



Munich local division

UPC_CFI_1569/2025

Order on Costs
of the Court of First Instance of the Unified Patent Court,
issued on 6 August 2026

Headnotes:

1. An application to increase or reduce the ceiling for recoverable costs pursuant to Article 2(4) of the Administrative Committee's Decision of 24 April 2023 on the table of ceilings for recoverable costs is deemed to have been made only if it is expressly and unambiguously apparent from the application that an increase or reduction of the ceiling is sought.
2. An application seeking (provisional) reimbursement of costs up to a specific amount does not constitute an application to increase or reduce the ceiling for reimbursable costs.

Keywords:

Decision on costs; reimbursable costs; upper limit; application for an increase the upper limit

Headnotes:

1. A request to raise or lower the ceiling for recoverable costs (Article 2(4) of the Administrative Committee's Decision of 24 April 2023 on the scale of recoverable costs ceilings) is only deemed to have been made if it is clear and explicit from the request that an increase or a reduction in the ceiling is sought.
2. A request for an interim award of costs up to a specified amount does not constitute a request to raise or lower the ceiling for recoverable costs.

Keywords:

Cost decision; recoverable costs; ceiling; request to raise the ceiling

APPLICANT

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mbB PATENT AT ISSUE

EP 3 421 081 B1

DECIDING JUDGES

This order was issued by the legally qualified judge Tobias Pichlmaier (judge-rapporteur)

LANGUAGE OF THE PROCEEDINGS

German

SUBJECT MATTER OF THE PROCEEDINGS

Application for the assessment of costs

Facts

The applicant was the respondent in the interim relief proceedings UPC_CFI_693/2025. By an application for the assessment of costs dated 13 November 2025, she applied, in respect of the proceedings at first instance,

the costs to be reimbursed by the respondent to the applicant be fixed at EUR 168,200.00.

In support of her application, the applicant argued that, given a fixed value in dispute of EUR 1,000,000.00, the amount to be fixed resulted from the corresponding upper limit (EUR 112,000.00). However, the upper limit should be increased by 50 per cent in accordance with Rule 152(2) of the RoP, as the applicant had already applied for reimbursement of costs exceeding the upper limit in its protective letter of 25 July 2025 and in its defence of 11 September 2025.

The following activities were incurred by the applicant:

Tätigkeit	Seiten	Anl. Seiten
- Vorbereitung und Einreichung der Schutzschrift vom 25. Juli 2025	53	ca. 220
- Prüfung des Verfügungsantrags der Antragsgegnerin vom 30. Juli 2025	92	ca. 260
- Vorbereitung und Einreichung der Erwiderung der Antragstellerin auf den Verfügungsantrag vom 11. September 2025	106	ca. 120
- Prüfung der Stellungnahme der Antragsgegnerin zur Schutzschrift vom 29. August 2025	88	ca. 140
- Prüfung der weiteren Stellungnahme der Antragsgegnerin vom 17. September 2025	3	ca. 40
- Vorbereitung und Einreichung der weiteren Stellungnahme der Antragstellerin vom 17. September 2025	3	
- Vorbereitung und Teilnahme an der mündlichen Verhandlung vom 24. September 2025		

Excerpts from the ('illustrative') invoices submitted in this regard as Annex FR 27 are set out below:

Date	Initials	Description	Hours
07/17/25	JYZ	Review of other side's cease and desist letter; review of proposed undertakings; review of other side's patent; check status of other side's patent; search on the Internet re challenged products; review comments from prosecution counsel; discuss status of the matter and further steps with	

The court fees of EUR 200.00 paid by the claimant should also be reimbursed.

The respondent submitted its response to this on 9 January 2026 and requests that

1. that the application for the assessment of costs be dismissed;
2. in the alternative: to stay the proceedings for the assessment of costs until a final and binding decision has been handed down by the Court of Appeal in the pending appeal proceedings (UPC_CoA_898/2025) in accordance with Rule 295(m) of the RoP;
3. in the further alternative: to reduce the recoverable costs at the court's discretion to an appropriate level and to set them at an amount not exceeding half of the applicable ceiling, i.e. EUR 56,000.00;
4. further in the alternative: to permit the respondent to pay the amount determined by the Court as recoverable costs of the proceedings at first instance by way of deposit until the Court of Appeal has given a final decision in the proceedings UPC_CoA_898/2025.

In particular, the respondent objected that the costs claimed could not be verified due to the invoices being largely redacted.

The judge-rapporteur then requested the applicant to state when the application to raise the ceiling was to have been made and, in this regard, referred to Article 2(4) of the Administrative Committee's decision of 24 April 2023 on the table of ceilings for recoverable costs. Furthermore, the applicant was requested to submit written evidence for the costs claimed (Rule 156.1 of the UPC RoP). The applicant was informed that Annex FR 27 does not constitute evidence of costs incurred, as the hourly rate and the number of hours claimed in each instance are redacted in this annex. The applicant was requested to explain the relevant evidence in a document, specifying and clarifying each individual cost item.

