

Order
of the Court of First Instance of the Unified Patent Court
issued on 13/08/2026
regarding: reimbursement

Claimant

1) BTL Medizintechnik GmbH
Prinzregentenplatz 7, 81675, Munich,
Germany

Represented by Tobias Wuttke

Defendant

1) Lexter Microelectronic Engineering Systems S.L.
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28200 Madrid, Spain

Represented by Alexandros
Stavrinadis

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP4146335	BTL Healthcare Technologies a.s.

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS: Reimbursement request after Infringement proceedings

DECIDING JUDGES

This order is issued by the panel, comprising:

Presiding judge	Edger Brinkman
Judge-rapporteur	Margot Kokke
Legally qualified judge	Samuel Granata

SUMMARY OF THE FACTS and POINTS AT ISSUE:

1. At the request of the parties, the Court confirmed the withdrawal of the infringement action by panel decision of 16 January 2026 (R.265 RoP). The parties informed the Court that no decision on the costs was needed. This was noted and reflected in the order, reproduced below.

The court:

- A. allows the withdrawal of infringement action UPC-CFI-1048/2025
- B. declares those proceedings closed;
- C. orders that this decision shall be entered on the register (R.265.2(b));
- D. declares that there is no need for cost decisions.

2. The case was subsequently closed, also on 16 January 2026.
3. On 10 March 2026, the representative of the Claimant uploaded a request for reimbursement of 60% of the court fees pursuant to Rule 370.9(b) RoP (the Request) in the closed CMS file. This was only recently brought to the attention of the Court, pursuant to emails sent to the sub-registry of the LD The Hague.
4. On 10 August the (sub-registry of the LD The Hague of the) Court sent the following email-message to the Claimant's representative:

"Your R.370.11 RoP Application filed in the closed CMS-file 1048/2025 on 11 March 2026 was recently brought to the attention of the Court, pursuant to your email enquiries.

On 16 January 2026 a withdrawal decision was uploaded in file 1048/2026. This decision was issued by the panel after a mutual request thereto of the parties. Pursuant to a request for clarification of R.265.2(c) RoP, the Court was informed that no cost decisions was needed, and this was included in the final decision. The case was subsequently closed, also on 16 January 2026.

The Court has doubts whether it is procedurally possible to file a reimbursement request in a file that is closed. Application in closed cases are not brought to the attention of the Court. See e.g. LD Dusseldorf decision of 8 June 2026 9UPC_CFI_195/2025, where the parties requested the Court to lift the stay of the proceedings to enable them to file withdrawal and reimbursement requests. The Court therefore tends to consider your request inadmissible.

Furthermore, the request materially does not seem in line with the communication to the Court that no cost decision was required, as court fees are part of the costs. A decision on the costs seems to include a decision on reimbursement of court fees. In case you did not agree with this, appeal should have been filed.

Lastly, even assuming the request is admissible, your application was uploaded almost two months after the withdrawal decision was uploaded. Although 370.11 RoP does not explicitly state a time limit, it seems logical, also in view of considerations of proportionality, flexibility, fairness and equity, to require such request for reimbursement to be submitted within a reasonable time frame, and 'as soon practical' after the final decision (see preamble 7 to the RoP). As court fees are part of the costs that are the topic of, for instance, cost decisions, such request should, after the closure have proceedings, have been filed within the time frame mentioned in R. 151 RoP which requires filing withing one month after the final decision. Almost two months after the final decision is not considered reasonable.

The court wonders whether an order is needed or if your application can be assumed to be withdrawn. Please comment.”

5. The representative responded by email of 11 August 2026 as follows:

“Thank you for your below Email which I would like to address in substance. For the sake of clarification: the application is upheld and it is requested that an order be made.

In detail:

The waiver on a cost decision is unrelated to the reimbursement of overpaid court fees (UPC_CFI_8/2023, Edward Lifesciences v Meril, 18.7.2025; UPC_CFI_716/2025, ETRI v Hisense, 16.2.2026; UPC_CFI_195/2025 UPC_CFI_568/2026, Sanofi v Amgen, 8.6.2026).

Rule 370.11 RoP does not stipulate a time limit. For this reason, the Local Divisions Düsseldorf allows that corresponding applications are filed after the action was withdrawn and the proceedings closed (cf. UPC_CFI_99/2024, UPC_CFI_392/2024, Ona Patents v Apple, 17.9.2025). The Local Division Munich (i.e., at least the panel of Judge Zigann) follows this practice (e.g. UPC_CFI_801/2024 (Belparts v IMI).

Moreover, the Preamble (item 7) does not relate to the reimbursement of overpaid court fees (but only to decisions on damages and costs). The Rules of Procedure clearly distinguish between both situations (R. 151 RoP on the one hand and R. 370.11 RoP on the other). In the decisions issued so far, the Court of First Instance has followed this distinction and treated these applications separately (UPC_CFI_8/2023, Edward Lifesciences v Meril, 18.7.2025; UPC_CFI_716/2025, ETRI v Hisense, 16.2.2026; UPC_CFI_195/2025 UPC_CFI_568/2026, Sanofi v Amgen, 8.6.2026).

