Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Milan Local Division

UPC CFI no. 2434/2026
Order
issued on 30.10.2026

CLAIMANT

NIXU FL IP PROTECTION LLC
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represented by
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DEFENDANTS

1) AMAZON WEB SERVICES, INC.
410 Terry Avenue North, Seattle, WA, 98109-5210, United States;
2) AMAZON WEB SERVICES EMEA SARL
38 Avenue John F. Kennedy, L-1855 Luxembourg, Luxembourg
3) AWS EUROPEAN SOVEREIGN CLOUD GMBH
Behlertstraße 3 A, Haus B 2, 14467 Potsdam, Germany,
4) AMAZON DATA SERVICES ITALY S.R.L.
viale Monte Grappa n. 3/5, 20124 Milan, Italy
represented by
Klaus Haft, at *Hoyng Rokh Monegier Düsseldorf*, Steinstraße 20, 40212 Düsseldorf, Germany

DECIDING JUDGES

Panel in the following composition:

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

LANGUAGE OF THE PROCEEDINGS

English

PATENT AT ISSUE

EP 3 417 570 B1 (EP'570)

SUBJECT OF THE ORDER

Application for a security for costs under Art. 69(4) UPCA and R. 158 RoP

SUMMARY OF FACTS

On 6 July 2026, Nixu FL IP Protection LLC ('Nixu') brought an infringement action before the Milan Local Division against Amazon Web Services, Inc., Amazon Web Services EMEA SARL, AWS European Sovereign Cloud GmbH and Amazon Data Services Italy s.r.l. (respectively, 'Defendant 1', 'Defendant 2', 'Defendant 3' and 'Defendant 4', and collectively, 'Amazon' or 'Defendants').

On 8 September 2026, Amazon lodged an application for security for costs pursuant to Art. 69(4) UPCA and R. 158 RoP and requested the Court to order Claimant to provide adequate security for legal costs and other expenses incurred by Defendants which Claimant may be liable to bear, in the amount of EUR 600,000 or such amount as the Court considers reasonable. Amazon submits that an order for security for costs is justified because there is a real and substantial risk that any costs award made in its favour would not be recoverable from the Claimant. According to Amazon, Nixu is a recently incorporated special-purpose litigation vehicle established solely for the acquisition and enforcement of patent rights. Nixu was incorporated in Texas on 26 March 2025 and acquired the patent in suit only shortly thereafter from FusionLayer Oy. The subsequent registration of the transfer before the EPO and the commencement of these proceedings within a short period further support the conclusion that Nixu's principal purpose is the monetisation of patents through licensing and litigation. Public filings of the corporate group behind Nixu expressly describe a business model centred on IP transactions, licensing activities and litigation-based monetisation of patent assets.

The Defendants further contend that Nixu has failed to demonstrate the existence of any meaningful source of income or independently available assets. Available public information indicates that Nixu is funded through advances made by its parent company, Sauvegarder Investment Management, Inc. ('Sauvegarder IM'), while, in return, substantially all of its present and future assets have been pledged to that entity. In particular, Nixu granted a first-ranking security interest over its patent portfolio, including the patent in suit, related licences, and future licensing revenues. As a result, even assuming that the portfolio possesses commercial value, Amazon submits that its practical availability to satisfy a future costs award is highly doubtful.

According to Amazon, the position is aggravated by the fact that the portfolio appears not yet to have been fully paid for, with outstanding acquisition obligations remaining to be satisfied from future proceeds. Moreover, there is no evidence that Nixu has to date generated licensing revenue, successfully monetised its portfolio, or accumulated assets capable of satisfying a substantial adverse costs order. The Defendants also note that previous UPC proceedings involving Nixu have already identified concerns regarding the effectiveness of the pledged patent portfolio as recourse for a potential costs award. Nor does publicly available information disclose alternative assets. The Claimant's corporate filings reveal no meaningful financial information, while its registered address appears to consist of leased office premises shared with affiliated