In a document dated 15 May 2026, the applicant subsequently explained its application for the assessment of costs as follows:

Regarding the application to raise the upper limit, she argued that she had already applied for provisional reimbursement of costs amounting to EUR 135,000.00 in her protective letter; in its defence to the application for an interim order, it had applied for provisional reimbursement of costs amounting to EUR 168,000.00 and had expressly pointed out that this amount exceeded the upper limit for a value in dispute of EUR 1 million:

„Die Antragsgegnerin hält ihren Antrag auf eine vorläufige Kostenerstattung nicht nur aufrecht, sondern beantragt eine höhere vorläufige Kostenerstattung als noch in der Schutzschrift. Für die Prüfung des Verfügungsantrags, der weiteren Stellungnahme und der umfangreichen Hilfsanträge der Antragstellerin und die Stellungnahme dazu sind bei der Antragsgegnerin beträchtliche weitere Anwaltskosten entstanden. Die Anwaltskosten betragen bereits jetzt mehr als der geregelte Höchstbetrag. Das wird anwaltlich versichert. Der Fall ist für ein Verfügungsverfahren besonders komplex, und es wurden mehrere Verfahrenssprachen verwendet.“

The applicant had therefore already, in her protective letter – that is, her first submission – applied for the reimbursement of costs exceeding the upper limit. She had also applied for the reimbursement of further costs in her defence to the application for an interim order. The applicant could not be criticised for not having explicitly referred to an ‘upper limit’, but rather to a regulated ‘maximum amount’. The same applied insofar as the applicant had not expressly designated her claim for reimbursement of costs as an application ‘pursuant to Article 4(2) of the Administrative Committee's decision of 24 April 2023 on the table of upper limits for reimbursable costs’. To require the applicant to do so

would constitute unnecessary red tape. What is decisive is that the applicant's intention to make an application for reimbursement of costs exceeding the regulated upper limit was made clear in a clear, unambiguous manner and as early as possible.

With regard to the activities invoiced, the applicant submitted that the representatives listed below had carried out work to the total extent specified.

Name	Kürzel	Stundensatz USD	Stundensatz EUR ca.	Std.
Dr. Jan Zecher, Rechtsanwalt	JYZ			
Dr.-Ing. Klaus Reindl, Patentanwalt	KPR			

The applicant also explained the activities individually, referring in this regard to the document of 15 May 2026, and the description is reproduced (by way of example) as follows:

Originaltext	Übersetzung bzw. Erläuterung	Std.
07/17/25	17. Juli 2025	
JYZ	Jan Zecher	
Review of other side's cease and desist letter; review of proposed undertakings; review of other side's patent; check status of other side's patent; search on the Internet re challenged products; review comments from prosecution counsel; discuss status of the matter and further steps with [REDACTED] and [REDACTED]	Prüfung des Abmahnung der Gegenseite; Prüfung der vorgeschlagenen Verpflichtungserklärungen; Prüfung des Patents der Gegenseite; Überprüfung des Stands des Patents der Gegenseite; Internetrecherche zu den beanstandeten Produkten; Prüfung der Stellungnahme des Vertreters im Erteilungsverfahren; Erörterung des Sachstands und der weiteren Schritte mit [REDACTED] und [REDACTED]	5,2

The relevant invoices were submitted as Annex FR 30. An extract from these is reproduced below:

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
07/17/25	JYZ	Review of other side's cease and desist letter; review of proposed undertakings; review of other side's patent; check status of other side's patent; search on the Internet re challenged products; review comments from prosecution counsel; discuss status of the matter and further steps with [REDACTED] and [REDACTED]	5.2

The respondent submitted its response to this on 5 June 2026 and, whilst maintaining application 1 of 9 January 2026, **requested** in the alternative that

that the recoverable costs be reduced at the court’s discretion and set at a reasonable amount not exceeding EUR 79,396.00.

The respondent has argued that

- all cost items relating to a German-language protective letter filed before German courts
- reconciliations with legal representatives of the distribution company of the applicant, as well as
- communication with the US lawyers

are irrelevant to the interim injunction proceedings before the UPC and are therefore not recoverable. No application to raise the upper limit has been made. As regards all other cost items, the costs should be disallowed on the grounds of lack of reasonableness and proportionality insofar as they are based on an excessive hourly rate. The submitted Annex FR 30 continues to contain redactions which hinder the review of the invoices by the court and the respondent. This relates in particular to redactions concerning documents relating to the state of the art. The costs claimed cannot be verified in light of the examined state of the art. Costs incurred through the examination of irrelevant state of the art, which required a disproportionate amount of time, do not constitute recoverable procedural costs. The fact that the relevant time sheets were not disclosed suggests that it was precisely the examination of prior art that had not become the subject of the dispute that was invoiced. This concerns the following cost items, for which patent attorney■■■■■ invoiced a total of■■■■■ working hours (‘Rn.’ refers to the paragraph numbers in the applicant’s document of 15 May 2026):

