Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf Local Division
UPC_CFI_1034/2025
CFI_931/2026

Procedural Order
of the Court of First Instance of the Unified Patent Court
issued on 26 November 2026
concerning EP 3 909 047

CLAIMANT:

Yangtze Memory Technologies Co., Ltd., No.88 Weilai 3rd Road, East Lake High-tech Development Zone, Wuhan, Hubei 430000, China

represented by:	Attorney-at-law Oliver Jan Jüngst, Attorney-at-law Lucas Brons, Bird & Bird LLP, Carl-Theodor-Straße 6, 40213 Düsseldorf, Germany
electronic address for service:	oliver.jan.juengst@twobirds.com
participating:	Patent Attorney Dr Felix Landry, Patent Attorney Leonard Lotz, Bird & Bird LLP, Am Sandtorkai 50, 20457 Hamburg, Germany

DEFENDANTS:

1. **Micron Technology, Inc.,** 8000 South Federal Way Boise, Idaho 83707-0006, USA

2. **Micron Europe Ltd.,** Venture House 2 Arlington Square, Downshire Way, Bracknell, Berkshire, RG12 1WA, United Kingdom

3. **Micron Semiconductor (Deutschland) GmbH,** Leopoldstrasse 250 B, 80807 Munich, Germany

4. **Micron Semiconductor France SAS,** Immeuble Iliade, 23 Avenue Carnot, 91300 Massy, France

represented by:	Attorney-at-law Prof Dr Tilman Müller-Stoy, Attorney-at-law Dr Jan Bösing, Patent Attorney Tobias Kaufmann, Patent Attorney Dr Christian Haupt, Bardehle Pagenberg, Prinzregentenplatz 7, 81675 Munich, Germany

PATENT IN SUIT:

European Patent n° 3 909 047

PANEL/DIVSION:

Panel 1 of the Local Division in Düsseldorf

DECIDING JUDGES:

The order was issued by the Panel in the following composition:

- Ronny THOMAS Presiding Judge and judge-rapporteur
- Jule SCHUMACHER legally qualified judge
- Pierluigi PERROTTI legally qualified judge
- Patrik RYDMAN technically qualified judge

LANGUAGE OF THE PROCEEDINGS: English

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

SUMMARY OF THE FACTS:

1. In their statement of defence and counterclaim for revocation of 16 March 2026, the Defendants requested an order for security for costs pursuant to Art. 69(4) UPCA and R. 158 RoP.

2. In support of their application, the Defendants (also referred to collectively as 'Micron') submit that the Claimant is domiciled in the People's Republic of China. According to the Defendants, any claim for reimbursement of costs would have to be enforced against the Claimant in China, where enforcement may prove impossible or, at the very least, unduly burdensome. They contend that, whilst Union law ensures the recognition and enforcement of judgments of courts of Member States, including the UPC, throughout the European Union, no comparable framework exists in respect of China.

3. Micron further submits that, to its knowledge, the Claimant does not hold significant assets within the territory of the UPC Member States and that, for this reason, recovery of any amounts awarded in its favour would be particularly difficult without the provision of security. It also relies on the alleged practical difficulties and delays associated with the service and enforcement of foreign judicial documents in China. On that basis, the Defendants argue that there is a sufficient risk that a future order for reimbursement of costs may not be enforceable, or may be enforceable only in an unduly burdensome manner, thereby justifying an order for security for costs.

4. The Defendants argue that the Claimant has significantly underestimated the value of the action by assessing it at EUR 2,000,000. Relying on their projections of the revenues expected to be generated by exploitation of the patent in suit within the relevant UPC territories over the coming years, they submit that the value of the infringement action alone amounts to at least EUR 51,000,000 and that the value of the counterclaim for revocation amounts to EUR 75,000,000. On that basis, they contend that the applicable value exceeds EUR 50,000,000, resulting in a ceiling for recoverable costs of EUR 2,000,000.

5. According to Micron's current estimates, the Defendants will incur legal costs of at least EUR 1,000,000 in defending the present proceedings at first instance. They therefore request that the Claimant be ordered to provide security for costs in at least that amount.

6. The Defendants additionally submit that the three parallel actions pending before the Düsseldorf Local Division, in which separate applications for security for costs have likewise been filed, concern different factual and legal circumstances. They therefore maintain that the anticipated legal costs in those proceedings must be assessed separately and should not be taken into account when determining the appropriate amount of security in the present action.

