Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Milan Local Division

UPC CFI no. 2216/2025, no. 1829/2026
order
issued on 30 July 2026

CLAIMANT

BIOPSAFE APS
Bygstubben 4, DK-2950 Vedbæk, Denmark
represented by
Lasse Henze and Stefan Borch Bilfeldt, *AWA Denmark A/S*, Strandgade 56, 1401 Copenhagen, Denmark;
Merit Berlips Persson and Louise Jonshammar, *AWA Sweden AB*, Matrosgatan 1, 211 18 Malmö, Sweden;
Laura Orlando, *Herbert Smith Freehills Kramer Studio Legale*, via Rovello n. 1, 20121 - Milano, Italy

DEFENDANT

KALTEK S.R.L.
via Liguria n. 29, 35020 - Saonara (PD), Italy
represented by
Stefania Bergia and Giulio Enrico Sironi, *Simmons+Simmons*, Milano, via Tommaso Grossi n. 2, 20121 - Milano, Italy;
Stefano Francesco Stignani and Alessandro Savio, *Modiano & Partners*, via Meravigli n. 16, 20123 - Milano, Italy

PANEL

Panel in the following composition:

-	Pierluigi	PERROTTI	presiding judge and judge rapporteur
-	Alima	ZANA	legally qualified judge
-	Daniel	SEVERINSSON	legally qualified judge
-	Martin	SCHMIDT	technically qualified judge

LANGUAGE OF THE PROCEEDINGS

English

PATENTS AT ISSUE

EP 2 720 617 B2 (“EP’617”)
EP 3 061 401 B1 (“EP’401”)
EP 3 653 132 B1 (“EP’132”)

SUBJECT MATTER OF THE ORDER

Application under Art. 69(4) UPCA and R. 158 RoP

SUMMARY OF FACTS

On 23 December 2025, Biopsafe ApS brought an infringement action (UPC CFI no. 2216/2025) against Kaltek s.r.l. before the Milan Local Division on the basis of three patents, EP'617, EP'401 and EP'132.

On 25 May 2026, Kaltek filed its statement of defence together with a counterclaim for revocation relating to two patents, EP'401 and EP'132.

On 1 July 2026, Kaltek filed an application for security for costs pursuant to Art. 69(4) UPCA and R. 158 RoP, based on the following arguments.

According to Kaltek, Biopsafe's financial position gives rise to a legitimate and real concern that any costs awarded in favour of Kaltek at the end of the proceedings may not be recoverable from the claimant.

Biopsafe is a Danish Anpartsselskab (limited liability company) incorporated on 16 March 2011 and, as from 1 January 2022, was wholly owned by Dena A/S.

The claimant has a registered share capital of DKK 80,000 (approximately EUR 10,700) and is a microenterprise employing only 2 to 4 persons.

In recent years, the sole shareholder has pursued an aggressive dividend distribution policy.

Prior to the acquisition by Dena in 2021 claimant distributed zero dividends, despite being profitable during the years.

Biopsafe began distributing dividends, and the payout ratio has escalated dramatically with each passing year. In 2025 the proposed dividends of DKK 7,631,000 exceed the net profit of DKK 6,231,000 by DKK 1,400,000, representing a payout ratio of 122%. This means that Dena A/S is not merely extracting the entirety of Biopsafe’s current year profits but is actively drawing on reserves accumulated in prior years.

As of 31 December 2025, Biopsafe's total equity stood at DKK 11,231,000 (approximately EUR 1,500,000, i.e. one third of the value of the infringement action initiated by Biopsafe). However, once the proposed dividends for fiscal year 2025 (DKK 7,631,000) are paid, Biopsafe's equity will be reduced to approximately DKK 3,600,000 (approximately EUR 480,000), which is below the ceiling for recoverable costs of the infringement action initiated by Biopsafe (EUR 600,000).

An additional, clear sign of financial fragility is near-zero liquidity over multiple years.

In detail, it was DKK 0 in fiscal years 2022 and 2023, DKK 150,000 (approximately EUR 20,000) in fiscal year 2024, and DKK 1,248,000 (approximately EUR 167,000) in fiscal year 2025.

Biopsafe presents all the hallmarks of a company that, absent a security for costs order, may well be unable to satisfy any costs order that the Court may issue in favour of Kaltek at the conclusion of the proceedings.
All these circumstances were directly apparent from the financial statements for the last four years (2022–2025).
The amount of the security should be determined in line with the value of the action, with legal costs ranging from EUR 600,000 to EUR 800,000.

By order of 2 July 2026, the claimant was invited to comment by 16 July 2026.

On 10 July 2026 Biopsafe filed its "*Reply to Kaltek's application under Article 69(4) UPCA and Rule 158(2) RoP*".
The claimant stresses that the minimum share capital of an ApS is DKK 20,000, meaning that Biopsafe maintains a share capital four times higher than the statutory minimum. Further, share capital is not relevant when assessing whether a company is solvent.
The 'microenterprise argument' is purely formal. Kaltek does not explain how this aspect would impact on the claimed risk and concern.
It is false that there is an aggressive dividend distribution policy. The defendant has omitted a key fact.
Biopsafe states that Medcap (a Swedish investment company) has been the sole shareholder since 26 June 2026, following an acquisition for a cash consideration of DKK 115,000,000 (approximately EUR 15,380,000). An acquisition for such a value would make no sense if Biopsafe were actually regarded as potentially exposed to insolvency. In any event, the extraordinary dividend was paid before the sale.
Biopsafe is a profitable company with sound finances. The claimant has substantial and increasing gross profit, net income, and stable retained earnings. Biopsafe's total equity, which includes an increase in cash and cash equivalents, is also increasing. There are no relevant debts.

GROUNDS FOR THE ORDER

Art. 69(4) UPCA provides that the Court may, at the request of the defendant, order the applicant to provide adequate security for the legal costs and other expenses incurred by the defendant which the applicant may be liable to bear. R. 158.1 RoP specifies that the Court may, at any time during proceedings, following a reasoned request by one party, order the other party to provide, within a specified time frame, adequate security for the legal costs and other expenses incurred and/or to be incurred by the requesting party, which the other party may be liable to bear.
The Court of Appeal held that when exercising its discretion under Art. 69(4) UPCA and R. 158 RoP, the Court 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 how likely it is that a possible order for costs by the Court may not be enforceable, or that enforcement may be unduly burdensome. The burden of substantiation and proof of why an order for security for costs is

appropriate in a particular case is on the party applying for security for costs (UPC CoA no. 890/2025, order of 18 February 2026; UPC CoA no. 431/2025, order of 9 July 2025; UPC CoA no. 218/2024, order of 17 September 2024).
Once the reasons and facts have been presented by the defendant in a credible manner, however, the claimant must challenge these reasons and facts in a substantiated manner (UPC CoA no. 890/2025, order of 18 February 2026; UPC CoA no. 596/2024, order of 12 July 2025).
Failing any guarantees or other special circumstances, it is irrelevant whether the claimant belongs to a financially sound group of companies. What is relevant is only the financial position of the claimant itself (UPC CoA no. 548/2024, order of 29 November 2024).

Against this legal background, the Court finds that Kaltek has not proved that 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 that a possible order for costs by the Court may not be enforceable, or that enforcement may be unduly burdensome.

The first two factual circumstances relied upon by the applicant for security, namely (i) the minimum share capital of EUR 10,700 and (ii) the microenterprise structure, are not, in themselves, particularly relevant indicators for the purposes of assessing a company's financial soundness.
Indeed, it is possible for relatively modest share capital to be accompanied by substantial equity; such a circumstance would normally indicate, on the contrary, very sound financial health.
In the present case, there is evidence that the entire shareholding was transferred by Dena to Medcap at the end of June 2026 for a stated consideration of DKK 115,000,000 (approximately EUR 15,380,000; see Biopsafe Annex 1).
The press release concerning the transfer does not disclose the criteria used to arrive at that valuation, which may also exceed the amount of net equity alone, by reason of a concurrent valuation of goodwill and, more generally, of the prospects linked to the ability to generate increasing revenues. Any assessment on this point, in the absence of certain evidence, would be purely speculative.
For the purposes relevant here, it is sufficient to note that the valuation expressed by the market is 1,400 times higher than the share capital, which, at this stage, makes the risk that the share capital may be impaired very remote.

Even stronger considerations can be made with regard to the limited number of employees of the company, which ranged between two and four over the last three years. The applicant for security did not carry out any detailed analysis of the possible reasons for this lean corporate organisation and, in particular, did not explain why and how such a microstructure could be indicative of a current financial imbalance of Biopsafe.

The published financial data, as reported by Kaltek in its application, show that the sole shareholder Dena did in fact pursue a ‘generous’ dividend distribution policy, which culminated in 2025 in a distribution even exceeding the profits generated during that same year.

This circumstance must also be assessed in the light of the recent change in the shareholding structure, whereby Medcap replaced Dena as sole shareholder following a share transfer transaction announced to the public at the end of June 2026.
It is common experience that the completion of corporate transactions of such importance requires complex economic assessments, in the present case also through the valuation of the income-generating prospects of intangible assets such as the patents asserted in these proceedings. It is therefore plausible that the last distribution of profits resolved upon in 2025 was made in awareness of the forthcoming disposal of the entire shareholding. Taking into account the valuation of the shareholding expressed by the acquirer Medcap, Dena's conduct was by no means perceived as indicative of a predatory intent, nor as capable of giving rise to a risk, even a merely potential one, of depletion of the company, dissipation of its earning capacity, or substantial sabotage of its productive prospects.

Finally, as regards the company's assets, Kaltek did not provide an analytical assessment of the individual items in the financial statements, but merely focused on the level of Biopsafe's cash reserves, which it considered inadequate to meet the risk of an adverse costs order at first instance in these proceedings.

Upon a closer examination of the financial data, for the limited purposes relevant here, the Court observes that:

- gross profits have been in constant and significant growth over the last three years, to the point of having substantially doubled from 2023 to 2025, increasing from DKK 7,235,000 (approximately EUR 968,000) to DKK 14,274,000 (approximately EUR 1,910,000);
- the same growth trend is also visible in net income, especially in the last two years, with DKK 4,087,000 (approximately EUR 547,000) in 2024 and DKK 6,231,000 (approximately EUR 834,000) in 2025;
- there were total current assets of DKK 12,426,000 (approximately EUR 1,662,000) at the close of the 2025 financial year;
- trade receivables amounted in 2025 to DKK 7,753,000 (approximately EUR 1,037,000);
- there are no particularly significant debts.

The applicant for security did not make any specific submissions with regard to Biopsafe's overall debt exposure.

It is likely that, in the event of a wholly unfavourable outcome of the proceedings on the merits, Biopsafe may find itself required to meet a significant financial commitment, having regard to what appear to be its current financial dimensions. Nevertheless, in view of the accounting data examined above, the Court considers that, at this stage, there are no elements of particular concern such as to justify the adoption of a security for costs order in the terms sought by Kaltek.

In the light of the considerations set out above, the application under R. 158 RoP filed by Kaltek must be dismissed.

ORDER

The application under Art. 69(4) UPCA and R. 158 RoP filed by Kaltek s.r.l. is dismissed.
The costs of the application will be addressed with the costs in the main proceedings.
Leave to appeal is granted.
The present order may be appealed within 15 days of service of this order which shall be regarded as the Court's decision to that effect (Art. 73(2)(b)(ii) UPCA, R. 220.2 and 224.1(b) RoP).
Milan, 30 July 2026.

Pierluigi Perrotti presiding judge and judge rapporteur	Digitally signed Perrotti Pierluigi 2026-07-28 14:23:47 +0200 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
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