Rn.	Bearbeiter	Stunden
36-38	■■■■■	■■■■■
39-41		

45-47		
51-53		
57-59		
63-65		
143-145		
146-148		
149-151		
161-163		
182-184		
188-190		
206-208		
212-214		
218-220		
239-241		
251-253		
260-262		

The following cost items relating to a German-language protective letter filed with German courts are also non-reimbursable:

Rn.	Bearbeiter	Stunden
72-73		
74-76		

The services listed below, relating to cooperation and coordination with the legal representatives of the applicant's distribution partner, are also not recoverable:

Rn.	Bearbeiter	Stunden
66-68		
77-79		
80-82		
86-88		
89-91		
95-97		
101-103		
83-85		
92-94		
98-100		

Services relating to the involvement of US lawyers are also not recoverable:

Rn.	Bearbeiter	Stunden
30-32	[REDACTED]	[REDACTED]
33-35		
42-44		
54-56		
60-62		
104-106		
107-109		
116-118		
128-130		
164-166		
203-205		
227-229		
242-244		
284-286		

It is also not reasonable that the lawyers handling the case required a total of more [REDACTED] than hours for the legal review, preparation and drafting of the protective letter.

In other interim proceedings before the Unified Patent Court, only one-tenth of these hours had been claimed for the preparation of a protective letter. In case UPC_CFI_640/2024, a total of 10.6 working hours had been claimed, and in case UPC_CFI_292/2023, a total of 9.7 working hours.

The applicant submitted its comments on this matter on 13 June 2026 – without prior order from the judge-rapporteur – and argued that

- the hourly rates charged of approximately EUR [REDACTED] for a partner and approximately EUR [REDACTED] for an associate were reasonable and customary
- and that the number of hours billed was also reasonable and customary.

It did not address the items specified in detail by the respondent which, in the respondent’s view, are not recoverable. It merely stated that the descriptions of the work were comprehensible despite the redactions. It is in the nature of the matter that prior art which is ultimately irrelevant

had ultimately been the subject of the examination. Furthermore, it explained that the protective letter filed with the German courts had merely been translated for the present proceedings; this had taken less than five hours' work by a solicitor and less than seven hours' work by a patent attorney.

The respondent has moved to dismiss the statement of 13 June 2026, which was filed on its own initiative and without (court) permission, as inadmissible.

Reasons

The recoverable costs are to be set at €112,000.00. This is based on the following reasons:

1. Value of the claim; upper limit for recoverable representation costs; application to raise the upper limit

- 1.1 The value of the claim for the proceedings at first instance amounts to €1,000,000.00, as stated in the application for provisional measures (see, regarding the assessment of the value of the claim in the subsequent appeal proceedings UPC_CoA_898/2025, Order of 27 March 2026, para. 185). There appears to be no submission by the applicant that could give rise to a different assessment of the value in dispute.

Pursuant to II. 5. a) of the Administrative Committee's decision of 24 April 2023 (Guidelines for the Determination of Court Fees and the Upper Limit for Recoverable Costs), it is not necessary to determine the value of an application for interim relief. However, pursuant to II. 5. b) of the Administrative Committee's decision of 24 April 2023, the value of the application for interim relief should be determined for the purpose of establishing the amount of recoverable costs.

- 1.2 Where the value in dispute is €1,000,000.00, the upper limit for recoverable legal representation costs is €112,000.00.
- 1.3 The applicant did not submit an application to raise the upper limit.

Pursuant to Article 2 of the Administrative Committee's decision of 24 April 2023 (on the table of upper limits for recoverable costs), the court may, in a limited number of cases – for example, where a case is particularly complex or where several languages of the proceedings are used – raise the upper limit set out in the Annex, upon application by a party and taking into account the financial capacity of all parties, in accordance with the principle of fair access to justice. Under Article 2(4), an application to increase or reduce the ceiling must be made as early as possible in the proceedings. This may be done by the claimant in the statement of claim or by the defendant in the statement of defence; however, the application must be made in good time so that

the court can make its decision before the conclusion of the interim proceedings. The application must include all evidence reasonably available.

An application to increase or reduce the ceiling for recoverable costs pursuant to Article 2(4) of the Administrative Committee's decision of 24 April 2023 on the table of ceilings for recoverable costs shall only be deemed to have been made if it is expressly and unambiguously apparent from the application that an increase or reduction of the ceiling is sought. This follows directly from the requirement for a clear and specific application (Article 76 of the UPC Agreement); this requirement is not a 'mere formality' but a significant procedural principle. An application aimed solely at the (provisional) reimbursement of costs up to a certain amount does not constitute an application for an increase or reduction in the ceiling for recoverable costs.