7. The Claimant (also referred to as 'Yangtze') contests the application in its entirety.

8. Yangtze submits, first, that there is no dispute as to its financial standing and that the Defendants have adduced no evidence suggesting any risk of insolvency or inability to satisfy a future costs award. According to the Claimant, the application is based solely on the fact that it is domiciled in the People's Republic of China and on speculative allegations that enforcement of a future costs decision in that jurisdiction may prove difficult. In the Claimant's view, no concrete evidence has been provided to establish that enforcement in China would in fact be impossible or unduly burdensome. The mere fact that a party is domiciled outside the European Union cannot, it argues, justify an order for security for costs, as this would amount to an impermissible presumption based solely on the location of that party's registered office.

9. The Claimant further submits that ordering security on the basis of assumptions regarding possible future enforcement difficulties would effectively prevent any judicial assessment of whether such difficulties genuinely exist. It therefore argues that enforcement obstacles cannot simply be presumed in the absence of reliable and specific evidence.

10. Yangtze also relies on the principle of effective access to justice and on the objectives of Directive 2004/48/EC, submitting that requiring security from patent proprietors without sufficient justification would risk undermining the effective enforcement of intellectual property rights and the high level of protection envisaged by that Directive.

11. As to the amount of security sought, the Claimant submits that the Defendants have failed to discharge their burden of demonstrating that the value in dispute indicated in the Statement of Claim, namely EUR 2,000,000, is incorrect. Pursuant to R. 370.6 RoP, the value in dispute must reflect the objective interest pursued by the Claimant at the time the action was commenced. The Claimant contends that the Defendants rely exclusively on a witness statement and on unsupported assertions contained in the Statement of Defence. In particular, they merely advance estimated future profit figures and extrapolate those figures over the remaining lifetime of the patent without providing the underlying sales data, revenue calculations, profit margins or market analyses necessary to verify such estimates.

12. Yangtze further argues that the Defendants' projections are inherently speculative, as they

assume that the allegedly infringing products will continue generating the same level of profits until expiry of the patent, notwithstanding the rapid technological developments in the relevant market and the likelihood that newer product generations will replace the current embodiments.

13. The Claimant additionally submits that the Defendants have failed to substantiate their assertion that they are likely to incur legal costs of at least EUR 1,000,000 in the present proceedings. Although the action may involve technically complex issues, the Defendants have not demonstrated that the case requires investigations or evidentiary activities of a scope capable of justifying costs of that magnitude. Nor have they provided any detailed explanation as to why equivalent amounts should be anticipated in each of the three parallel UPC proceedings.

14. Accordingly, Yangtze maintains that the application should be dismissed. In the alternative, should the Court consider an order for security to be appropriate, the amount should be determined by reference to the Claimant's valuation of the dispute of EUR 2,000,000, for which the applicable ceiling of recoverable costs would be EUR 200,000. Any higher amount would, in the Claimant's submission, be excessive and disproportionate.

GROUNDS FOR THE ORDER

15. The Defendants' application for security for costs is admissible and well-founded for the reasons and to the extent set out below.

1. General principles

16. 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 further provides that the Court may, at any time during the proceedings and following a reasoned request by one party, order the other party to provide, within a specified period, adequate security for the legal costs and other expenses incurred and/or to be incurred by the requesting party which the other party may be liable to bear.

17. The Court of Appeal has held that, when exercising its discretion under Art. 69(4) UPCA and R. 158 RoP, the Court must assess, in the light of the facts and arguments advanced 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 and/or whether such an order is likely to be unenforceable or its enforcement unduly burdensome. The burden of substantiating and proving why security for costs is appropriate in the particular case rests on 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). To that end, the applicant must provide evidence not only of the foreign law applicable in the territory in which enforcement is sought, but also of its application in practice (UPC CoA no. 548/2024, order of 29 November 2024, Aarke v Sodastream).

18. Once the defendant has credibly substantiated the reasons and facts relied upon, however, the claimant must challenge them in a substantiated manner (UPC CoA no. 890/2025, order of 18 February 2026; UPC CoA no. 596/2024, order of 12 July 2025).

