

Order
of the Court of Appeal of the Unified Patent Court
issued on 13 October 2026
concerning an application for leave to appeal against cost decisions
(R. 221.3 RoP)

HEADNOTES:

An application for leave to appeal pursuant to R. 157 RoP in conjunction with R. 221 RoP is inadmissible insofar as it concerns a rejection of the application for re-establishment of rights. According to R. 320.7 RoP, there shall be no right to appeal from an order rejecting an application for re-establishment of rights or from an order granting re-establishment of rights. It follows that a corresponding application for leave to appeal according to R. 157 RoP in conjunction with R. 221 RoP is inadmissible.

KEYWORDS:

- Inadmissibility of an application for leave to appeal against the decision on an application for re-establishment of rights (R. 320.7 RoP, R. 221 RoP)

APPLICANT (APPLICANT IN THE PROCEDURE FOR COST DECISION AND CLAIMANT AND COUNTER-DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Rematec GmbH & Co KG, Dietersburg, Germany

(hereinafter 'Rematec')

represented by attorney at law Dr. Blumenröder and other attorneys at law from Grünecker PartG mbB, Munich, Germany

RESPONDENT (RESPONDENT IN THE PROCEDURE FOR COST DECISION AND DEFENDANT AND COUNTER-CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Europe Forestry B.V., Stegeren, The Netherlands

(hereinafter 'Europe Forestry')

represented by attorney at law Dr. Michael Rüberg and other attorneys at law from Boehmert & Boehmert Anwaltspartnerschaft mbB, Patentanwälte, Rechtsanwälte, Düsseldorf, Germany

PATENT AT ISSUE

EP 2 548 648

LANGUAGE OF THE PROCEEDINGS

German

DECIDING JUDGE

This order was issued by Patricia Rombach, standing judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- ‘Order’ issued by the Mannheim Local Division on 22 May 2026
- Reference numbers before the Court of First Instance:
 - UPC-CFI-340/2023 (first application for cost decision and infringement proceedings)
 - UPC-CFI-978/2026 (second application for cost decision)
 - CC-7594/2024 (counterclaim for revocation)

SUMMARY OF FACTS

1. The subject matter of the proceedings is an application for cost decision by Rematec. In the preceding main proceedings, Rematec brought an action for infringement of the patent against Europe Forestry before the Mannheim Local Division (hereinafter ‘the Local Division’ or ‘the Court of First Instance’ [‘CFI’]). Europe Forestry filed a counterclaim seeking the revocation of the patent at issue.
2. In its final decision of 31 January 2025, the Local Division ordered Rematec to bear $\frac{3}{4}$ of the costs of the first instance and Europe Forestry to bear the remaining quarter. Following Rematec’s appeal, the Court of Appeal set aside the Local Division’s decision, dismissed the counterclaim for revocation of the patent at issue and largely upheld the infringement action (decision of 17 February 2026, UPC-CoA-302/2025 and UPC-CoA-305/2025). Regarding costs, the Court of Appeal ordered that Europe Forestry should bear, in both instances, the court fees for the counterclaim for revocation and the costs incurred by Rematec as a result. Furthermore, Europe Forestry was ordered to pay, in both instances, 80% of the court fees for the infringement action and the costs incurred by Rematec as a result.
3. On 18 March 2025, more than one month after the Local Division’s final decision on the merits, Rematec lodged a first application for cost decision with the Local Division and requested a retroactive extension of the missed time limit or, alternatively, re-establishment of rights in respect of the missed time limit.
4. Following the Court of Appeal’s decision on the merits, Rematec lodged a second application for a cost decision before the Court of Appeal on 17 March 2026, as a result of which the case references PR-UPC-CFI-951/2026 and PR-UPC-CFI-952/2026 were automatically generated by the CMS and displayed to Rematec via the CMS. Following a notification from the Registry of the Court of Appeal at 17:15 on the very day of the submission, stating that the application for a cost decision was to be lodged before the Court of First Instance, Rematec subsequently requested that the application be ‘forwarded’ to the Local Division, instructing that the date of submission of the application before the Court of Appeal should be deemed to be the date of the submission of the application. The Court of Appeal dismissed the application (order issued on 30 March 2026, UPC-CoA-302/2025 and UPC-CoA-305/2025). Rematec

lodged an application for panel review pursuant to R. 333 RoP which was dismissed by order issued on 3 July 2026.

5. On 18 March 2026, Rematec lodged before the Local Division the application for a cost decision previously filed with the Court of Appeal on 17 March 2026.
6. On 17 April 2026, Rematec applied for re-establishment of rights regarding the time limit for lodging an application for a cost decision, which had expired on 17 March 2026, or, alternatively, an extension of the time period pursuant to R. 9.3(a) RoP.
7. In the impugned decision, the Local Division, by 'order' of the judge-rapporteur, rejected both the first and second applications for a cost decision and dismissed Rematec's further applications.

Reasons for the impugned decision

8. The Local Division rejected the first application for a cost decision on the grounds that the time limit had expired. The application for a retroactive extension of the time limit was deemed inadmissible and the application for re-establishment unfounded. According to the Local Division, refraining from involving legal representatives from the law firm in the proceedings when drafting and filing written pleadings does not satisfy the required due care. The fact that, since an unspecified date in 2024, the monitoring of time limits was left entirely to the legal assistants without any supervision by a representative raises in the opinion of the Local Division serious concerns. At the very least, random checks should have been carried out. With regard to the cost proceedings following the main proceedings at first instance and the relevant time limits, it was evident that the legal assistants had not yet been able to establish sufficient routine at that point.
9. Furthermore, the Local Division stated, it would be contrary to due care to allow the legal assistants to operate within a completely new court system with new rules of procedure without observing the dual-control principle, and without subsequent checks by a lawyer. According to the submissions and the affidavits, no such system for monitoring time limits had been established. Rather, the staff member, with many years of experience, bore primary responsibility, whilst the less experienced staff member was only responsible when acting as a substitute. Consequently, the latter had not been able to develop sufficient routine. In this respect, it would have been essential for the less experienced staff member, acting as a substitute, to inform the staff member primarily responsible of any entries she had made in the latter's absence and to ask her to review them. The error would then have been detected promptly and would not have had any consequences. No such control mechanism had been put forward or confirmed by sworn statement. Accordingly, the claim for reimbursement of costs – insofar as it had already been quantified following the conclusion of the first instance proceedings on the basis of the allocation of costs determined therein – had been extinguished.
10. Furthermore, the second application for a cost decision was also filed after expiry of the applicable time limit, the application for a retroactive extension of the time limit was inadmissible, and the application for re-establishment was unfounded. Consequently, the further claim for costs asserted in the second application has also been extinguished in its entirety. The application lodged with the Court of Appeal on 17 March 2026 had been filed before the wrong instance. It could therefore not be regarded as having been lodged in good time with the registry of the correct instance, in this case the CFI.

11. The application was lodged by the attorney before the wrong instance due to an avoidable error of law, which would have been prevented had the case law been diligently and properly followed and examined. The argument that the law firm's staff should also enter in the calendar the instance before which the application must be lodged within the time limit is irrelevant. The monitoring of time limits concerns the time limit itself. The examination of the legal question as to where the application should be lodged is a matter to be resolved by the legal representative himself, which must not be delegated to the law firm's staff. Consequently, Rematec's argument that this was an administrative oversight also fails.

REQUESTS OF THE PARTIES

12. Rematec applies for leave to appeal pursuant to R. 157 and 221 RoP against the impugned 'order' of the Local Division.
13. Europe Forestry requests that the application for leave to appeal be dismissed and that Rematec be ordered to pay the costs of the proceedings for leave to appeal.

SUBMISSIONS OF THE PARTIES

14. Rematec essentially submits, with regard to the first application for a cost decision, that:
- Leave to appeal should be granted in order to ensure uniform case law of the Unified Patent Court.
 - It cannot be inferred from the decision of the Hamburg Local Division of 2 June 2025 (UPC-CFI-58/2024), cited by the Local Division, that the dual-control principle is a minimum requirement for the exercise of due care. Rather, the Hamburg Local Division had merely found that the dual-control principle satisfied the requirements of due care.
 - The Local Division had not addressed the decision of the Düsseldorf Local Division of 1 April 2026 (UPC-CFI-705/2025, *Topcon v Optopol*), which ultimately held that a time limit check carried out by a staff member was sufficient.
15. Prior to the subsequent rejection of the application under R. 333 RoP regarding the refused re-establishment in relation to the second application for a cost decision, Rematec had argued that:
- The submission of the second application for a cost decision to the Court of Appeal on 17 March 2026, whilst still within the time limit, was the result of a mere administrative oversight and constituted a failure to meet the timeline despite the exercise of due care.
 - The final and binding effect of the decision on costs issued by the Mannheim Local Division would lead to an irreconcilable contradiction should the Court of Appeal, in the course of reviewing the procedural decision pursuant to R. 333 RoP, conclude that the application for a cost decision dated 17 March 2026 should have been forwarded to the Mannheim Local Division as requested, whilst ensuring that the date of receipt by the Court of Appeal was observed.
 - The requirement for the proper administration of justice justifies the need to grant leave to appeal against the decision on costs of the Mannheim Local Division, to prevent that decision from becoming final.
16. Europe Forestry defends the impugned 'order' and submits, in essence, that:

- Pursuant to R. 157 RoP, an application for leave to appeal is admissible only against a 'cost decision'. A decision within the meaning of R. 350 RoP is, pursuant to R. 156.2 RoP, issued only if a substantive decision is made on the amount of the costs.
- A reinterpretation of the application for leave to appeal as an application for a discretionary review under R. 220.3 RoP cannot be considered.
- If, by contrast, one were to reinterpret the present application as an application for a discretionary review, it would in any event be inadmissible, as follows from R. 320.7 RoP.
- In any event, the application for leave to appeal is unfounded. Rematec has not put forward any valid reasons for granting leave.
- Ensuring the consistency of case law is not recognised as a sufficient reason for granting leave to appeal or for an application for a discretionary review.
- It is not apparent, nor has Rematec demonstrated, that the judge-rapporteur of the CFI committed such serious errors that they would have to be corrected under R. 151 RoP and R. 221 RoP. Rematec merely represents a divergent legal opinion.
- A breach of essential procedural provisions would, at most, be present if the principle of a fair trial had been violated or if the order were to be classified as arbitrary. It cannot be assumed that the decision is no longer objectively justifiable, i.e. that it lacks any legal basis and is manifestly untenable.
- Even if the standard set out in the order of the Düsseldorf Local Division to which Rematec refers – which might allow a mere consultation with a lawyer to suffice, but nevertheless considers such consultation necessary – were applied, there would be no reason to grant leave. Furthermore, the decision of the Düsseldorf Local Division is not comparable to the present case. This is a decision concerning a time limit that may be extended. Precisely where a time limit results in the loss of legal rights, a higher standard of due care must be observed.
- Rematec had not argued that the organization function in CMS had been used. However, according to the Hamburg Local Division, this would be a further factor in ensuring the requisite due care.
- The Court of Appeal had already held, in the context of access to the case file, that an order for costs under Art. 69(3) UPCA could be made even in the absence of an express provision to that effect. Under Art. 69(3) UPCA, a party must bear any unnecessary costs it has caused another party.

GROUNDS

17. The application for leave to appeal must be dismissed.

I. Admissibility of the application for leave to appeal

18. An application for leave to appeal pursuant to R. 157 RoP in conjunction with R. 221 RoP is inadmissible insofar as it concerns a rejection of the application for re-establishment of rights. According to R. 320.7 RoP, there shall be no right to appeal from an order rejecting an application for re-establishment of rights or from an order granting re-establishment of rights. It follows that a corresponding application for leave to appeal according to R. 157 RoP in conjunction with R. 221 RoP is inadmissible.

II. Reasons for leave to appeal in respect of the denial of the applications for retrospective extension?

19. Regarding the rejection of requests for a retrospective extension of the time period, Rematec is correct in not challenging the Local Division's opinion that an extension of the time period in R. 151.1 RoP is not permitted under R. 9.3(a) RoP, and that an application for re-establishment of rights under R. 320 RoP takes precedence in this respect. This aligns with the Court of Appeal's case law (Court of Appeal, 6 June 2025, UPC-CoA-618/2024, para. 46, *Hanshow v Vusion Group*). Consequently, no grounds for leave to appeal have been put forward in this regard, nor do any such grounds exist.

Costs of the leave to appeal proceedings

20. Europe Forestry's application to order Rematec to bear the costs of the leave to appeal proceedings shall be dismissed. In principle, no costs are awarded in proceedings for cost decisions, except for the court fee (*Hanshow v VusionGroup*, para. 54). This principle also applies if the application for leave to appeal is deemed inadmissible.

ORDER

- I. The application for leave to appeal against the 'order' issued by the Mannheim Local Division on 22 May 2026 is dismissed.
- II. Europe Forestry's application to order Rematec to bear the costs of the leave to appeal proceedings is dismissed.

Issued on 13 October 2026

Patricia Rombach, standing judge