Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC-CoA-169/2026
UPC-CoA-170/2026
UPC-CoA-171/2026
UPC-CoA-172/2026

ORDER

of the Court of Appeal of the Unified Patent Court concerning an Application for leave to appeal (R. 221.3 RoP) issued on 23 November 2026

APPLICANT (CLAIMANT IN THE INFRINGEMENT ACTION, DEFENDANT IN THE COUNTERCLAIM FOR REVOCATION, APPLICANT IN THE ACTION FOR PROVISIONAL MEASURES AND THE ACTION FOR PRESERVATION OF EVIDENCE BEFORE THE COURT OF FIRST INSTANCE)

Hybridgenerator ApS, Nørrevang 15, Nørre Lyndelse, 5792 Årslev, Denmark

(hereinafter referred to as: "**Applicant**")

represented by Mikkel Kleis, attorney-at-law, Patrade A/S, Aarhus, Denmark

RESPONDENTS (DEFENDANTS IN THE INFRINGEMENT ACTION, CLAIMANTS IN THE COUNTERCLAIM FOR REVOCATION, DEFENDANTS IN THE ACTION FOR PROVISIONAL MEASURES AND THE ACTION FOR PRESERVATION OF EVIDENCE BEFORE THE COURT OF FIRST INSTANCE)

1. **HGSystem ApS,** Røjlevej 24, Nørre Søby, 5792 Årslev, Denmark
2. **Infotech Concept ApS**, Røjlevej 24, Nørre Søby, 5792 Årslev, Denmark
3. **Rune Eilertsen**, Røjlevej 24, Nørre Søby, 5792, Årslev, Denmark

(hereinafter jointly referred to as: "**Respondents**")

all represented by Allan Christensen, attorney-at-law, Gorrissen Federspiel, Aarhus, Denmark

PATENT IN DISPUTE

EP 4 238 202

LANGUAGE OF THE PROCEEDINGS

English

DECIDING JUDGE

Bart van den Broek, standing judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Cost decision of the Local Division Copenhagen, 17 September 2026

- Reference numbers of the Court of First Instance:
  - UPC-CFI-2308/2026: procedure for a cost decision infringement action (UPC-CFI-560/2024)
  - UPC-CFI-2309/2026: procedure for a cost decision counterclaim for revocation (UPC-CFI-89/2025)
  - UPC-CFI-2310/2026: procedure for a cost decision provisional measures (UPC-CFI-501/2024)
  - UPC-CFI-2311/2026: procedure for a cost decision preservation of evidence (UPC-CFI-492/2024)

SUMMARY OF THE FACTS

Application for preserving evidence and enforcement proceedings (UPC-CFI-492/2024)

1. On 16 August 2024, Applicant filed an Application for preserving evidence and inspection of property held by Respondents without prior notice. The application was filed at the Local Division Copenhagen ("**LD Copenhagen**") and was based on the patent in suit ("**patent**"). The value in dispute was determined by Applicant to be less than EUR 250,000.

2. On 26 August 2024, the LD Copenhagen issued an order allowing the preservation of evidence in accordance with the application. In the order, Applicant was ordered to provide a security of EUR 14,000 to cover the fees of the independent expert appointed by the Court (EUR 7,000) and any damages and inconvenience that may be suffered by Respondents (EUR 7,000).

3. Following the provision of the security, on 30 August 2024, the order was enforced by the Bailliff's Court in Svendborg, Denmark. The preservation of evidence could not be completed that day due to the inability to access the cloud-based solution and the data contained therein. In particular, Respondents refused to provide the usernames and passwords for the accounting system and the email account. In addition, Respondents refused to provide the relevant codes for an encrypted laptop that was seized during the preservation of evidence.

4. On 4 September 2024, the LD Copenhagen issued an order in which Respondents were held jointly liable to pay a daily penalty sum of EUR 5,000 until they provided the relevant usernames, passwords and codes for the encrypted laptop. The order was served on Respondents on 16 September 2024.

5. On 30 September 2024, Respondents requested a review of the order for the preservation of evidence of 26 August 2024. On 19 December 2024, the LD Copenhagen upheld the order. The LD Copenhagen deferred a decision on the legal costs to the main proceedings. No appeal was lodged against this order.

6. On 3 January 2025, Applicant requested the LD Copenhagen to order that all preserved CAD files would be handed over to its representatives and that the LD Copenhagen would begin collecting the imposed penalty sums due to Respondents' non-compliance with the order of 4 September 2024.

7. On 3 March 2025, with reference to R. 194.3 RoP, the presiding judge of the LD Copenhagen decided that the preserved CAD files should be handed over to the representatives of Applicant. The presiding judge further determined that, based on the available evidence, Respondents could not be ordered to pay the periodic penalty sums, since the requested information had in the meantime been provided by Respondents. Leave to appeal was granted.

8. Applicant lodged an appeal against the part of the order relating to the penalty sums. On 4 June 2025, the Court of Appeal issued an order setting aside that part of the order and held that the order regarding the penalty sums should have been issued by the panel of the LD Copenhagen pursuant to

R. 354.4 RoP (UPC-CoA-233/2025). The Court of Appeal referred the case back to the LD Copenhagen for adjudication. No decision on the reimbursement of legal costs was made, as the order of the Court of Appeal was not a final order or decision.

9. On 5 December 2025, the LD Copenhagen issued an order in which Respondents were ordered to pay a penalty sum of EUR 67,500 due to the late provision of the relevant usernames, passwords and codes for the encrypted laptop. The LD Copenhagen deferred the decision on legal costs until the decision in the main action. No appeal was lodged against the order and on 13 January 2026 the imposed penalty sum was paid by Respondents.

Application for provisional measures (UPC-CFI-501/2024)

10. On 28 August 2024, Applicant filed an Application for provisional measures based on the patent, requesting the issuance of provisional measures without hearing Respondents. The value in dispute was determined by Applicant to be less than EUR 250,000.

11. On 13 September 2024, the LD Copenhagen refused to issue the requested provisional measures without prior notice and ordered that Respondents be notified of the application and be allowed to provide comments.

12. On 18 October 2024, Respondents lodged an Objection to the Application for provisional measures.

13. On 14 January 2026, an interim conference was held, at which the question was raised whether Applicant wished to maintain the Application for provisional measures.

14. By letter of 26 January 2026, Applicant informed the Court that it withdrew the Application for provisional measures.

15. On 8 September 2026, the LD Copenhagen sent a Communication to the parties indicating that the case (UPC-CFI-501/2024) was closed ("Phase change").

Infringement action (UPC-CFI-560/2024) *and Counterclaim for revocation* (UPC-CFI-89/2025)

16. On 27 September 2024, Applicant started an Infringement action against Respondents based on the patent. Respondents subsequently filed a Counterclaim for revocation on 3 February 2025.

17. In the Infringement action, Respondents filed a Statement of defense (3 February 2025), a Rejoinder to the Reply to the Statement of defence (21 July 2025) and an additional submission (6 March 2026). In response to Respondents' Counterclaim for revocation (3 February 2025), Applicant filed a Defence to the Counterclaim and a (conditional) Application to amend the patent with four auxiliary requests (22 May 2025). Pursuant thereto, Respondents filed a Reply to the Defence to the Counterclaim and a Defence to the Application to amend the patent (22 July 2025), followed by a Rejoinder to the Reply to the Defence to the Application to amend the patent (18 September 2025). On 14 January 2026, an interim conference was held and the oral hearing took place on 13 April 2026. During the oral hearing, one of Respondents' witnesses was heard.

18. Following a request by the LD Copenhagen at the oral hearing, on 27 April 2026, the parties filed an estimate of their legal costs in all proceedings, i.e. the proceedings for the preservation of evidence, the action for provisional measures, the Infringement action and the Counterclaim for revocation.

19. On 29 May 2026, the LD Copenhagen rendered a decision in which the patent was revoked and the infringement claims were dismissed ("**Decision on the merits**"). In the Decision on the merits,

Applicant was ordered to pay Respondents' costs in the Infringement action (UPC-CFI-560/2024) and in the Counterclaim for revocation (UPC-CFI-89/2025). The value in dispute was set in each case to be less than EUR 500,000. The maximum amount of recoverable representation costs was set at a total of EUR 112,000 for the Infringement action and the Counterclaim for revocation together.

20. In the Decision on the merits, the decision on the legal costs in the actions for the preservation of evidence (UPC-CFI-492/2024) and provisional measures (UPC-CFI-501/2026) was (again) deferred. The LD Copenhagen stated the following in this respect (English translation CoA):

> "*Costs of the Proceedings*
> *Pursuant to Article 69(2) of the UPC Agreement and Rule 118(5) of the Rules of Procedure, a decision on legal costs must be rendered.*
> *On August 16, 2024, Hybridgenerator ApS filed a request with the UPC for the immediate preservation of evidence and inspection of property without prior notice (UPC_CFI_492/2024).*
> *Hybridgenerator APS's request for the immediate preservation of evidence and an inspection of property without prior notice was granted.*
> *On August 28, 2024, Hybridgenerator ApS filed a request with the UPC for a preliminary injunction and seizure without prior notice (UPC_CFI_501/2024). On January 26, 2026, Hybridgenerator ApS announced that it was withdrawing its request for a preliminary injunction and seizure.*
> *In both cases, the Court decided to defer its ruling on legal costs in the respective cases until a decision had been rendered in the main proceedings.*
> *Following the main hearing, the parties each submitted a brief regarding the court's determination of legal costs.*
> *The Court will subsequently rule on legal costs in each of these cases*." [emphasis added; CoA]

21. On 27 July 2026, Applicant lodged an appeal against the Decision on the merits (UPC-CoA-124/2026 and 125/2026).

The proceedings for a cost decision relating to the infringement action (UPC-CFI-2308/2026; **UPC-CoA-170/2026**)*, Counterclaim for revocation* (UPC-CFI-2309/2026; **UPC-CoA-169/2026**)*, provisional measures* (UPC-CFI-2310/2026; **UPC-CoA-172/2026**) *and preservation of evidence* (UPC-CFI-2311/2026; **UPC-CoA-171/2026**)

22. On 26 June 2026, within one month of service of the Decision on the merits, Respondents lodged an Application for a cost decision under R. 150 *et seq*. RoP in relation to the Infringement action, the Counterclaim for revocation, the Application for provisional measures and the Application for preserving evidence. In its application, Applicant requested payment of the following amounts:

Infringement action:	EUR 56,000 (representation costs)
Counterclaim for revocation:	EUR 56,000 (representation costs) + EUR 6,600 (court fees)
Provisional measures:	EUR 38,000 (representation costs)
Preservation of evidence:	EUR 38,000 (representation costs)

23. On 9 July 2026, Applicant filed a response to the application. Applicant argued that Respondents did not provide sufficiently detailed information and documentation regarding the alleged representation costs relating to the Infringement action, the Counterclaim for revocation and the Application for provisional measures. Furthermore, according to Applicant, these costs were disproportionally high, also in view of its own costs in connection with these actions. With respect to the costs in relation to the preservation of evidence, Applicant argued that it, rather than

Respondents, was entitled to the reimbursement of costs, as the action had resulted in the successful preservation of evidence. Applicant claimed the following amounts: EUR 38,000 (representation costs), EUR 26,842.23 (court fees and IT costs) and EUR 9,514,30 (representation costs for the appeal regarding the penalty sums).

24. On 17 September 2026, the judge-rapporteur of the LD Copenhagen rendered a decision in the cost proceedings ("**impugned decision**").

25. In the impugned decision, the judge-rapporteur ordered Applicant to pay the maximum amounts of recoverable attorney's fees in the Infringement action (UPC-CFI-560/2024) and the Counterclaim for revocation (UPC-CFI-89/2025) (EUR 112,000 in total), supplemented by the court fees for the Counterclaim for revocation (EUR 6,600).

26. Regarding the provisional measures (UPC-CFI-501/2024), the judge-rapporteur indicated that it permitted the withdrawal of the action under R. 265.1 RoP and stated that it "*must now rule on costs in accordance with Rule 265(2)(c) of the Rules of Procedure*" (English translation CoA). Pursuant thereto, the judge-rapporteur ordered Applicant to pay an amount of EUR 15,000. This amount was lower than the ceiling of EUR 38,000 given that Respondents had lodged only one written submission before the action was discontinued.

27. Regarding the action for the preservation of evidence (UPC-CFI-492/2024), the judge-rapporteur decided that each party had to bear its own costs. The judge-rapporteur noted that Applicant had not obtained documentation to support its allegations of infringement and subsequently lost the infringement case. "*This suggests that Hybridgenerator ApS should pay the defendant's legal costs*.", according to the judge-rapporteur (English translation CoA). On the other hand, the judge-rapporteur referred to Respondents' breach of the preservation order and the penalty sums that were imposed. As a result of this breach, according to the judge-rapporteur, the preservation of evidence had not been fully carried out and Applicant had been forced to file the Infringement action when the preserved evidence had not yet been handed over.

28. In total, the amount of costs to be reimbursed by Applicant was determined to be EUR 133,600. The judge-rapporteur held that 80% of this amount (i.e. EUR 106,880) had to be paid to HGSystem ApS (Respondent 1) and that 10% (i.e. EUR 13,360) had to be paid to each of Infotech Concept ApS (Respondent 2) and Rune Eilertsen (Respondent 3).

29. On 30 September 2026, Applicant lodged an Application for leave to appeal the impugned decision under R. 221.3 RoP ("**Application for leave to appeal**"), together with an Application for suspensive effect as meant in Art. 74(1) UPCA. On that same day, the Registry identified a number of deficiencies. On 12 October 2026, Applicant corrected the deficiencies and paid the outstanding court fees.

30. Thereupon, with the agreement of the parties, the language of the proceedings was changed from Danish to English, and following an invitation by the standing judge, on 29 October 2026 Respondents filed their comments to the Application for leave to appeal ("**Response**"). On that same day, the standing judge dismissed Applicant's request for suspensive effect.

REQUESTS OF THE PARTIES (REGARDING THE APPLICATION FOR LEAVE TO APPEAL)

31. In the Application for leave to appeal, Applicant requests that the Court of Appeal:

- grant leave to appeal the impugned decision under R. 221.3 RoP; and
- upon granting leave, determine the appeal under R. 221.4 RoP in accordance with the orders sought below.

32. Regarding the appeal, Applicant requests that the Court of Appeal:

- set aside the order requiring the Applicant to pay EUR 106,880 to HGSystem ApS, EUR 13,360 to Infotech Concept ApS and EUR 13,360 to Rune Eilertsen,
- as regards UPC-CFI-560/2024 and UPC-CFI-89/2025 reduce the amounts to such lower sums as the Court considers established,
- as regards UPC-CFI-501/2024, set aside the award of EUR 15,000 and either order that the parties bear their own costs or reduce the award to the amount proved to relate exclusively to the limited work on the requirements for provisional measures;
- as regards UPC-CFI-492/2024, set aside the direction that each party bear its own costs and order the Respondents to pay to Applicant EUR 38,000 in recoverable representation costs and EUR 26,842.23 in court fees and IT-expert costs, or alternatively remit that claim for determination;
- separately, order the Respondents to pay the Applicant EUR 9,514.30 in representation costs incurred in UPC_CoA-233/2025, APL-13146/2025 concerning penalty payments, or alternatively remit that distinct claim for determination; and
- order the Respondents to bear the Applicant's recoverable costs in this appeal

33. In their Response, Respondents request that the Court of Appeal reject the Application for leave to appeal, and, in the alternative, if the Court of Appeal grants leave and determines the appeal under R. 221.4 RoP, dismiss the appeal and uphold the impugned decision.