2. Assessment

19. In the present case, it is common ground that the Claimant's financial position does not give rise to concerns as to its ability to satisfy a possible costs award. Financial capacity and practical enforceability are, however, distinct considerations. Yangtze's financial standing does not, in itself, exclude a risk that recovery through enforcement may be unduly burdensome.

a. Risk of undue difficulty in enforcing a future cost decision

20. The issue is therefore whether Micron has substantiated a concrete risk of undue difficulty in enforcing a future costs decision against Yangtze, rather than whether the Claimant is financially able to comply with it. The Court must assess the specific circumstances relied upon to demonstrate practical enforcement difficulties.

21. In the present case, no documentary evidence has been provided of the outcome of specific attempts to enforce UPC costs decisions in China.

22. The same issue was considered by the Court of Appeal in UPC CoA no. 431/2025, order of 9 July 2025, *Jingao Solar v Chint New Energy Technology*. In this respect, the Court of Appeal expressly held that:

> '*The finding that – due to the recent establishment of this Court – there is currently no experience with enforcing costs decisions of this Court in a particular country, does not rule out the possibility that enforcing a cost decision in that country may prove to be impossible or unduly burdensome. In the absence of such experience, the Court must examine the likelihood of successful enforcement on the basis of other facts and circumstances*.'

23. In that assessment, the fact that a claimant has its registered office in a country outside the European Union or the European Economic Area may be relevant. Whereas Union law guarantees the recognition and enforcement of judgments of courts of Member States, including this Court, in other Member States, comparable guarantees may not be available in countries outside the European Union or the European Economic Area.

24. Micron has adduced evidence supporting its submission that enforcement of a cost decision of this Court in China would be unduly burdensome in practice. The Defendants rely on the difficulties encountered by this Court in serving statements of claim and other documents in China. They refer to several cases in which the competent Chinese authority failed to effect service despite this Court having complied with all the formal requirements of the Hague Service Convention (UPC CFI no. 425/2024, LD Munich, order of 19 March 2025, *JingAo Solar v Chint New Energy Technology*; UPC CFI no. 248/2025, LD Munich, order of 26 August 2025, *Huawei v MediaTek*; UPC CFI nos. 508/2023 and 509/2023, LD Munich, order of 21 January

2025, *air up v Guangzhou Aiyun Yanwu*). Comparable difficulties are also illustrated by UPC CFI no. 766/2024, LD Milan, decision of 10 July 2026, *Cardo Systems v Shenzhen Asmax Infinite Technology*.

25. The Claimant has not contested the Defendants' submissions concerning those unsuccessful attempts at service, nor has it identified any cases in which this Court successfully served documents in China.

26. It is also undisputed that national courts of Contracting Member States have encountered comparable difficulties in serving documents in China under the Hague Service Convention.

27. Difficulties in serving judicial documents and difficulties in recognising and enforcing a judgment are not identical. The former cannot therefore be equated automatically with the latter. They are nevertheless relevant to the prospective assessment required here: repeated failures to effect service despite compliance with the applicable formal requirements indicate practical obstacles to obtaining the assistance of the competent Chinese authorities in giving effect to this Court's judicial acts. The Court treats those failures as evidence of a practical risk, not as proof that Chinese law excludes recognition of UPC decisions or that enforcement would necessarily fail.

28. Taken together, the repeated difficulties encountered by this Court and by national courts, and the absence of a substantiated challenge to the specific instances relied upon, support the conclusion that enforcement of a future costs decision in China would likely be unduly burdensome. The absence of experience of actual enforcement is not itself evidence of an obstacle; it explains why the assessment must draw on the other facts and circumstances identified above. On that basis, Micron has sufficiently substantiated the practical enforcement risk. The conclusion rests on those concrete difficulties, rather than on a presumption arising solely from Yangtze's domicile (see again UPC CoA no. 431/2025, order of 9 July 2025, *Jingao Solar v Chint New Energy Technology*).

29. The Claimant's argument that an order for security would severely restrict its access to justice and its ability to enforce the patent is not persuasive. The Claimant's submissions in that respect remain general. In particular, it has neither substantiated nor demonstrated that its financial resources are such that any difficulty in providing security would outweigh the Defendants' legitimate interest in obtaining security for costs.

b. Amount of security

30. The second issue concerns the amount of security and, in particular, the value of the action. Micron seeks a substantial upward revision of the value of the infringement action, from EUR 2,000,000, as stated by Yangtze, to at least EUR 51,000,000.

