Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Paris Local Division

UPC_CFI_530/2025
Procedural order
of the Court of First Instance of the Unified Patent Court, issued on 20 July 2026

Concerning an amendment to the security for costs (Rule 158 of the Rules of Procedure)

APPLICANT

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DEFENDANTS

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DISPUTED PATENT

Patent number	*Patent holder(s)*
EP2949070	KEEEX SAS

JUDGE RULING ON THE CASE

President and Reporting Judge **Camille Lignieres**

LANGUAGE OF THE PROCEEDINGS: French

ORDER

An infringement action has been brought before this Division by KEEEX, the proprietor of patent EP'070, against the defendants as set out in the heading of this order.

By order of 19 December 2025, made on the defendants' application, the main claimant was ordered to provide a bank guarantee issued by a bank authorised in the EU pursuant to Rule 158 of the Rules of Procedure, in the amount of 200,000 euros. ADOBE lodged an appeal against that order with the JUB Court of Appeal, which declared the appeal inadmissible.

By application dated 22 June 2026, ADOBE sought a variation of the amount of this guarantee, as follows:

- primarily, an additional security in the amount of 1,800,000 euros; in the alternative, 1,300,000 euros; and in the further alternative, 800,000 euros; or such amount as the Court may deem appropriate,

- in the form of a cash deposit (or, in the alternative, in the form of a bank guarantee issued by an EU-authorised bank), failing which a judgment in default shall be entered,

-and, should the application for review and amendment be dismissed, that leave to appeal be granted.

In support of its application, ADOBE relies principally on the following arguments:

-Rule 158(1) of the Rules of Procedure allows a reasoned application to be submitted at any time,

- the court may amend the security in the event of new facts (Decisions of the Central Division of the UPC: Paris Central Division, Microsoft Corporation v Suinno Mobile & AI Technologies Licensing Oy, 27 December 2024, UPC_CFI_164/2024; Munich Central Division, NanoString Technologies Europe Ltd v President and Fellows of Harvard College, 17 December 2024, UPC 252/2023, Headnote, point 2);

- in the present case, substantial changes have occurred which necessitate a significant increase in the security, namely: a request for a provision made by KEEEX in the amount of 120 million euros pursuant to R. 119 RdP, the counterclaim for invalidity and the application for patent amendment, which would be unusual in that it concerns a grouping of claims, an amendment to the description, and the deletion of dependent claims, some of which are not opposed.

- the increase in the amount of the security sought is consistent with the principle of proportionality, particularly in light of the decision handed down on appeal against the initial order of 30 April 2026. According to ADOBE, the Court of Appeal reiterates that the starting point should be the ceiling specified in the Administrative Committee's Decision on recoverable costs, calculated on the basis of the value of the action, and that only a reduction may be applied in view of the claimant's status as an SME, that, according to the case law established by divisions of the JUB, the amount of 50 per cent of the ceiling for recoverable costs is often used to set the security provided for in R 158 RdP, and that the costs incurred in the infringement proceedings should be added to those of the revocation proceedings.

- KEEEX's conduct during the proceedings has led to complications and an increase in the costs borne by ADOBE.

-ADOBE argues that the four groups of defendants comprise separate and even partly competing entities, and that ADOBE, at the very least, has put forward different defences, going beyond those raised by the other defendants.

In its response filed with the CMS on 6 July 2026, KEEEX seeks, as its principal claim, that ADOBE's application be dismissed; and, in the alternative, that the claim for subsidiary indemnity be declared excessive and disproportionate, and that it should not exceed 10,000 euros.

KEEEX argues that:

- Under the guise of an amendment, the application seeks to reopen the court's assessment of the security for costs set out in its order of 19 December 2025, which had already taken into account the factors invoked—whether already present or foreseeable—in determining the amount of the security in question.

- The application for an advance on costs cannot automatically justify an increase in the security, which must be assessed in the light of the costs incurred, and the defendants have not produced any evidence of the costs incurred

- The value of the claim must not be confused with recoverable costs, the latter being subject to a cap; however, this cap must be adjusted in accordance with the circumstances of the case, in particular the fact that the claimant is an SME, and the claimant cannot bear the cost of procedural choices which the defendants themselves have exacerbated

- ADOBE overestimates the impact of the procedural developments cited, as the additional costs claimed fall within the normal course of infringement proceedings.

GROUNDS

<u>The legal framework</u>

Art. 69 AJUB

Rule 158 RdP

<u>In the present case</u>

As a preliminary point, the court notes that a ruling has already been made in this case by order of 19 December 2025 on the need to set a security for legal costs as provided for in R. 158 RdP in view of KEEEX's financial situation, and that this Division has ruled in the affirmative. Therefore, ADOBE's arguments in its application on this point are irrelevant. Furthermore, the grounds cited by the applicant, drawn from the Court of Appeal's decision of[1]June 2026 (UPC_CoA_48/2026, La Siddhi Consultancy Limited v Athena) to argue that SME status should not result in an exemption from security relate to the necessity of setting security and not to the question of what the appropriate amount is in light of the procedural context at the time of the application, which is the issue to be addressed in the present application. This is evident from the 'Headnotes' of that decision, as follows:

"HEADNOTES: The classification of a party as an SME or the submission of a declaration purporting to establish a party's SME status pursuant to Rule 370.8 of the Rules of Procedure (RoP) is not, in itself, sufficient to dispense with the obligation for that party to provide security for costs in accordance with Rule 158 of the RoP, if the requirements for the application of that rule are met.

The amount of the security for costs should be set, taking as a starting point the ceiling set out in Annex A ("scale of ceilings for recoverable costs") to the Decision of the Administrative Committee of 24 April 2023, and weighed against all the relevant circumstances of the case as presented by the parties. Where appropriate, the Court may take a party's SME status into account when determining the amount of the security for costs.")

<u>Regarding the criteria for setting an appropriate amount for the security for costs:</u>

The JUB Court of Appeal, on appeal against the initial order of 19 December 2025, which had declared the appeal inadmissible, stated in its order of 30 April 2026:

'the claimant's relative financial position compared with that of the defendant does not constitute a criterion within the meaning of Rule 158 of the Rules of Procedure. This is all the more so where the low level of funding for the proceedings results from a deliberate decision by the claimant (order of 17 September 2024, UPC_CoA_219/2024, Audi v NST). It is also noted that, should they succeed in the main proceedings, the Adobe companies would then be entitled to recover reasonable and proportionate legal costs (Rules 152.1 and 152.2 of the Rules of Procedure), the ceiling for which is set by the "Schedule of Recoverable Costs Ceilings" of 24 April 2023. According to the annex, where the value of the dispute exceeds €50,000,000, the ceiling on recoverable costs is €2,000,000. If the conditions are met, a security deposit should be set in accordance with this scale and the ceiling on recoverable costs, weighted in light of the relevant circumstances of the present case (such as, on the one hand, the fact, as alleged by Keeex, that it is an SME, and, on the other hand, the potential synergy between the four defence teams in this case).'

It follows that SME status may be taken into account when setting this amount, as was done in the order on the security provided for under Rule 158, made on 19 December 2025 in this case.

Whilst the ceiling recommended in the Administrative Committee's Decision 'Scale of Recoverable Costs' of 24 April 2023 should be taken into account, given the value of the claim indicated by the claimant and not yet determined by the reporting judge (this determination being scheduled for the pre-trial conference on 15 September), the JUB Divisions do not automatically apply this ceiling. Indeed, the applicant points out that the local divisions have often applied an amount equivalent to 50 per cent of this ceiling in light of the specific circumstances of the case. Furthermore, the reporting judge agrees with KEEEX's argument that the setting of the security cannot be limited to the automatic application of a percentage based on the said ceiling. Moreover, the Court of Appeal expressly stated that the SME status of the party required to provide security under Rule 158 of the Rules of Procedure could be taken into account. This is entirely justified in light of the spirit of the texts governing the JUB; *see* recital 2 of the AJUB: *'WHEREAS the fragmentation of the patent market and the significant variations between national legal systems are detrimental to innovation, in particular for small and medium-sized enterprises, which face difficulties in enforcing their patents (…)'*. It should also be recalled that the primary source of law to be applied by the JUB is EU law. For this reason, the reporting judge of this Division concurs with that of the Local Division in The Hague when it states: *"The cautio cannot constitute an unjustified interference with the claimant's right to an effective remedy and to a fair hearing as guaranteed under EU law, including Article 47 of the Charter*[1]*and the Enforcement Directive*[2]*. Any limitation on the right to an effective remedy before a tribunal within the meaning of Article 47 of the Charter must, in accordance with Article 52(1) of the Charter, be provided for by law and respect the essence of that right. Furthermore, subject to the principle of proportionality, limitations may be imposed only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of* others" (UPC The Hague LD, UPC_CFI_239/2023, Application No. 586761/2023, Order of 13 February 2024, page 3).