Most importantly: a parallel case by the same parties was pending before the LD Hamburg (Case UPC-CFI-0001049/2025). The timeline is almost identical to the present matter and the court fees were reimbursed as requested:

Issue order / dec...	Order		C Court	24-03-2026 10:07	Completed	
Issue communic...	Communication by the Court		C Court	12-03-2026 15:28	Completed	
File application	Application by Rule / Article	Application type: RoP 370.11 - Applic...	TW Tobias WUTTKE	11-03-2026 12:09	Received	
Issue communic...	Communication by the Court		CE Carolin Ewers	21-01-2026 09:16	Completed	
Change phase	Close case		SS Stefan Schilling	16-01-2026 10:27	Completed	

It is kindly requested to take this situation into account when deciding on the application. A harmonized approach by the Court of First Instance is in the interest of the users of the system.

For the sake of precaution a request pursuant to R.320 RoP will nevertheless be filed by the end of this week unless the JR reconsiders the situation in light of the above.”

GROUND

6. The Court considers the application inadmissible. Even if it were admissible, it is dismissed. The reasons for this are the following.

7. The present case ended because the parties settled the case in an early phase; a statement of defense was not yet filed. The Court received an application pursuant to R.265.1 RoP, which was filed by claimant (defendants consented). R.265.2 RoP requires the Court, when making the withdrawal decision, to declare the proceedings closed and issue a cost decision. This was done (see 1 and 2 above). As no cost decision was needed, there was no need to set the value of the proceedings. The case was closed on 16 January 2026.
According to R.371.11 RoP, a party seeking reimbursement of court fees under paragraphs 9 and 10 shall lodge a reasoned application for reimbursement to the Court. If a case is temporarily or permanently closed, for instance due to a stay or because the proceedings have ended, it is not possible to file further submissions/applications in such case, even if the CMS technically permits this. Such filing will not be considered by the Court. In case a party wants to file a further submission, it first must ask for reopening of the case (on which the Court has to decide, at its discretion). Reference is made to a decision of the LD Dusseldorf of 8 June 2026¹. There, the case was stayed and the parties requested the Court to lift the stay of the proceedings to enable them to file withdrawal and reimbursement requests. In these proceedings, no request for reopening the case was filed. Already from that point of view, the Request must be dismissed or disregarded as inadmissible. Only in specific circumstances as envisaged in the Rules of Procedure, for instance when the successful party wishes to enforce the decision or when there is a clerical error in the decision, may a party file submissions in an already closed case file. However, in such circumstances the closure of the case was not mandated by the Rules of Procedure nor was such closure ordered by a specific order in the operative part of a court decision.
8. Even if the Request would be admissible from a procedural point of view, Claimant has forfeited its right to request reimbursement of court fees because parties informed the Court that no decision on costs was needed, which was mentioned as such in the withdrawal decision (see 1. above). Court fees are part of the costs (see R.150.1 and 151(d) RoP).
9. But also, in case the Request were admissible and the right to seek reimbursement had not been forfeited, filing it almost two months after the closure of the proceedings is not reasonable. It is also inconsistent with the expedited nature of UPC proceedings. Although R. 370.11 RoP does not expressly prescribe a time limit, considerations of proportionality, flexibility, fairness and equity require such request for reimbursement to be submitted within a reasonable period and as soon as practicable after the final decision (see Preamble 7 to the RoP, last sentence). Since court fees form part of the costs addressed, for example, in cost decisions, such a request should have been filed after closure of the proceedings within the period set out in Rule 151 RoP, namely within one month of the final decision. Filing almost two months after the closure is therefore too late. A different approach would mean that reimbursement requests could be filed in closed proceedings indefinitely, without any time limit. Alternatively, national limitation periods might apply, which would be undesirable from the viewpoint of a unified application of the law.
10. The decisions taken by other local divisions of the UPC to which Claimant refers in tis reply of 11 August 2026, cited in 5 above, do not change the above assessment. No decision on admissibility was taken in any of those cases. In several cases referred to, the reimbursement application was filed shortly (a few days) after the withdrawal decision was taken and was simply granted without addressing the admissibility thereof. In the cited Belparts case (not published), the request was withdrawn after comments of the JR (admittedly on a different issue, namely that the new reimbursement rules do not envisage any reimbursement once

¹ UPC_CFI_195/2025

the written phase has ended), so no conclusions may be drawn from this. Similarly, in the LD Hamburg decision in a case parallel to this one, no explicit decision was taken on admissibility. Some decisions referred to do not support Claimant's position at all. These decisions thus do not indicate a 'practice' of the UPC. Although a harmonised approach by the UPC is desirable, decisions of other local divisions, are not binding on this local division. To improve harmonisation, however, the Claimant may appeal this decision. Leave to appeal is granted.

ORDER

The court:

1. declares the reimbursement request inadmissible;
2. grants leave to appeal this decision pursuant to 220.2 RoP.

Brinkman, presiding judge	
Granata, legally qualified judge	
Kokke, judge rapporteur	
For the Deputy Registrar, clerk	