It is true that, in her preliminary objection of 11 September 2025, the applicant requested the provisional reimbursement of costs amounting to €168,000.00. In doing so, she has not only requested a higher (provisional) reimbursement of costs than she had sought in her protective letter, but also the reimbursement of costs in an amount that exceeds the upper limit. However, the preliminary objection does not explicitly request that the upper limit be raised. The requirement to make such an application expressly – and not merely implicitly – is clearly set out in Article 2 of the Administrative Committee's decision of 24 April 2023. It also follows from this that the court must rule on this matter before deciding on the substance of the case itself (in this instance: the application for provisional measures). For this reason alone, it must be made clear to the court that this is a specific application seeking an increase in the costs ceiling, which must be decided upon in advance. An application for provisional reimbursement of costs ("The applicant is ordered to reimburse the respondent provisionally for costs amounting to EUR 168,000.00"), such as that made by the applicant here in the context of the preliminary objection on 11 September 2025, must be distinguished from an application to raise the cost ceiling ("It is applied for that the ceiling for recoverable costs be raised to € ..."). The applicant's mere reference to legal costs incurred in a specific amount is not sufficient to constitute an application to raise the ceiling. Nor does it emerge with sufficient clarity and unambiguity from the grounds of the preliminary objection that an increase in the ceiling is sought. Apart from general references to the

complexity of the proceedings and the use of several languages of the proceedings, there is no sound justification for raising the upper limit. Ultimately, an increase would not have been justified either, as the proceedings are not particularly complex in either factual or legal terms.

Nor can an application to raise the ceiling be inferred from the documents of 13 November 2025 and 15 May 2026. Once again, there is no explicit application to that effect. Furthermore, an application to raise the ceiling is no longer possible once the provisional measures have been issued.

2. Amount of the recoverable legal fees

In the court's view, the hourly rates claimed [REDACTED] and [REDACTED] are not open to objection. They fall – albeit at the upper limit – within the range of what, to the best of the judge-rapporteur's knowledge, is agreed with clients and actually paid by them.

3. Reimbursable services

- 3.1 In her document of 15 May 2026, the applicant provided a detailed explanation of her application for the assessment of costs, whilst redacting passages of the 'time sheets' relating to the lawyer's work which she considered to be subject to confidentiality.

The respondent replied in detail to this in a document dated 5 June 2026, specifically identifying services which, in her view, were not recoverable.

The claimant did not address the items objected to in this manner in her document of 13 June 2026. Although this document was filed without a prior order from the judge-rapporteur, the court nevertheless takes the arguments contained therein into account, as the claimant would in any event have had to be heard on the respondent's submissions. However, the applicant's representative is once again reminded that any submission of facts not provided for in the Rules of Procedure requires a court order; it is not for the party's representative to comment unsolicited.

3.2 Assuming that the applicant has not substantively contested the respondent's submissions set out in the document of 5 June 2026, such that these may be regarded as uncontested, the objections relate in total to

Hours:

This leaves hours hours – hours) for Dr and hours hours – hours) for Dr , which may be regarded as recoverable.

Based on the stated hourly rates, the reimbursable amount for is hours. This results in a reimbursable amount of hours in total, therefore an amount of

This amount exceeds the relevant upper limit of €112,000.00. As the upper limit has been reached, an amount equal to the upper limit is to be reimbursed. The question of whether certain items were rightly challenged as non-reimbursable is therefore irrelevant, as the uncontested items alone already result in a reimbursement amount exceeding the upper limit.

3.3 In so far as the respondent further objects that the lawyers handling the case required a total of more than hours for the legal review, preparation and drafting of the protective letter, there is a lack of specific arguments relating to the present proceedings regarding the reasonable amount of time required for the work. A general reference to the time spent in other proceedings cannot, in this respect, be decisive.

Decision

1. The value of the application for interim relief is set at €1,000,000.00 in accordance with Section II. 5. b) of the Administrative Committee's decision of 24 April 2023 (Guidelines for the Determination of Court Fees and the Upper Limit for Recoverable Costs).
2. The respondent must pay the sum of €112,000.00 to the applicant within three weeks of service of this order on costs.
3. In all other respects, the application for reimbursement of costs is dismissed.

TOBIAS GÜNTHER
PICHLMAIER

 Digitally signed by TOBIAS GÜNTHER
PICHLMAIER
Date: 6 August 2026 10:16:32 +02'00'

Pichlmaier, judge-rapporteur

Information on the appeal:

A party aggrieved by a decision referred to in Rule 157 of the RoP may, within 15 days of service of the decision, lodge an application for leave to appeal with the Court of Appeal, Rule 221.1 of the RoP.