application for the assessment of costs to the CFI

28. The application to refer the application for the assessment of costs to the CFI must be dismissed.

29. As the judge-rapporteur rightly noted in the order of 30 March 2026, there are no exceptional circumstances in the present case that might, by way of exception, justify a referral to the CFI. The fact that the Court of Appeal lacks jurisdiction has been clarified by its case-law (the aforementioned order, Hanshow v. VusionGroup).
30. In accordance with the unambiguous provisions of the Rules of Procedure in this regard, the application for the assessment of costs in the present case should have been lodged with the Mannheim local division.
31. Contrary to Rematec's view, Rule 151 of the RoP does not conflict with the UPC Agreement or with EU law. Rule 151 of the RoP sets out the procedures by which a party may assert its claim for reimbursement of costs in accordance with Article 69 of the UPC Agreement. It does not conflict with Article 69 of the UPC Agreement, but rather regulates the details of the procedure in accordance with Article 41 of the UPC Agreement.
32. Nor is there any conflict with EU law. As this Court has already held, there is no reasonable doubt that Rule 151 of the RoP is consistent with EU law (UPC_CoA_380/2025, order of 20 August 2025, Expert v Seoul Viosys, para. 32 et seq.). There is therefore no basis for referring a question for a preliminary ruling to the CJEU. This is underlined by the fact that Rematec has not cited any provision of EU law other than Article 47 of the Charter of Fundamental Rights of the European Union, which, on its own, cannot form the basis for such a reference (UPC_CoA_380/2025, order of 20 August 2025, Expert v Seoul Viosys, para. 42).
33. No order as to costs is required here. As a general rule, each party bears its own costs in the proceedings for the assessment of costs (UPC Court of Appeal, decision of 6 June 2025, UPC_CoA_618/2024, APL_57918/2024, para. 54 – Hanshow et al. v. VusionGroup).

ORDER

Rematec's application under Rule 333 of the RoP for the panel to review the judge-rapporteur's order of 30 March 2026 is dismissed.

This order was issued on 3 July 2026.

Klaus Grabinski, President of the Court of Appeal

Emmanuel Gougé, judge-rapporteur and legally qualified judge

Peter Blok, legally qualified judge

Max Tilmann, technically qualified judge

Gérard Myon, technically qualified judge