entities. No evidence has been identified of real estate holdings, liquid assets, or other readily attachable property.
Amazon further argues that Nixu forms part of a wider investment structure dedicated to the acquisition and enforcement of third-party patents. While such a business model is not objectionable as such, the group's financing arrangements appear designed to maximise returns for investors while limiting exposure to adverse financial consequences. In Defendants' submission, this considerably increases the risk that a costs award would remain unsatisfied.
Having regard to the value of the infringement action, the anticipated counterclaim for revocation, and the applicable ceilings for recoverable costs, Amazon submits that the value of the proceedings should be assessed at approximately EUR 5 million, corresponding to a recoverable-costs ceiling of EUR 600,000.
In the particular circumstances of the case, Amazon contends that security should be ordered in the full amount of EUR 600,000. Unlike cases in which a reduced percentage of the costs ceiling may be appropriate, the present case involves a claimant that appears entirely dependent on third-party funding, possesses no demonstrated income stream, and has encumbered substantially all of its present and future assets. Requiring such security would not impair the Claimant's right of access to justice; rather, it would strike a fair balance between the parties by protecting Amazon against the proven risk that any costs award in its favour may otherwise remain unenforceable.

On 23 September 2026, Nixu filed its "*Reply to the Request for the Security for Costs*".
Nixu submits that Defendants' application for security for costs under Art. 69(4) UPCA and R. 158 RoP is unfounded and should be dismissed in its entirety.
As a preliminary matter, Nixu emphasizes that an order for security for costs is a discretionary and exceptional measure. According to the established case law of the Court of Appeal, the relevant question is whether the facts of the case give rise to a legitimate and real concern that a future costs award may not be recoverable or may be enforceable only with undue difficulty. The burden of proving such circumstances rests on the defendants. Nixu submits that Amazon has failed to discharge that burden and relies instead on speculation, assumptions regarding Nixu's business model, and general criticisms of non-practising entities.
Nixu argues that no concrete evidence has been produced demonstrating financial distress, insolvency, inability to meet liabilities, or any previous failure by Nixu. Amazon has not identified a single instance in which a debt, judgment, or costs award remained unpaid. In Nixu's submission, the application is therefore unsupported by the type of specific and verifiable facts required under R. 158 RoP.
The Claimant maintains that it forms part of a financially sound and well-capitalised corporate group. The patent portfolio acquired from FusionLayer was purchased for approximately USD 4 million, which Nixu submits is itself evidence of substantial financial resources. Moreover, the patents owned by Nixu constitute valuable assets capable of serving as recourse for creditors and, if necessary, being subject to enforcement measures. Nixu further argues that Amazon mischaracterises the legal effect of the security interests granted in favour of Sauvegarder IM. The relevant patents remain owned by Nixu; the existence of intra-group security arrangements

does not transfer ownership, remove the assets from Nixu's patrimony, or establish any inability to satisfy a future costs award.
Nixu places particular reliance on the Parent Guarantee of Litigation Cost Obligations ('Parent Guarantee' or 'Guarantee', SB Annex 67) issued by Sauvegarder IM. Under that Guarantee, Sauvegarder IM irrevocably undertakes to satisfy any litigation-cost obligations imposed on Nixu, including any costs award or security ordered by the UPC. According to Nixu, the guarantee closely mirrors the characteristics that the Court of Appeal regarded as sufficient protection (see UPC CoA no. 890/2025, order of 18 February 2026, Syntorr v Arthrex). In particular, the guarantee grants direct enforcement rights to beneficiaries, is unconditional and irrevocable, is not subject to defences available to Nixu, provides a straightforward payment mechanism, and remains effective for proceedings already commenced even in the event of termination. Nixu therefore submits that any conceivable concern regarding recoverability is fully addressed by the guarantee.
Nixu further contends that the financial strength of Sauvegarder IM independently confirms the absence of any genuine enforcement risk. It points to a recently completed USD 100 million insurance-backed financing transaction and a series of substantial patent portfolio acquisitions completed in recent years. According to Nixu, these transactions demonstrate both liquidity and continued investor confidence in the group.
Accordingly, Nixu submits that Amazon has failed to establish any legitimate and real concern regarding the recovery of costs and that the request for security should therefore be dismissed.
In the alternative, if the Court were nevertheless minded to order security, Nixu submits that the amount requested by Amazon is excessive. The ceiling for recoverable costs represents only a maximum amount and cannot automatically determine the quantum of security. Amazon has provided no substantiated estimate of its expected legal costs, despite the requirement to do so. Nixu therefore argues that any security should be set well below the EUR 600,000 requested. Consistent with UPC practice in comparable cases, and taking into account the need to preserve effective access to justice under Article 47 of the Charter, Nixu submits that any security should not exceed EUR 200,000, corresponding to approximately one third of the applicable costs ceiling and reflecting a proportionate balance between the parties' interests.