31. Under R. 370.6 RoP, the value of the action must reflect the objective interest pursued by the filing party at the time the action was brought.

32. The extent of the increase sought by Micron does not, in itself, justify rejecting it. The issue

is whether the material relied upon provides a sufficiently reliable basis for the proposed valuation.

33. Projections over the remaining lifetime of the patent, which is due to expire in 2039, require an assessment of the economic assumptions underlying them and of relevant technical developments, including the possibility of obsolescence before expiry. As the Claimant points out, the underlying sales data, revenue calculations, profit margins and market analyses needed to verify the estimates have not been provided. In the absence of that supporting material, the witness statement on which the Defendants rely does not sufficiently substantiate the proposed increase for the purposes of the present application.

34. Accordingly, for the purposes of the present application, the Court takes EUR 2,000,000 as the value of the infringement action. On the material presently available, the Court adopts, solely for this application, the value of EUR 2,000,000 for the counterclaim for revocation, without an uplift for which no sufficiently substantiated basis has been established. The combined value for determining the applicable ceiling is therefore EUR 4,000,000.

35. This provisional assessment does not prejudge the final determination of that value.

36. The Court of Appeal has clarified that the amount of security for costs must be determined by taking as a starting point the applicable ceiling under Annex A ("Scale of ceilings for recoverable costs") to the Decision of the Administrative Committee of 24 April 2023 and weighing all relevant circumstances of the case presented by the parties (UPC CoA no. 48/2026, order of 1 June 2026, *La Siddhi Consultancy v Athena Pharmaceutiques*).

37. For the combined value of EUR 4,000,000, the applicable ceiling for recoverable representation costs is EUR 400,000. That ceiling does not automatically determine the amount of security. The Court must assess an appropriate amount in the light of the proceedings and the parties' submissions.

38. Yangtze is correct that Micron's estimate of costs of at least EUR 1,000,000 has not been substantiated in sufficient detail to justify security in that amount. The Court nevertheless takes into account the work required both to defend the infringement action and to pursue the counterclaim for revocation, including the technically complex issues raised by each. Those matters justify meaningful security, but do not, on the material presently available, justify security at the full combined ceiling of EUR 400,000. Having regard to the limited substantiation of the costs estimate and the need to avoid double counting work common to infringement and validity, the Court considers EUR 200,000 to be a reasonable and proportionate amount of security for representation costs in both claims, assessed together.

39. The Court has also taken into account the parallel proceedings pending between the same parties (UPC CFI nos. 1034/2025 and 1041/2025). Although each action raises distinct factual and legal issues requiring separate consideration, the Court considers that certain efficiencies may reasonably be expected from the parallel conduct of the proceedings, including work that may overlap across the different actions. Those efficiencies should be reflected in the amount of security. In the circumstances of the present case, security in the amount of

EUR 200,000, corresponding to one half of the applicable ceiling, adequately reflects those efficiencies while providing reasonable and proportionate protection against the costs likely to be incurred in these proceedings. Nor has the Claimant demonstrated that security in that amount would impair its ability to pursue the action effectively. Taking all relevant circumstances into account, the Court sees no sufficient reason to fix a lower amount.

40. In the light of the foregoing, the security for costs to be provided by the Claimant is set at EUR 200,000.

ORDER:

The Court of First Instance, Düsseldorf Local Division:

- orders Yangtze Memory Technologies Co., Ltd to provide security for costs to the Defendants in the amount of 200,000 EUR (two hundred thousand euros) by way of deposit on the bank account of the Court set up for this purpose, or by way of a bank guarantee provided by a bank licensed in the EU, within one month from the date of service of this order; and

- informs Yangtze Memory Technologies Co., Ltd that a decision by default may be given in accordance with R. 158.5 and 355 RoP if Yangtze Memory Technologies Co., Ltd fails to provide the ordered security within the time stated;

- grants leave to appeal.

Issued in Düsseldorf on 26 November 2026

Ronny Thomas Presiding Judge and judge-rapporteur	Digitally signed Thomas Ronny 2026-11-26 07:34:25 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
Jule Schumacher legally qualified judge	Digitally signed Schumacher Jule Kathrin 2026-11-25 12:12:59 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
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Patrik Rydman technically qualified judge	Digitally signed Rydman Jonas Patrik 2026-11-25 14:57:52 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet