Central Division (Section Munich)
UPC_CFI_894/2026

Procedural order

of the Court of First Instance of the Unified Patent Court
issued on 26 August 2026
concerning EP 3 802 413 B1

CLAIMANT
SYPOX GmbH, Am Waldrand 3, DE-85354 Freising, Germany

Claimant represented by:
German and European patent attorney Dr Andreas Hofmann, LL.M. of RGTH Patentanwälte PartGmbB, and attorney-at-law Dr Matthias Hülsewig of AURODION PartmbB

DEFENDANT
Topsoe A/S, Haldor Topsøes Allé 1, DK-2800 Kgs. Lyngby, Denmark

Defendant represented by:
European Patent Attorney Connor McConchie of D Young & Co LLP

PATENT AT ISSUE
European patent no EP 3 802 413 B1

PANEL/DIVISION
Panel 1 of the Central Division (Section Munich)

DECIDING JUDGE
Daniel Severinsson acting as judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT OF THE PROCEEDINGS

Revocation action

BACKGROUND

1. In the present revocation action the claimant SYPOX GmbH ("Sypox") estimated the value of the proceedings to EUR 1.250.000. Sypox paid only 50% of the court fee (EUR 13.250) since it considered itself to qualify as a small enterprise or a micro-enterprise ("SME") pursuant to R. 370.8 of the Rules of Procedure ("RoP"). The parties dispute inter alia whether Sypox qualifies as an SME and whether it should provide security for costs according to R. 158 RoP.

REQUESTS

2. Sypox requests that the Court
i) concludes that Sypox qualifies as an SME and that the reduced court fee paid by Sypox is considered adequate,
ii) significantly lower the ceiling of recoverable costs, and
iii) set the value of the proceedings to EUR 1.250.000.

3. Topsoe A/S ("Topsoe") requests that the Court
i) conclude that Sypox does not qualify as an SME and order Sypox to pay the remainder of the court fee pursuant to R. 370.8(d) RoP,
ii) reject Sypox's request to lower the ceiling of recoverable costs, and
iii) set the value of the proceedings to EUR 4.000.000.

4. Topsoe further requests that Sypox is ordered to provide a security in respect of the legal costs and other expenses incurred and/or to be incurred by Topsoe.

5. Sypox requests that the Court rejects Topsoe's request for security for costs.

ARGUMENTS OF THE PARTIES

Sypox

6. Sypox has in summary held that it is a research-driven start-up which originated from the Technical University of Munich. It is not primarily active in the development or

commercial operation of complete hydrogen plants. Sypox was forced to challenge the validity of the patent in suit because Topsoe has chosen to assert it against Sypox in parallel UPC inspection and evidence-preservation proceedings. As confirmed by Sypox's tax advisor it qualifies as an SME in terms of annual turnover, balance sheet total and number of employees (approximately 10). This also follows from Sypox's SME self-assessment based on the EU Participant Portal methodology. The latest completed and approved financial statement available at the time of filing the Statement for revocation was the annual financial statement for 2024. Sypox is an independent technology company. It's co-founders, two former students and a professor of the Technical University of Munich, currently hold 90% of the shares and the corresponding voting rights. European Energy A/S ("European Energy") holds a strategic minority investment of 10% of the shares and voting rights. European Energy thus does not exercise dominant influence over Sypox and is not a linked enterprise within the meaning of Article 3(3) of the European Commission's Recommendation of 6 May 2023 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC) ("the Commission's SME recommendation"). European Energy has had certain consent rights in a limited set of reserved matters served to protect a minority investment during an early financing phase. These rights have not permitted European Energy to determine Sypox's ordinary technical, commercial, operational or litigation decisions. In any event, European Energy's rights were time-limited and expired on 1 July 2026 according to an Investment agreement. The figures of European Energy are not to be aggregated with those of Sypox for the purpose of assessing the SME status.

7. Since Sypox is an SME, and in the event that Sypox is unsuccessful, an enforcement of the full (or even raised) amount of recoverable costs to be awarded to Topose would threaten the economic existence of Sypox, the ceiling for recoverable costs should be significantly lowered.

8. There is no reason to set a higher value of the dispute than EUR 1.250.000. Sypox was forced to challenge the validity of the patent in suit because Topsoe asserted it against Sypox in parallel UPC inspection and evidence-preservation proceedings. The value of the proceedings does not correspond to the market potential of Sypox's broader technology platform, but must be assessed by reference to the claimed subject-matter of the patent in suit and the concrete defensive interest pursued by the revocation action.

9. There is no basis to order Sypox to provide security for Topsoe's legal costs and other expenses. Security for costs requires concrete circumstances giving rise to a legitimate concern that a future costs order would not be recoverable. Topsoe has not identified

any such circumstances but only relied on Sypox's request to lower the recoverable cost ceiling. A request to lower the recoverable cost ceiling is not an admission that a party is unable or unwilling to satisfy a costs order.