SUMMARY OF THE PARTIES' SUBMISSIONS (REGARDING THE REQUESTED LEAVE TO APPEAL)

34. According to Applicant leave to appeal should be granted "*because the appeal raises errors of law, failures to determine pleaded claims and deficiencies in the exercise and explanation of the Local Division's discretion*". In particular, Applicant relies on the following grounds:

1. In the Application for a cost decision, Respondents only provided aggregate figures of the fees of its attorneys-at-law (Gorrisson Federspiel) and its patent attorneys (Copenhagen Patents) without identifying tasks, time entries, fee-earners, hourly rates, dates of work or documentation of the actual amounts billed to Respondents. The judge-rapporteur and Applicant could therefore not verify which work was actually performed, whether this work was necessary and whether it was attributable to a certain proceeding. The impugned decision does not explain why the maximum amounts of EUR 56,000 in the Infringement action (UPC-CFI-560/2024) and the Counterclaim for revocation (UPC-CFI-89/2025) are nevertheless justified.
2. Respondents' aggregate division of fees between the various proceedings did not establish that shared work had been allocated only once. Awarding the maximum amounts in the Infringement action and the Counterclaim for revocation and an additional amount of EUR 15,000 in the action for provisional measures without addressing the issue of potential overlap created a "*material risk of double recovery*", according to Applicant.
3. Respondents only submitted one written statement in the action for provisional measures (UPC-CFI-501/2024) with only half a page on the requirements for provisional measures. The remainder overlapped with submissions in related proceedings. The judge-rapporteur did not identify the discrete work that justified the amount of EUR 15,000, did not explain how overlapping work was excluded and did not connect the awarded amount to costs actually and necessarily attributable to the action for provisional measures.
4. The judge-rapporteur applied an incorrect criterion when deciding on the cost allocation in the proceedings for preserving evidence (UPC-CFI-492/2024). In particular, the judge-rapporteur treated the later loss in the Infringement action as a factor against Applicant without explaining why a party who obtained and maintained the requested preservation measures should cease to be the successful party in that procedure because the later infringement claim failed. Correct application of Art. 69 UPCA would have required Applicant

to be treated as the successful party.

5. The judge-rapporteur did not deal with Applicant's claim of EUR 9,514.30 covering its legal costs in the appeal proceedings regarding the penalty sums in which Applicant prevailed (UPC-CoA-233/2025).
6. The judge-rapporteur followed Respondents' estimate of costs allegedly incurred by each Respondent (80%/10%/10%) without addressing whether each recipient had actually incurred the corresponding costs.
7. Finally, Applicant refers to the pending appeal against the Decision on the merits (UPC-CoA-124/2026 and 125/2026) which addresses the allocation of costs in the Infringement Action and the Counterclaim for revocation. If the appeal succeeds, the present allocation will be reversed or materially altered, according to Applicant.

35. Respondents argue that a review of the impugned decision is limited to a marginal review of whether the judge-rapporteur awarded more than reasonable and proportionate costs or otherwise departed from Art. 69(1) UPCA and R. 150 *et seq*. RoP. Against this background, Respondents argue that none of the asserted grounds can justify the requested leave to appeal.

Ad 1: The judge-rapporteur conducted the litigation and was able to assess its extent, the technical and legal issues addressed, and the significance of the requested injunction. In view thereof, the information provided by Respondents was sufficient to allow the judge-rapporteur to determine the legal costs for all four proceedings, including the Infringement action and the Counterclaim for revocation. There is no categorical rule that the absence of invoices and individual time entries necessarily invalidates a cost award.

Ad 2: The fact that certain issues are discussed in related proceedings does not imply that the same hours were entered in different cost pools. Applicant merely raises the risk of duplication but does not identify a particular instance where an item was actually recovered twice.

Ad 3: Applicant has not shown that the awarded amount of EUR 15,000 for legal costs in the action for provisional measures was unreasonable or disproportionate. This amount implied a reduction of EUR 23,000 from the ceiling of EUR 38,000 and a still further reduction from the actual costs of DKK 439,400 (around EUR 59,000). According to Respondents, the short length of the injunction-specific section in the Objection to the Application for provisional measures overlooks the substantive work that was needed to defend against the application.

Ad 4: When deciding on the cost allocation in the proceedings for preserving evidence, the judge-rapporteur correctly considered both the provisional success in the evidentiary proceedings and the eventual outcome in the Infringement action. The judge-rapporteur therefore struck the right balance when deciding that each party had to bear its own costs.

Ad 5: The judge-rapporteur did not ignore Applicant's costs in the appeal proceedings regarding the penalty sums. The appeal was taken into account in the overall assessment of the allocation of costs in the evidentiary proceedings. The fact that the appeal proceedings have their own cost ceiling does not mean that these costs can be claimed separately.

Ad 6: The allocation of costs among the various Respondents (80/10/10) was reasonable. The mere fact that the division was estimated does not mean that the award exceeded the costs of the successful parties.

Ad 7: The appeal on the merits in the Infringement action and the Counterclaim for revocation is irrelevant for the present cost proceedings. A different outcome in the appeal does not make the present cost determination unlawful.