In their supplemental brief of 8 October 2026, the Defendants submit that the Parent Guarantee relied upon by Nixu does not sufficiently eliminate the risk that a future costs award may remain unrecovered. According to Amazon, the Guarantee falls short of the standards identified in the UPC case law and therefore cannot justify dismissal of the application for security for costs.
First, Amazon argues that the validity and continuing effectiveness of the Guarantee have not been established. The document was executed on 26 March 2025, fifteen months before the commencement of these proceedings. Nixu has adduced no evidence demonstrating that the Guarantee remains in force today or was still effective when the action was filed. In Amazon's submission, the burden of proving the Guarantee's continuing validity rests on Nixu. The Defendants further note that Nixu did not rely on the same Guarantee in the earlier proceedings before the LD Hamburg, despite the Guarantee allegedly already being in force at that time.

Amazon submits that this omission raises serious doubts as to its current validity and practical effectiveness.

Secondly, Amazon contends that the Guarantee contains limitations that may materially reduce the protection afforded to potential obligees. In particular, clause 8 includes a "*fraudulent transfer*" provision that caps the Guarantor's liability in a manner which cannot be assessed *ex ante* by the Defendants. According to Amazon, it is impossible to determine the aggregate exposure assumed by the Guarantor under the Guarantee, especially given the possibility that Nixu may have commenced multiple proceedings in different jurisdictions and may be relying on the same Guarantee in each of them. The Defendants therefore submit that the actual value of the protection offered remains uncertain.

Thirdly, although the Guarantee formally provides for direct enforcement rights against Sauvegarder IM, Amazon submits that significant uncertainty remains concerning the circumstances in which payment may be demanded. The Defendants point to an apparent inconsistency between clauses 1 and 15(c), particularly because clause 15(c) refers to a "*final*" order and expressly preserves the Guarantor's right to object that an award is not yet final. Amazon argues that the Guarantor could therefore refuse payment until appellate proceedings have been exhausted. In contrast, UPC costs orders and orders for security for costs are generally enforceable when issued. According to Amazon, such a reservation renders the Guarantee materially less effective than direct enforcement against the Claimant itself.

Fourthly, Amazon argues that enforcement against the Guarantor would be unduly burdensome. While clause 5 provides for payment upon request, clause 15(b) contains an express submission by the Guarantor to the jurisdiction of Texas courts. Although the Guarantee states that obligees may bring proceedings before other competent courts, Amazon submits that nothing prevents the Guarantor from challenging jurisdiction outside Texas. Furthermore, there is no evidence that Sauvegarder IM possesses assets within the UPC territory against which enforcement could readily be pursued. In Amazon's view, any enforcement would likely require proceedings in the United States, thereby creating delays, additional costs and procedural complexity.

Fifthly, Amazon submits that the termination mechanism does not provide the same level of protection as the guarantee considered by the Court of Appeal in the case Syntorr v Arthrex. Although clause 11 preserves coverage for proceedings commenced before termination, the Guarantee contains no notice mechanism informing either Nixu or prospective obligees that termination has occurred. Consequently, Defendants would be unable to react promptly by seeking substitute security, as was possible under the scheme considered in Syntorr. Since no evidence has been provided that the Guarantee has never been terminated, Amazon submits that uncertainty remains regarding the existence of coverage.

Finally, Amazon reiterates that the US nationality of the Guarantor is itself a relevant consideration. In line with the Court of Appeal's reasoning in ICPillar v ARM (UPC CoA no. 301/2024, order of 16 September 2024), a form of protection that ultimately requires enforcement in the United States does not provide protection equivalent to security that can be directly enforced within the UPC territory. Amazon therefore maintains that the Guarantee does not sufficiently mitigate the risk of non-recovery or burdensome enforcement of a future costs award.

For those reasons, the Defendants submit that the Parent Guarantee cannot be regarded as an adequate substitute for security for costs and does not remove the legitimate and real concerns identified in their application. Accordingly, Amazon maintains its request that the Court order Nixu to provide security for costs.

In its final submissions of 19 October 2026, Nixu maintains that the Guarantee remains a valid, effective and adequate safeguard against any risk of non-recovery of costs.
As regards validity, Nixu expressly confirms that the Guarantee is still valid and in force. It further argues that the Defendants incorrectly seek to shift onto Nixu the burden of proving a negative fact, namely that the Guarantee has not been terminated or otherwise ceased to be effective. Relying on Art. 54 UPCA, Nixu submits that once the existence of the Guarantee has been established, the burden of proving any subsequent event affecting its validity lies with the Defendants. Since the Defendants have not identified any concrete fact suggesting termination, invalidity or amendment of the Guarantee, their concerns remain purely speculative. Nixu further argues that its decision not to rely on the Guarantee in the separate Infoblox proceedings is legally irrelevant and cannot be construed as evidence against its continued effectiveness.
Regarding Clause 8 and the alleged exclusions, Nixu submits that the Defendants misconstrue the purpose of the "*fraudulent transfer*" provision. According to Nixu, the clause is a standard safeguard under Texas insolvency law intended to preserve, rather than limit, the enforceability of the Guarantee. Its purpose is to ensure that the Guarantee remains valid to the maximum extent permitted by law and is not vulnerable to being set aside in its entirety. Given Sauvegarder IM's undisputed financial strength, including the USD 100 million financing transaction previously evidenced, Nixu argues that any suggestion that Clause 8 could materially reduce recovery is entirely hypothetical.
As to direct enforcement, Nixu notes that the Defendants themselves accept that the Guarantee grants beneficiaries a direct right of recourse against Sauvegarder IM. The possibility that the Guarantor may require a costs award to have become final before payment is sought does not, in Nixu's submission, create a genuine enforcement risk or establish that the eventual costs award would be unrecoverable. The relevant test is whether recovery is genuinely endangered, not whether immediate payment is available at every procedural stage.
Concerning straightforward enforcement, Nixu emphasizes that the Guarantee provides for payment within ten business days of a written demand accompanied by the relevant costs order. This, Nixu submits, constitutes precisely the kind of simple and effective payment mechanism approved by the Court of Appeal in Syntorr v Arthrex. Nixu further rejects the Defendants' assertion that enforcement is limited to Texas courts. Clause 15(b) provides only for non-exclusive jurisdiction and expressly preserves the right of beneficiaries to pursue enforcement before any other competent court. Moreover, Nixu argues that the record already demonstrates that Sauvegarder IM owns patent assets, including European patents, capable of supporting enforcement within UPC territories. Even if enforcement in the United States became necessary, the Guarantee contains mechanisms preventing the Guarantor from relitigating the merits of a costs award and expressly obliges reimbursement of successful enforcement costs, including attorneys' fees and court costs.

With respect to termination, Nixu submits that the Defendants wrongly equate the present Guarantee with the insurance arrangement considered in Syntorr. Under Clause 11, termination operates strictly prospectively and cannot affect proceedings already commenced. Accordingly, even if the Guarantee were terminated in the future, coverage for the present proceedings would remain fully intact until all obligations arising from them had been satisfied. Because no future termination could deprive Defendants of protection in this case, Nixu argues that a notice mechanism similar to that considered relevant in Syntorr is unnecessary. Nixu also relies on Clause 17(c), which prevents amendments adverse to beneficiaries without their consent.
Finally, as regards the US nationality of the Guarantor, Nixu submits that neither the UPCA nor the Court of Appeal's case law establishes any preference for EU-based guarantors. The relevant criterion is solvency, not nationality. According to Nixu, the Defendants have produced no evidence whatsoever calling into question Sauvegarder IM's financial standing. To the contrary, the evidence demonstrates that Sauvegarder IM is a financially substantial entity with significant assets and access to major financing. In those circumstances, Nixu submits that the mere fact that the Guarantor is established in the United States cannot justify an order for security for costs.
For those reasons, Nixu maintains that the Parent Guarantee fully addresses any conceivable concerns regarding enforcement of a future costs award and that the Defendants have failed to demonstrate any legitimate and real concern capable of justifying security for costs under Art. 69(4) UPCA and R. 158 RoP.

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 put forward by the parties, whether the claimant's financial position gives rise to a legitimate and real concern that a possible costs order may not be recoverable or enforceable, or that its enforcement may be unduly burdensome. The burden of substantiating and proving why security for costs is appropriate in the particular case lies with the party seeking security (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).

Defendants' application under R. 158 RoP was initially based on a detailed assessment of Nixu's current economic and financial position, which, in Amazon's submission, justified ordering the security sought. That overall position had already been examined by the Court of First Instance, Hamburg Local Division, in UPC CFI No. 360/2026, Nixu v Infoblox and others. By order of 10 June 2026, the Hamburg Local Division held that the circumstances justified ordering security for costs as requested by the defendants in those proceedings. It does not appear that Nixu appealed that order. That assessment provides relevant background but does not dispense the Court from examining the different circumstances established in the present proceedings.
In the present proceedings, however, the Claimant has introduced a new circumstance, namely a guarantee issued by its parent company, Sauvegarder IM (the "Guarantee").
It is therefore necessary to determine, first, whether the Guarantee is capable of removing any legitimate and real concern that a possible costs order in favour of the Defendants may not be recoverable or enforceable, or that its enforcement may be unduly burdensome.
The Court of Appeal has already addressed this issue in the specific context of litigation insurance provided by an insurer. It held that "*A litigation insurance that covers the legal costs of the defendant must be considered when assessing whether the claimant's financial position gives rise to a concern that a possible order for costs may not be enforceable, or in an unduly burdensome way, by the defendant*". In its order of 18 February 2026, following a detailed assessment of the terms of the cover, the Court of Appeal concluded that "*Due to the existing insurance policy and its specific terms and conditions, the financial situation of Syntorr does not give rise to a legitimate and real concern that a possible order for costs may not be recoverable or in an unduly burdensome way*" (UPC CoA no. 890/2025, order of 18 February 2026).
The Panel considers that the Court of Appeal's reasoning may be applied more generally to guarantees for litigation costs issued by third parties, including guarantees issued by a claimant's parent company. The assessment must focus, in particular, on the guarantor's solvency and on the specific contractual terms of the guarantee.

As regards the first aspect, it is sufficient to note that Amazon has not disputed Sauvegarder IM's solvency. Therefore, Sauvegarder IM is acknowledged to be a financially sound company with adequate resources and the capacity to pay an amount corresponding to the recoverable costs that may be awarded to the Defendants should they prevail in the main proceedings.

Amazon nevertheless questions the present validity and effectiveness of the Parent Guarantee, relying in particular on the fact that Nixu did not invoke it before the Hamburg Local Division in June 2026, although it had been executed in March 2025.
That circumstance is unusual. It does not, however, disclose any defect or other ground capable of calling into question the validity or effectiveness of the Guarantee. At this stage, the objection remains unsupported by adequate substantiation.

As regards its terms, the Court considers that the Guarantee contains a number of provisions drafted clearly for the benefit of the beneficiaries and significantly restricting the defences otherwise available to the Guarantor:

(i) *Primary-obligor undertaking*

The guarantor expressly undertakes its obligations "*as a primary obligor and not merely as a surety.*" This provision places the guarantor in a position akin to that of a principal debtor, rather than a merely secondary obligor, and substantially strengthens the beneficiaries' position by allowing direct recourse against the guarantor.

(ii) *Guarantee of payment rather than collection*

The guarantee is expressly characterised as a guarantee of payment and not of collection.

Accordingly, the beneficiaries are not required to exhaust remedies against Nixu before seeking payment from the guarantor, nor must they first attempt enforcement against Nixu's assets.

(iii) *Direct enforcement rights*

The beneficiaries are expressly entitled to proceed directly against the guarantor without first pursuing Nixu, any co-guarantor, or any other security that may exist.

This eliminates the equivalent of a benefit of prior exhaustion.

(iv) *Absolute and unconditional nature of the Guarantee*

The guarantor's obligations are stated to be absolute and unconditional. In particular, they are not affected by amendments or variations of the underlying costs order, Nixu's insolvency or financial distress, lack of notice of default, the existence, validity or invalidity of other security; changes in the ownership or control of Nixu; defences or counterclaims available to Nixu; or any other circumstance that might otherwise discharge a guarantor.

This appears to be a very broad allocation of risk in favour of the beneficiaries.

(v) *Extensive waivers*

The guarantor waives numerous procedural protections, including: notices of acceptance; notices of default; presentment; demand; protest; and similar formal requirements.

The practical consequence is that enforcement is considerably simplified.

(vi) *Survival of the Guarantee*

Particularly significant is the guarantee's survival mechanism.

The guarantor remains bound notwithstanding: termination of the guarantee; any change in ownership or control of Nixu; and Nixu's insolvency, liquidation or comparable proceedings.

These are commonly considered as the circumstances in which concerns regarding recoverability of costs would ordinarily become most acute.

(vii) *Obligation to pay within a fixed period*

Upon receipt of a written demand together with the relevant costs order, the guarantor must pay within a specified period.

This creates a clear and readily enforceable payment mechanism.

(viii) *Reinstatement clause*

The guarantee contains a reinstatement provision under which the guarantor's obligations revive if a previous payment is subsequently avoided, clawed back or otherwise set aside in insolvency proceedings.

This protects beneficiaries against insolvency-related avoidance risks.

(ix) *Restriction of subrogation and recourse rights*
The guarantor may not exercise: rights of subrogation; reimbursement rights; indemnity claims; or rights of recourse against Nixu, until all guaranteed obligations owed to the relevant beneficiary have been paid in full.
This ensures that the beneficiaries retain priority.
(x) *Trust mechanism*
Any amount received by the guarantor in breach of the subordination provisions must be held in trust for the beneficiary and transferred to it.
This further reinforces the beneficiaries' priority position.
(xi) *Corporate authority and enforceability representations*
The guarantor expressly represents and warrants that: it is validly existing; it possesses the necessary corporate power; all approvals have been obtained; and the guarantee constitutes a valid and binding obligation.
These representations significantly restrict future challenges to the guarantee's enforceability.
(xii) *Third-party beneficiary clause*
Each potential recipient of a litigation costs award is expressly designated as an intended third-party beneficiary.
Accordingly, the defendants can enforce the guarantee directly, even though they are not signatories to it.
This is a particularly important provision from an enforcement perspective.
(xiii) *Recovery of enforcement costs*
The guarantor undertakes to reimburse the reasonable costs incurred in enforcing the guarantee, including legal fees and court costs.
The beneficiaries therefore do not bear the economic burden of enforcement if successful.
(xiv) *Conclusive-evidence clause*
One of the strongest beneficiary-protection mechanisms appears in Clause 15(c).
A final costs order, judgment, decision or award against Nixu constitutes conclusive evidence of both the existence of the guaranteed obligation and the amount payable.
The guarantor is precluded from re-litigating the merits of the underlying dispute and is generally limited to arguing either that the underlying decision is not final or that the relevant amount has already been paid.
This significantly restricts the scope of potential defences.

The remaining objections raised by the Defendants do not alter that assessment.
Clause 8 is directed at preserving the Guarantee to the maximum extent permitted by applicable insolvency law; in the absence of evidence that its operation would materially reduce the protection available in this case, its possible effect remains hypothetical.
Clause 15(b) provides for non-exclusive jurisdiction and does not prevent a beneficiary from bringing proceedings before another competent court.
Moreover, Clause 11 preserves coverage for proceedings commenced before termination, while Clause 17(c) prevents amendments adverse to beneficiaries without their consent. In those circumstances, the absence of a termination-notice mechanism does not create a material risk for

the present proceedings. Nor has it been shown that enforcement against Sauvegarder IM would, in practice, be unduly burdensome, particularly in view of the direct payment obligation and the Guarantor's undertaking to reimburse reasonable enforcement costs.
By contrast, the Court considers that only two provisions of the Guarantee appear capable of raising material concerns:
(a) *Finality requirement*
The guarantee applies only to a final order, decision, judgment or award, potentially excluding costs orders that are immediately enforceable but still subject to appeal.
(b) *Texas governing law*
The Guarantee is governed by Texas law, which may add a further layer of complexity to any enforcement dispute.

In the exercise of its discretion, and following an overall and balanced assessment of the terms of the Guarantee in accordance with the principle of proportionality, the Court considers that the Guarantee, viewed as a whole, is strongly creditor-oriented. Its core features include liability as a primary obligor; a guarantee of payment rather than collection; direct enforceability by beneficiaries; extensive waivers of defences by the Guarantor; and survival notwithstanding termination, a change of control or insolvency.
They also include third-party beneficiary rights and a conclusive-evidence mechanism in respect of costs orders.
The requirement to await a final determination of the costs order, the merits of which the Guarantor may not relitigate, may delay payment. However, it does not affect the existence or amount of the guaranteed obligation once finally determined and, in the circumstances of the present case, does not establish a legitimate and real concern that recovery would be unavailable or unduly burdensome.
Taken together, those provisions provide substantial assurance that a successful defendant would have an effective means of recovering litigation costs from a solvent guarantor. Although the application of Texas law may add complexity to a dispute concerning enforcement, that possibility alone does not establish that enforcement would be unduly burdensome, particularly given the direct enforcement rights, the restrictions on the Guarantor's defences and the obligation to reimburse reasonable enforcement costs.

The Court notes that neither the UPCA nor the Rules of Procedure establish any presumption that decisions issued by the UPC are inherently difficult to enforce merely because enforcement may ultimately be sought in a third country. The assessment under Art. 69(4) UPCA and R. 158 RoP must focus on whether the facts of the particular case disclose a legitimate and real concern regarding recoverability or enforceability of a potential costs award. The analysis must therefore be based on concrete evidence of actual enforcement risks and not on general assumptions linked to the geographical location of assets. Similarly, the UPC case law has already repeatedly emphasized that security for costs cannot be justified by broad structural considerations alone, but requires specific circumstances demonstrating a genuine enforcement risk. Against this background, the Court considers that the mere possibility that enforcement may need to be

pursued in the United States does not, in itself, support an order for security. In the absence of evidence of actual difficulties in enforcing judgments of EU courts or of the UPC in the United States, or of specific legal or practical impediments likely to affect enforcement in the present case, the location of assets outside the European Union remains insufficient to establish the legitimate and real concern required under Art. 69(4) UPCA and R. 158 RoP[1].

In the light of all the foregoing considerations, the Court concludes that the Defendants have not established a legitimate and real concern that a possible costs order may not be recoverable or enforceable, or that its enforcement may be unduly burdensome. The conditions for ordering security under Art. 69(4) UPCA and R. 158 RoP are therefore not met, and the Court, in the exercise of its discretion, dismisses the application.

ORDER

The application under Art. 69(4) UPCA and R. 158 RoP filed by the Defendants is dismissed.
The costs of this application shall be dealt with in the final decision in the main proceedings.
This order may be appealed within 15 days of its service. This order shall constitute the Court's decision granting leave to appeal for the purposes of Art. 73(2)(b)(ii) UPCA and R. 220.2 and 224.1(b) RoP.
Milan, 30 October 2026.

Pierluigi Perrotti presiding judge and judge rapporteur	Digitally signed Perrotti Pierluigi 2026-10-30 10:09:49 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
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Daniel Severinsson legally qualified judge	Sven Daniel Severinsson Digitally signed by Sven Daniel Severinsson Date: 2026.10.30 09:40:10 +01'00'

[1] see UPC CFI no. 360/2026, LD Hamburg, order of 10 June 2026: "*It is standing practice of the UPC that the fact that a claimant is domiciled in the US does not justify an order under Rule 158 RoP. The judge-rapporteur has no doubt that in the U.S. judgments of foreign courts and related orders on costs may not only in principle be recognized and enforced (LD Munich, Order of 29 September 2023 – UPC_CFI_15/2023 ORD_576853/2023 – Edwards Lifesciences v Meril; LD Munich, Order of 23 April 2024 – UPC_CFI_514/2024 – Volkswagen et al. v NST; LD Paris, Order of 21 May 2024 – UPC_CFI_495/2023, ORD_23494/2024 – ARM v ICPillar), but with respect to European Court decisions, including the UPC, also in practice. There is no reason to assume that the situation might be divergent in the State of Florida. Defendants have neither shown that a practice of non-recognition could already be in place nor that this is seriously to be expected (cf. LD Munich, Order of 23 April 2024 – UPC_CFI_514/2024 – Volkswagen et al. v NST)*".