Topsoe

10. Topsoe has in summary held that Sypox does not qualify as an SME, at least not at the time of filing the Statement for revocation. Sypox has not submitted sufficient financial evidence but relied on outdated information and financial figures related to the financial year 2024. In any event, European Energy has the right to exercise a dominant influence over Sypox and is a linked enterprise within the meaning of Article 3(3) of the Commission's SME recommendation. According to Sypox's Articles of association, European Energy has blocking rights in eleven different categories plus a catch all clause covering inter alia the level of the operations (allocation of profits, losses and dividends and any change of Sypox's object or fundamental change of business plans and strategies), the representatives of Sypox (appointment and removal of Managing Directors) and the Articles of Incorporation. Even if European Energy's blocking rights were limited in time according to an Investment agreement, which is disputed, at least some blocking rights remain reserved for European Energy. Hence, the numbers of European Energy would have to be added to the numbers of Sypox which means that Sypox does not qualify as an SME.

11. Sypox has not presented all reasonably available evidence as to why the ceiling for recoverable costs should be lowered. Even if Sypox would qualify as an SME there is no reason to grant this request. Sypox's own annual financial statement for 2024 shows that at the end of that year Sypox had current assets of EUR 1.163.000 whilst the equity capital was at EUR 1.088.000.

12. The patent in suit is not due to expire until 2039 and it is in force in eleven EPC contracting states. Based on available information the value of the patent in suit in Bavaria alone amounts to MEUR 2,3.

13. Sypox has itself expressly stated that "[…]an enforcement of the full (or even raised) amount of recoverable costs to be awarded to the defendant would threaten the economic existence of the claimant." Sypox has not provided any substantiated financial information and should provide a security in respect of the legal costs and other expenses incurred and/or to be incurred by the defendant.

GROUNDS FOR THE ORDER

Qualification as an SME

14. It follows from R. 370.8 RoP that SMEs are required to pay only 50% of the regular court fees, subject to certain conditions. The assessment of whether a party qualifies as an SME follows the criteria of a “small enterprise” or a “micro-enterprise” as defined in Title I of the Annex to the Commission’s SME recommendation. According to Art. 2(2) and (3) of the Annex to the Commission’s SME recommendation, within the SME category a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million and a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million. When calculating staff numbers and financial amounts also the data of partner enterprises and linked enterprises are included (Art. 3 and 6 of the Annex to the Commission’s SME recommendation). It follows from Art. 3(3) that linked enterprises are enterprises where (a) an enterprise has the majority of the shareholder’s voting rights in another enterprise, (b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise, (c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association or (d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

15. In the present case Topsoe claims that the staff numbers and financial amounts of European Energy should be included for the assessment of Sypox’s SME status, since European Energy has a dominant influence over Sypox according to Sypox’s Articles of association. Topsoe has further held that the financial evidence relied on by Sypox is insufficient and outdated, but Topsoe has not substantiated why Sypox would not qualify as an SME if the data of European Energy is not included. According to the Court, it is sufficiently clear from the confirmation of Sypox’s tax advisor and the annual financial statement for 2024 that, if the staff numbers and financial amounts of European Energy are not included, Sypox qualifies as an SME, also at the time of filing the Statement for revocation.

16. It is undisputed that European Energy only controls 10% of the shares and voting rights of Sypox. It follows from Sypox’s Articles of association that European Energy has certain veto rights regarding inter alia allocation of profits or losses, the appointment and

removal of managing directors and senior executives and any transactions or agreements having equal effect as any of the referred transactions. According to Sypox these rights were limited in time until 1 July 2026 on the basis of an Investment agreement between Sypox and European Energy.

17. The Court finds that European Energy's veto rights are not of such a nature that they give European Energy the right to exercise a dominant influence over Sypox. Therefore Sypox qualifies as an SME irrespective of whether these veto rights were limited in time or not. As an SME Sypox is entitled to a 50% reduction of the court fees according to R. 370.8 RoP. The court fee already paid by Sypox, EUR 13.250, is therefore sufficient.

Provisional value of the proceedings and the ceiling for recoverable costs

18. The assessment of the value of the proceedings shall reflect the objective interest pursued by the filing party at the time of filing the action (R. 152.3 and 370.6 RoP). The value of a revocation action should be determined having regard to the value of the patent to be revoked which, in the absence of relevant information, may be assumed to be equal to the value of an appropriate license fee calculated on the basis of the turnover of the parties for the remaining lifetime of the patent (see section I.1 and II.2(b) of the Administrative Committee's Guidelines for the determination of the court fees and the ceiling of recoverable costs).

19. Topsoe has submitted a detailed valuation of the proceedings which is mainly based on publicly available information regarding the interest in procuring Sypox's e-SMR hydrogen plant, production capacities, hydrogen prices and royalty rates. Sypox has pointed out several alleged flaws in Topsoe's valuation but has not substantiated its own assessment of the value. Taking into account in particular that the patent in suit does not expire until 2039 and that it is in force in six UPC contracting states, the Court finds that the value of the proceedings should provisionally be set to EUR 2.000.000 which means that the ceiling for recoverable costs is EUR 200.000. The Court intends to take a final decision on the value of the proceedings after the interim conference (cf. R. 104(j) RoP).

20. As regards Sypox's request to lower the ceiling for recoverable costs, the Court may issue such an order if the amount of recoverable costs of representation to be awarded to the successful party would threaten the economic existence of the requesting party, in particular if the latter is e.g. an SME (see Art. 2(2) of the Decision of the Administrative Committee of 24 April 2023 on the "Scale of ceilings for recoverable costs"). However, even if a requesting party's qualification as an SME is a relevant factor it is not sufficient

in itself (cf. Court of Appeal, UPC_CoA_48/2026, order of 1 June 2026, La Siddhi Consultancy v Athena Pharmaceutiques, para. 31).

21. Sypox has held that an enforcement of the full amount of recoverable costs would threaten its economic existence. However, according to the Court Sypox has neither sufficiently substantiated this assertion nor presented any other convincing arguments, let alone evidence, that motivates lowering the ceiling. Sypox's request to lower the ceiling for recoverable costs should therefore be rejected.

Security for costs

22. At any time during proceedings, following a reasoned request by one party, the Court may order the other party to provide, within a specified time period, 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 (Art. 69(4) UPCA and R. 158.1 RoP). The purpose of security for costs is to protect the opposing party against the risk that a future order for costs may not be recoverable or may be enforceable only in an unduly burdensome manner. Security for costs may therefore be ordered where the financial position of the claimant gives rise to a legitimate and real concern that such a risk exists (see also CoA orders of 17 September 2024, UPC_CoA_218/2024, Volkswagen v NST, and UPC_CoA_217/2024, Audi v NST). The burden of substantiation and proof why an order for security for costs is appropriate in a particular case is on the applicant. Once the reasons and facts in the request have been presented in a credible manner, it is up to the opposing party to challenge these reasons and facts in a substantiated manner, especially since that party will normally have knowledge and evidence of its financial situation. It is for the respondent to argue that and why a security order would unduly interfere with its right to an effective remedy. In making that assessment, the Court must take into account all relevant circumstances and strike a fair balance between protecting the respondent against the risk of non-recovery and safeguarding the appellant's right of access to justice. While the mere fact that a party's financial situation is not fully known, is not in itself sufficient to justify an order for security for costs, proof of actual insolvency is not required. Nor is the Court required to establish that recovery of a future costs order will be impossible. It is sufficient that the circumstances objectively demonstrate a genuine risk affecting the practical recoverability or enforceability of such an order (see Court of Appeal, UPC_CoA_935/2025, order of 2 July 2026, AMYCEL, paras. 11–14). The qualification of a party as an SME is not, in itself, sufficient to dispense with the obligation for said party to provide a security for costs pursuant to R.158 RoP, if the requirements for the application of this rule are met (Court of Appeal, UPC_CoA_48/2026, order of 1 June 2026, La Siddhi Consultancy v Athena Pharmaceutiques, para. 21).

23. As already mentioned Sypox has, in the context of the request to lower the ceiling for recoverable costs, asserted that an enforcement of the full amount of recoverable costs to be awarded to Topsoe would threaten the economic existence of Sypox. Topsoe, which has the burden of substantiation and proof, has referred to this statement. However, the Court finds that Sypox's statement alone is not sufficient for Topsoe to have presented in a sufficiently credible manner that an order for security for costs is appropriate. Further, Topsoe has not presented any other convincing arguments as to why a future order for costs may not be recoverable or may be enforceable only in an unduly burdensome manner. On the contrary, Topsoe has itself held that it seems feasible that Sypox's economic existence would not be threatened by having to pay legal costs up to the applicable ceiling, since Sypox had assets and equity capital of over EUR 1.000.000 according to its financial statements for 2024. Against this background Topsoe's request for security for costs should be rejected.

ORDER

I. Sypox qualifies as an SME under R. 370.8 RoP and the reduced court fee paid by Sypox is adequate.

II. The provisional value of the proceedings is set to EUR 2.000.000.

III. Sypox's request to lower the ceiling for recoverable costs is rejected.

IV. Topsoe's request for security for costs is rejected.

INFORMATION ABOUT PANEL REVIEW

Any party may request that this order be referred to the panel for a review pursuant to R. 333 RoP.

Issued on 26 August 2026

Sven Daniel Severinsson

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Daniel Severinsson
Judge-rapporteur