GROUNDS FOR THE ORDER

Legal framework

36. According to R. 150.1 RoP, a cost decision may be the subject of separate proceedings following a decision on the merits and, if applicable, a decision for the determination of damages. According to

R. 151.1 RoP, where the successful party wishes to seek a cost decision, it shall within one month of service of the decision lodge an Application for a cost decision.

37. In accordance with R. 118.5 RoP, in the decision on the merits the Court shall decide in principle on the obligation to bear legal costs in accordance with Art. 69 UPCA. Therefore, the decision on the merits must determine who is to bear which costs under Art. 69 UPCA ("cost allocation"). R. 150 *et seq*. RoP determine the amount of costs that should be reimbursed ("cost determination") based on the cost allocation provided in the decision on the merits (UPC-CoA-618/2024, 3 July 2025, Tiroler Rohre v SSAB, par. 18; UPC-CoA-84/2026, 3 November 2026, Yealink v Barco, paras. 47-49). This systematic approach, which differentiates between cost allocation in the final decision and cost determination in subsequent proceedings under R. 150 *et seq*. RoP also applies to proceedings for provisional measures (UPC-CoA-618/2024, 6 June 2025, Hanshow v VusionGroup, paras. 38-43; see also Yealink v Barco, par. 49). As a general rule, the applicant in PI proceedings, may not admissibly lodge an Application for cost determination before the decision on the merits is issued (cf. Yealink v Barco, par. 44).

38. In the context of withdrawals of actions pursuant to R. 265 RoP, the reference to Part 1, Chapter 5 RoP in R. 265.2(c) RoP means that the Court shall decide who is to bear the legal costs in accordance with R. 118.5 RoP (cost allocation), and that separate proceedings for a cost decision may be started thereafter (cost determination). The decision in R. 265 RoP declaring the proceedings closed corresponds to the decision on the merits referred to in R. 150.1 RoP (cf. Tiroler Rohre v SSAB, par. 18).

39. In accordance with Art. 69 UPCA, R. 152.1 RoP provides that the applicant in proceedings for a cost decision is entitled to recover reasonable and proportionate costs for representation. Reasonableness and proportionality are cumulative conditions that must be assessed in each case according to its specific characteristics (CJEU, 28 July 2016, C-57/15, United Video Properties; CJEU, 28 April 2022, C-531/20, NovaText GmbH).

40. R. 152.2 RoP further states that the Administrative Committee shall adopt a scale of ceilings for recoverable costs by reference to the value of the proceedings. The ceilings are to be regarded as an absolute cap on recoverable representation costs applicable in every case (see preamble of the Decision of 24 April 2023). Exceeding the ceiling does not as such entitle a party to reimbursement of the ceiling set by the Administrative Committee pursuant to R.152.2 RoP (cf. Yealink v Barco, par. 37; see also UPC-CoA-49/2026, 5 November 2026, Guardant v Sophia, par. 45).

41. According to R. 151(d) RoP, the Application for a cost decision shall contain an indication of the costs for which compensation is required. R. 156.1 RoP adds that the judge-rapporteur may request the applicant to provide written evidence of all costs requested in R. 151(d) RoP. For the unsuccessful party to be able to comment on both the necessity and the proportionality of the costs for representation, the applicant for a cost decision should provide a sufficiently substantiated specification of the costs in view of the circumstances of the case, which would generally include breakdowns corresponding to each service provided in relation to the case, the date on which such service was provided, and the number of hours and rate billed for that specific service (cf. Guardant v Sophia, par. 40).

42. The determination of costs is the subject of special appeal proceedings (R. 157 and R. 221 RoP). Leave to appeal is required, and if leave to appeal a cost decision is granted, the standing judge shall decide the appeal (R. 221.4 RoP). Leave to appeal shall be granted if the impugned decision of the judge-rapporteur is manifestly erroneous or the impugned decision raises a fundamental question of law and its review is necessary to ensure a consistent application of law or any other objective of granting leave to appeal (cf. Yealink v Barco, par. 19). Where the applicant asserts a manifest error, it must be apparent from the applicant's submission that the decision would probably have been different had the judge-rapporteur not made a manifest error.

43. The judge-rapporteur who decides on costs will typically have managed the case step by step throughout the various stages of the proceedings. The legal review on appeal is consequently limited to a marginal review of whether the judge-rapporteur's assessment of costs results in the successful party being compensated for legal costs and other expenses beyond what is reasonable and proportionate, or otherwise deviates from the principles inherent in Art. 69(1) UPCA, as specified in R. 150 et seq. RoP (cf. Tiroler Rohre v SSAB, par. 22 and Yealink v. Barco, par. 40).

Present cases

I. Requests for leave to appeal the cost decisions regarding the Infringement action (UPC-CFI-2308/2026) and the Counterclaim for revocation (UPC-CFI-2309/2026)

44. The Applications for leave to appeal the cost decisions regarding the Infringement Action and the Counterclaim for revocation are admissible, but unfounded.

Admissibility of the Application for a cost decision

45. Respondents lodged their Application for a cost decision in the Infringement action and the Counterclaim for revocation within one month of service of the Decision on the merits, in which the LD Copenhagen ordered Applicant to pay Respondents' legal costs in both actions. The judge-rapporteur therefore correctly considered the application to be admissible (R. 151.1 RoP).

