Procedural Order

of the Court of First Instance of the Unified Patent Court
Nordic-Baltic Regional Division
issued on 24 November 2026
(Art. 69.4 UPCA, R. 158 RoP)

APPLICANT

Ty Inc., 280 Chestnut Avenue, 60559 Westmont, IL, USA

Represented by Prof. Dr. Tilman Müller-Stoy (BARDEHLE PAGENBERG)

DEFENDANTS

1. **Tomson Toys OÜ**, Harju maakond, Tallinn, Kesklinna linnaosa, Kiikri tn 6/1-57, 10159, Estonia

2. [redacted], Harju maakond, Tallinn, Kesklinna linnaosa, Kiikri tn 6/1-57, 10159, Estonia

Represented by Mr. Patric Straßburger (ULLRICH & NAUMANN)

PATENT AT ISSUE

EP 4 606 438 B1

DIVISION

Nordic-Baltic Regional Division

DECIDING JUDGE

This order has been issued by presiding judge Stefan Johansson, acting as judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

English

SUBJECT-MATTER

Request for security for costs in proceedings on provisional measures
(Art. 69.4 UPCA, R. 158 RoP)

SHORT SUMMARY OF FACTS AND REQUESTS

1. The Applicant is a company founded in 1986, with its registered office in Westmont, Illinois (USA). It operates internationally and specialises in the development, manufacture, and sale of toys.

2. The Applicant is the proprietor of European patent No. 4 606 438 B1 (EP'438), which relates to a bouncing toy with a plush exterior. The mention of the grant of the patent-in-suit was published on October 21, 2026. On the same day, the Applicant filed an application for provisional measures at the Nordic- Baltic Regional Division of the Unified Patent Court (UPC). The Applicant requests, inter alia, that the Defendants be ordered to cease and desist from offering, placing on the market, using, importing or storing toys that infringe claim 1 of EP'438.

3. With its submission of 11 November 2026, the Defendants request that the Court orders the Applicant to provide adequate security for the legal costs and other expenses incurred by the Defendants which the Applicant may be liable to bear (Art. 69.4 UPCA, R. 158 RoP). The Defendants suggest a security in the amount of EUR 224.000.

4. The Defendants' have, in summary, submitted the following reasons for granting the request. USA is not member to the 1954 Hague Convention, so a potential cost order by the Court may not, or merely in an unduly burdensome way, be enforceable. Furthermore, the Applicant is a privately held US company entirely exempt from the reporting requirements that apply to publicly traded corporations. This unavailability of information on the Applicant's financial situation gives reason for legitimate and real concern. Furthermore, the Applicant appears not to hold any assets in Europe that would ensure the possibility of enforcing a potential UPC cost decision in favour of the Defendants. According to the knowledge of the Defendants, the Applicant does not operate in Europe through their own subsidiaries or production sites. Instead, they rely on independent distribution partners. These partners are separate legal entities, and there is no indication that these partners could be held liable for any obligations of the Applicant arising from a UPC cost decision. Thus, there is no indication on record showing that the Applicant holds assets in Europe other than their patent portfolio, which is insufficient. The fact that the Applicant's owner/founder may have substantial resources does not mean that the Applicant's current financial situation is good.

5. The Applicant has requested that the Defendants' request for security for costs is dismissed. In the alternative, the Applicant has requested 1) that any security is limited to a proportionate amount reflecting Defendants' reasonably anticipated recoverable costs in the present first-instance proceedings, and in any event not exceeding 50% of the ceiling for recoverable costs, 2) that the Applicant may provide security either by deposit into the account designated by the Court for securities or by an unconditional and irrevocable bank

guarantee issued by a bank licensed within the European Union, and 3) that the Applicant may provide security within three weeks of service of an order for security.

6. The Applicant has, in summary, submitted the following reasons for dismissing the request. The Defendants have failed to substantiate their request. Their request is based only on inference and assumption but not on concrete evidence. The Defendants have not established any difficulty in enforcing foreign, in particular UPC, decisions in the US. To the contrary, the US have well-developed procedures for the recognition and enforcement of foreign judgments, and according to the UPC case-law, US courts routinely recognize and enforce judgments of foreign courts. Merely referring to the fact that the US is not a party to the Hague Convention is not sufficient to establish that enforcement of a potential cost order in the US causes any difficulty, let alone would be unduly burdensome. Furthermore, the mere fact that a company is privately held does not, without more, give rise to a legitimate and real concern about recoverability of costs. Private ownership and an alleged absence of European assets do not establish financial weakness. Even assuming for the sake of argument that Applicant had no readily attachable assets within Europe, this would identify the possible place of enforcement; it would, however, not establish that Applicant has insufficient assets overall, nor that enforcement in the US would be unduly burdensome. The absence of public reporting obligations says nothing about the financial standing of the company; it is simply a feature of its corporate form. The Applicant is 100% owned by its founder whose net worth, according to publicly available sources, such as Forbes, is estimated at US-$ 8.9 billion. Thus, there are no concerns regarding enforceability of a potential cost order in the US, nor does Applicant's financial position give rise to a legitimate and real concern that a possible order for costs may not be recoverable. Furthermore, an order for security at this stage would unjustifiably interfere with Applicant's right to an effective remedy in proceedings where urgency is of the essence

GROUNDS FOR THE ORDER

Legal framework

7. According to Art. 69(4) UPCA and R. 158 RoP, the Court may order the Claimant/Applicant to provide adequate security for the legal costs and other expenses incurred and/or to be incurred by the Defendant, which the Claimant/Applicant may be liable to bear.

8. The ordering of security is a discretionary decision of the Court. When exercising this discretion, the Court shall determine, in the light of the facts and arguments brought forward by the parties, whether the financial position of the Claimant/Applicant gives rise to a legitimate and real concern that a possible order for costs may not be recoverable and/or the likelihood that a possible order for cost by the UPC may not, or only in an unduly burdensome way, be enforceable.

9. The burden of proof as to why an order for security for costs is appropriate in a particular case lies with the Defendant making such an application. However, once the grounds and facts have been credibly set out in the application, it is for the Claimant/Applicant to challenge those grounds and facts in a reasoned manner, particularly as that party generally has knowledge of and evidence regarding its financial situation (UPC_CoA_217/2024, 17 September 2024).

10. While the mere fact that a party has its registered office in a country that is not a Member State of the EU or the EEA, or that its financial situation is not fully known, is not in itself sufficient to justify an order for security for costs, proof of actual insolvency is not required. Nor is the Court required to establish that recovery of a future costs order will be impossible. It is sufficient that the circumstances objectively demonstrate a genuine risk affecting the practical recoverability or enforceability of such an order (UPC_CoA_935/2025, order of 2 July 2026, para. 14, and UPC_CoA_431/2025, order of 9 July 2025, para. 14). To this end, the Applicant must normally not only provide evidence as to the foreign law applicable in the territory where the order shall be enforced, but also its application (UPC_CoA_548/2024, order of 29 November 2024, para. 24)

Assessment

11. It is inherent that the enforcement of a cost order against a company that has it registered office in e.g. the US to some extent may be more burdensome than enforcement against a company that has its registered office in the EU or EEA. However, it is standing practice of the UPC that the fact that a Claimant/Applicant is domiciled in the US does not in itself justify an order under R. 158 RoP (see e.g. LD Hamburg, order of 10 June 2026, UPC_CFI_360/2026, para. 31). Thus, enforcement in the US is normally not impossible or unduly burdensome, even though the US is not member to the 1954 Hague Convention.

12. The Defendants have not submitted any arguments or evidence to convince the Court that there are reasons to draw a different conclusion in this case, i.e. that enforcement of a possible cost order against the Applicant may not, or only in an unduly burdensome way, be enforceable in Illinois, where the company has its headquarters, or Delaware, where the company was incorporated. Thus, the fact that the Applicant is based in the US and potentially only has assets there (other than their patent portfolio) is not sufficient for ordering the provision of a security for costs.

13. With regard to the Applicant's financial situation, the Defendants have only submitted, in general terms, that the Applicant is a privately held US company entirely exempt from the reporting requirements that apply to publicly traded corporations, and that this unavailability of information on the Applicant's financial situation gives reason for legitimate and real concern.

14. Since it is the Applicant that has best knowledge and access to evidence regarding its financial situation, the evidentiary burden on the Defendants to put forward their reasons and facts in a credible manner should not be set too high (see UPC_CoA_217/2024, order of 17 September 2024, para. 10). However, in this case the Defendants have not even submitted, let alone proven, that they have made a serious attempt to find any information about the Applicant's financial situation. Thus, the Defendants have failed to present in a sufficiently credible manner that an order for security for costs would be appropriate (cf. e.g. LD Hamburg, order of 30 October 2026, UPC_CFI_1646/2026, and LD Munich, order of 20 November 2026, UPC_CFI_1966/2026).

15. In summary, the Court finds that the Defendants have not presented in a sufficiently credible manner that an order for security for costs is appropriate because the enforcement of a cost decision would be unduly burdensome or due to the Applicant's

financial situation. The Defendants' request for security for costs should therefore be dismissed.

ORDER

The Defendants' request for security for costs is dismissed.

Issued on 24 November 2026

Stefan Johansson

INFORMATION ABOUT PANEL REVIEW

Since an order pursuant R. 158 RoP is a case management order, any party may request that this order be referred to the panel for a review pursuant to R. 333 RoP.