[1] Article 47 of the Charter of Fundamental Rights of the European Union (the Charter), referred to in the preamble to the UPCA – Article 47 of the Charter of Fundamental Rights of the European Union (the Charter), referred to in the preamble to the UPCA

[2] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights - Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights

This consideration of the principle of proportionality and the right to a fair trial is particularly well-founded in the present case, as the claimant is a small or micro-enterprise (see page 8 of the statement of claim) set up by the inventor of the patent in question, who is a natural person (see page 14 of the statement of claim). The aim is therefore to ensure that it has effective access to justice within the JUB’s legal framework; however, imposing a security deposit of an excessive amount at this stage of the proceedings would deprive it of that right.

The question before the reporting judge in this application is whether the amount of the security set by the order of 19 December 2025, which is now final, warrants adjustment in light of new and unforeseeable circumstances in the case in question.

Regarding the admissibility of a variation to the amount of the security:

A request for additional security is admissible, since Rule 158 of the Rules of Procedure expressly states that such a request for security may be made ‘at any time’, in accordance with several decisions handed down by the Central Division of the UPC on this matter (notably, Paris Central Division, Microsoft Corporation v Suinno Mobile & AI Technologies Licensing Oy, 27 December 2024, UPC_CFI_164/2024).

Regarding the justification for a variation of the security:

In the present case, the question arises as to whether the request for an increase in the security is well-founded and, if so, what the appropriate amount is.

On the new evidence adduced by the claimant:

It should be noted that the existence of a counterclaim for revocation of the patent, which was brought by the defendants and not by KEEEX, as well as the amendment to the patent sought by the patent proprietor in response, are common developments in this type of case and do not allow the case to be characterised as being of such particular complexity as to justify a variation of the security on the grounds of unforeseeable new circumstances.

Furthermore, the application for subsequent amendment of KEEEX’s patent under Rule 30.2 of the Rules of Procedure was rejected by order of 25 June 2026.

Finally, it should be noted that the proliferation of claims and appeals raised by ADOBE in support of its application to justify an increase in the costs incurred by the defendants is attributable more to ADOBE’s own initiative than to that of KEEEX. Consequently, ADOBE cannot in good faith rely on the increased complexity of the case caused by its own conduct to justify an increase in the security to be borne by KEEEX.

Similarly, it is not for KEEEX, at this stage, to bear the impact of the increased cost of the claim arising from a motion for revocation initiated by the defendants through an increase in the security payable by the claimant in the main action.

As regards the application for interim relief made by KEEEX in its latest statement of case on the merits, this Division has already ruled that it is admissible within the framework set by the reporting judge with the agreement of the parties. Moreover, the duty judge of the Court of Appeal indicated that the contested order contained no error of law that could justify discretionary review. Thus, the duty judge states in his decision of 10 July 2026: *‘In these circumstances, having regard in particular to the content of the procedural order and the information already available to the Applicants in the statement of claim, it was not manifestly* *wrong of the DL to accept the inclusion of the claim for provisional damages in the Reply and to reject the arguments raised by the Applicants in this regard*."

However, it is clear that this claim for provisional damages amounting to 120 million euros compelled the defendants to develop defence arguments to oppose it, which inevitably led to an increase in legal costs for ADOBE, attributable to KEEEX.

Therefore, at this stage of the proceedings, an increase in the security to be provided by KEEEX is justified in accordance with the criteria set out in the initial order of 19 December 2025, which is consistent with the case law of the JUB in this area, taking into account the specific circumstances of the present case, and in particular the fact that KEEEX is a small or micro-enterprise entitled to effective access to justice before the JUB, as well as the common ground among the defences, which have put forward similar arguments in opposition, in accordance with what was reiterated in this case by the Court of Appeal in its order of 30 April 2026.

Regarding the amount of the increase:

It appears that a 50 per cent increase in the amount already granted is appropriate, reasonable and proportionate in view of the particular circumstances of the case, namely an additional security of 100,000 euros. This security shall be provided by KEEEX within one month and in accordance with the same terms set out in the initial order, which will be reiterated in the operative part.

ON THESE GROUNDS, it is ordered:

- an amendment to the security for legal costs pursuant to Rule 158 of the Rules of Procedure, which was set by the initial order of 19 December 2025 and has become final, is declared admissible,

- the increase in the said security is set at 100,000 euros and must be provided by KEEEX in the form of a bank guarantee issued by a bank authorised by the European Union, within one month of this order, failing which a judgment in default shall be entered in accordance with the terms set out in Rule 158.4 of the Rules of Procedure.

Delivered in Paris, 20 July 2026.

Camille Lignieres, President and Judge-rapporteur

INFORMATION ON THE APPEAL: This order is subject to review in accordance with the procedures laid down in R. 333 RdP.

DETAILS OF THE ORDER
UPC No.: UPC_CFI_530/2025
Type of action: Infringement action
Type of application: Rule 158 of the Rules of Procedure (amendment of security for costs) Date of the order: 20 July 2026