Decision on costs by the judge-rapporteur

46. In the Application for a cost decision, Respondents separated the four proceedings, identified Gorrissen Federspiel and Copenhagen Patents as the relevant service providers, specified the sums attributable to each of these service providers, and proposed an allocation of the reimbursable costs among the different Respondents. The application specified the representation costs for the Infringement action to be DKK 31,200 (around EUR 4,000) for Copenhagen Patents and DKK 1,280,000 (around EUR 170,000) for Gorrissen Federspiel. The representation costs for the Counterclaim for revocation were specified to be DKK 435,600 (around EUR 58,000) for Copenhagen Patents and DKK 500,000 (around EUR 67,000) for Gorrissen Federspiel.

47. Respondents explained that these costs were reasonable and necessary to defend their position in the proceedings, also taking into account that the requested injunction was directed against Respondents' only product. According to Respondents, an injunction – whether temporary or permanent – would have effectively made it impossible for them to continue their operations. Applicant did not contest these statements.

48. The decision of the judge-rapporteur to award the requested EUR 56,000 for representation costs in both actions does not constitute a manifest error.

49. Contrary to Applicant's assertion, the judge-rapporteur did not automatically apply the applicable ceiling but considered it appropriate to set the reimbursable legal costs to the maximum amount in view of the relevant case law of the CJEU and the facts of the case which were extensively discussed in the impugned decision. Given Respondents' explanations and the scope and level of complexity of the case (cf. paragraph 17 above), there is no indication that the judge-rapporteur's assessment resulted in Respondents being compensated for legal costs beyond what is reasonable and proportionate, or otherwise in deviation from the principles inherent in Art. 69(1) UPCA.

50. Applicant correctly notes in this respect that in general, an Application for a cost decision must contain a breakdown of costs corresponding to each service provided in relation to the case, the date on which such service was provided, and the number of hours and rate billed for that specific service

(cf. Guardant v Sophia, par. 40). Such overview is missing in this case. However, this does not in itself invalidate the cost award in this case. As this Court held in Guardant v Sophia (par. 40), it ultimately depends on the specific circumstances of the case whether the applicant can be said to have provided a sufficiently substantiated specification of the costs. In this particular case with its relatively low recoverable cost ceiling and substantial workload, it was not unreasonable for the judge-rapporteur to consider Respondents' cost specification per proceeding, per service provider and per represented party sufficient to award the requested costs. In this context it is important to note that the judge-rapporteur who rendered the impugned decision, managed all four proceedings from the outset to the end of the proceedings and was therefore well positioned to assess the provided information and decide whether or not to use his discretion to request additional information (cf. R. 156.1 RoP). In this case, the judge-rapporteur did not exceed his discretion by accepting the cost specification provided by Respondents and awarding the requested costs based thereon.

51. Applicant's own representation costs in the Infringement action and the Counterclaim for revocation, which are said to be around EUR 28,000 (DKK 206,366) and EUR 56,000 (DKK 418,340) respectively, do not alter this. Given the difference in position and (financial) interests of the parties, Applicant's own costs are not decisive for determining the reasonableness and proportionality of Respondents' costs. Leaving this aside, the Court of Appeal notes that Applicant's asserted costs regarding the Counterclaim for revocation correspond to the costs awarded to Respondents. Applicant's asserted costs for the Infringement action (around EUR 28,000) appear rather low compared to the activities in the case, and cannot, in any event, render the cost award of EUR 56,000 manifestly erroneous.

52. Applicant further argues that the judge-rapporteur ignored that there was a "*material risk of double recovery*" (cf. paragraph 34, ground 2) and that he accepted Respondents' estimated cost allocation of 80/10/10 without determining that the respective parties indeed incurred these costs (cf. paragraph 34, ground 6). These arguments were not raised in first instance in relation to the costs in the Infringement action and the Counterclaim for revocation and cannot be raised now (R. 222.2 RoP). Leaving this aside, also these arguments cannot render the cost decision manifestly erroneous. Merely referring to a "material risk" of double recovery is insufficient, and the Court of Appeal does not consider Respondents' cost allocation, which was never disputed by Applicant, to be manifestly erroneous.

53. Finally, the Court of Appeal agrees with Respondents that the appeal against the Decision on the merits is not decisive for the present cost proceedings. Although it may generally be more appropriate to stay the R. 151 proceedings until a decision in appeal has been rendered, the possibility of a different cost allocation in appeal does not in itself make the cost determination based on the current cost allocation manifestly erroneous.

II. Request for leave to appeal the cost decision regarding the provisional measures (UPC-CFI-2310/2026)

54. The Application for leave to appeal the cost decision regarding the provisional measures is admissible and will be granted.

Admissibility of the Application for a cost decision

55. Respondents lodged their Application for a cost decision in the action for provisional measures within one month following the service of the Decision on the merits. As explained above, the Decision on the merits did not contain a cost allocation decision in the PI action. At the time of lodging the cost application, there was also no other decision (on the merits or otherwise) in which the cost allocation for the PI action was determined. On 26 January 2026, Applicant had sent a letter to the LD Copenhagen in which it indicated to withdraw its action for provisional measures, but the action was

never formally withdrawn pursuant to R. 265 RoP and, hence, no decision regarding the allocation of costs had been rendered pursuant to R. 265.2(c) RoP (cf. Tiroler Rohre v SSAB, par. 18).

56. On the other hand, at the time of filing the cost application (26 June 2026), there was no dispute between the parties that the action for provisional measures was in fact terminated and that Applicant, as the party withdrawing the action, should be considered as the unsuccessful party under Art. 69(1) UPCA. This follows, for example, from Applicant's estimate of legal costs dated 27 April 2026 lodged after the oral hearing in the case on the merits, which only discussed the amount of costs (if any) that Applicant would have to pay to Respondents in relation to the withdrawn PI action, without questioning Applicant's liability under Art. 69 UPCA. Respondents shared this view in their estimate of legal costs dated 27 April 2026 and repeated this position in the Application for a cost decision. In its response of 9 July 2026, Applicant again did not object against this cost allocation.

57. In line with this, the impugned decision orders Applicant to pay an amount of EUR 15,000 for Respondents' costs in relation to the withdrawn PI action, thereby not only *determining* Respondents' costs but also (at least implicitly) *allocating* these costs. In the Application for leave to appeal, Applicant does not object against the cost allocation in the impugned decision but merely argues that the judge-rapporteur incorrectly determined the costs to be EUR 15,000. Applicant does request the Court of Appeal to "*order that the parties should bear their own costs*" but in light of Applicant's submissions in first instance and in its Application for leave to appeal, the Court of Appeal understands this as a request to decide that no costs should be awarded to Respondents for the provisional measures given the overlap with the other cases.

58. Therefore, both at the time of lodging the Application for a cost decision and thereafter in the cost proceedings (both in first instance and in appeal), the parties appear to agree that Applicant, as the withdrawing party, had to bear the legal costs in connection with the provisional measures (if any). This understanding has now (at least implicitly) been confirmed in the impugned decision.

59. This raises the question whether under the specific circumstances of the case, the Application for a cost order is admissible despite the absence of a cost allocation decision at the time of lodging the application and the subsequent (implicit) issuance of such decision as part of the cost proceedings. As this question raises fundamental issues of law on the admissibility of the cost application that should be clarified and have not yet been addressed by the parties, the standing judge grants leave to appeal and invites the parties to express their views on this question, in particular taking into account the circumstances set out in paragraphs 55-59.

Decision on costs by the judge-rapporteur

60. For the sake of clarity, in the event that the Court of Appeal would find the cost application to be admissible, the following is noted regarding the merits of the cost decision in the PI action.

61. In the Application for a cost decision, Respondents specified the representation costs in the action for provisional measures to be DKK 99,400 (around EUR 13,000) for Copenhagen Patents and DKK 340,000 (around EUR 46,000) for Gorrissen Federspiel. These costs were mainly incurred in connection with the preparation of the Objection to the Application for provisional measures.

62. Of this total amount of around EUR 59,000, the judge-rapporteur only awarded EUR 15,000, which was also substantially lower than the applicable ceiling of EUR 38,000. The judge-rapporteur explained this by indicating that only one written submission had been lodged in the PI action. The Court of Appeal finds no indication that the judge-rapporteur thus compensated Respondents for legal costs beyond what was reasonable and proportionate, or that the judge-rapporteur otherwise deviated from the principles inherent in Art. 69(1) UPCA (leaving aside the cost allocation issue discussed above in paragraphs 55-59).

63. Also in this context, Applicant argues that no breakdown of costs was provided indicating the number of hours, the billing rate, etc., which made it impossible to determine whether the claimed costs were actually made and necessary. For similar reasons as set out above, the Court of Appeal disagrees. Given the scope of the work performed and the interests at stake, the judge-rapporteur did not exceed his discretion by accepting the specification of Respondents and awarding EUR 15,000 in relation to the lodged Objection to the Application for provisional measures.

64. The fact that the judge-rapporteur did not specifically address the risk of double recovery does not alter this. As said, Applicant has not presented concrete indications of double recovery and when viewed from a chronological perspective, such double recovery is doubtful in this case, as the Objection to the Application for provisional measures was lodged at the outset of the proceedings (18 October 2024), well before the first submissions in the Infringement action and the Counterclaim for revocation (3 February 2025).

65. Also Applicant's reference to its own asserted costs of DKK 62,277 (around EUR 8,300) and the acceptance by the judge rapporteur of the proposed allocation among the three Respondents (80/10/10) do not make the cost decision manifestly erroneous on this point. To avoid repetition, reference is made to the statements above (paragraphs 51-52).

III. Request for leave to appeal the cost decision regarding the preservation of evidence (UPC-CFI-2311/2026)

66. The Application for leave to appeal the cost decision regarding the preservation of evidence is admissible and will be granted.

67. Respondents lodged their Application for a cost decision in the action for the preservation of evidence within one month following the service of the Decision on the merits. As explained above, the Decision on the merits did not contain a decision on the obligation to bear legal costs regarding the preservation of evidence in accordance with Art. 69 UPCA. At the time of lodging the cost application, there was also no other decision (on the merits or otherwise) in which such cost allocation for the action for the preservation of evidence was provided. In all orders regarding the preservation of evidence and the enforcement thereof, a decision on the legal costs was deferred until the decision in the main action. Despite this announcement and the submissions on legal costs following the oral hearing in the case on the merits, the Decision on the merits did not contain such cost allocation decision in relation to the preservation of evidence. Instead, the judge-rapporteur in the cost proceedings under R. 150 *et seq*. RoP provided such decision by ordering that each party should bear its own costs in accordance with Art. 69(2) UPCA. This decision is manifestly erroneous for several reasons.

68. Firstly, as explained above, the systemic approach which differentiates between cost allocation in the final decision and cost determination in subsequent proceedings under R. 150 *et seq*. RoP also applies to proceedings for provisional measures, such as actions for the preservation of evidence. This approach was not adhered to and the Court of Appeal sees no reason to deviate from that approach in this case.

69. Moreover, the decision for the parties to bear their own costs is manifestly erroneous on substantive grounds. As this Court indicated in the appeal regarding the penalty sums, the proceedings for the *preservation of evidence* should be distinguished from the proceedings regarding the *enforcement* of the preservation orders, including the imposition of penalty sums (UPC-CoA-233/2025, par. 16). Following the review of the preservation order of 26 August 2024 in the order of 19 December 2024, the procedure for securing evidence and inspection of property was completed (R. 192-197 RoP). The proceedings regarding the imposition of penalty sums (R. 354.4 RoP) subsequently started with the

order of 3 March 2025, reviewed by this Court in the order of 4 June 2025. This procedure was completed with the order of 5 December 2025 imposing a penalty sum of EUR 67,500.

70. Both proceedings have their own scope and objective and their own appellate regime: orders for the preservation of evidence can be appealed under R. 220.1(c) RoP (R. 196.7 RoP), whilst orders regarding the imposition of a penalty sum must be appealed under R. 220.2 RoP (R. 354.4 RoP). This appellate regime also applies to the cost allocation decisions in each of these proceedings (UPC-CoA-930/2025, 4 February 2026, EOFlow v Insulet, par. 29). Moreover, given their difference in scope and objective, the cost allocation itself is also not necessarily the same in both proceedings. In case the decision on costs in the evidentiary proceedings is deferred until the decision in the main action, such as in this case, the Court may take the outcome of the infringement action into account when deciding on the allocation of costs in the evidentiary proceedings. When no infringement is found, the alleged infringer whose evidence was successfully preserved may then nevertheless be regarded as the successful party under Art. 69 UPCA in the evidentiary proceedings (cf. R. 196.6 and R. 198.2 RoP). On the other hand, that same party may remain to be regarded as the unsuccessful party in the proceedings for the imposition of penalty sums due to its breach of the preservation order (as long as this order is not revoked; UPC-CoA-28/2026, 3 August 2026, Kodak v Fujifilm, par. 26). Combining the cost decisions in both proceedings obscures this distinction and creates the risk of double punishment for the same alleged misconduct (failure to comply with a preservation order)

71. The impugned decision provides a single allocation decision combining various elements from both proceedings. This makes it unclear to which procedure the allocation decision applies, which party is considered to have prevailed in which type of proceedings, whether and how double punishment is avoided and which appellate regime would be applicable to which allocation decision. Therefore, leaving aside that the impugned decision breaches the two-stage approach on costs according to the RoP, the cost allocation decision in the impugned decision is manifestly erroneous as it does not separately address the costs in the evidentiary proceedings (R. 192-197 RoP) and the proceedings regarding the imposition of a penalty sum (R. 354.4 RoP).

IV. Conclusion

72. No leave to appeal is granted of the cost decisions in the Infringement action and the Counterclaim for revocation. With respect to the cost decisions in the action for provisional measures and the action for preserving evidence leave to appeal is granted. Both parties shall be given the opportunity to provide their comments on the issues discussed above in parapgraphs 55-59 and 67-71.

V. Payment of court fees

73. According to the Table of Court Fees, the fee for an Application for leave to appeal against a cost decision under R. 221 RoP does not arise if the appeal is allowed. This also applies if leave to appeal is granted in part (see for the request for discretionary review: UPC-CoA-651/2024, 27 November 2024, Total Semiconductor v Texas Instruments, par. 3).

74. In each of the two cases in which leave to appeal is granted (UPC-CoA-171/2026 and UPC-CoA-172/2026) Applicant must pay a court fee of EUR 2,000 by 30 November 2026 at the latest, which corresponds to the difference between the fee of EUR 2,000 for an Application for leave to appeal against a cost decision and the fee of EUR 4,000 for an appeal against a cost decision pursuant to Rule 221.4 (see Table of Court Fees).

ORDER

1. Leave to appeal the cost decisions in the Infringement action (UPC-CFI-2308/2026) and the Counterclaim for revocation (UPC-CFI-2309/2026) is refused.

2. Leave to appeal the cost decisions in the proceedings for provisional measures (UPC-CFI-2310/2026) and the proceedings for the preservation of evidence (UPC-CFI-2311/2026) is granted.

3. Both parties shall provide their comments on the issues specified in paragraphs 55-59 and 67-71, respectively, ultimately on **14 December 2026**.

4. In each of the cases UPC-CoA-171/2026 and UPC-CoA-172/2026 in which leave to appeal is granted, Applicant must pay a court fee of EUR 2,000 ultimately on **30 November 2026**. If this fee is not paid on time, a default judgment may be rendered (R. 229.3 RoP).

Issued on 23 November 2026.

Bartholomeus Johannes van den Broek

Digitally signed by Bartholomeus Johannes van den Broek
Date: 2026.11.23 14:42:44 +01'00'

Bart van den Broek, standing judge