Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC_CFI_927/2025
ORDER
of the Court of First Instance of the Unified Patent Court
Central Division (Milan Seat)
issued on 13 March 2026
concerning EP 3 592 333 (UP)

CLAIMANT:
La Siddhi Consultancy Ltd., 16 St. Michaels Avenue, HP3 8HF Hemel Hempstead, United Kingdom

Representatives: Dr. Christian Meyer, c/o Maiwald GmbH, Grünstraße 25, 40212 Düsseldorf, Dr. Holger Glas and Dr. Felix Schröter, c/o Maiwald GmbH, Elisenstraße 3, 80335 München

DEFENDANT:
1. Athena Pharmaceutiques SAS, Espace Arnold de Ville, 12 Rue Georges Blandon, 78430 Louveciennes, France
2. Substipharm, 24 Rue Erlanger, 75016 Paris, France

Representatives: Dr. Jegannath Korukottu, Grünecker Patent- und Rechtsanwälte PartG mbB, Leopoldstr 4, 80802 München

PATENT AT ISSUE: European Patent no. 3 592 333 (UP)

COMPOSITION OF PANEL – FULL PANEL:

Presiding Judge	Andrea Postiglione
Judge Rapporteur	Anna-Lena Klein
Technically Qualified Judge	Dr. Michael Alt

DECIDING JUDGE:

This order has been issued by the full panel.

LANGUAGE OF PROCEEDINGS: English

SUBJECT MATTER OF THE PROCEEDINGS

revocation action; here: decision on R158 application

SUMMARY OF FACTS:

1 On 16 December 2025, with their statement of defence, the defendants lodged an application for security of legal costs, R 158 RoP (statement of defence, margin 752 et sequi).

2 With their reply to the statement of defence and reply to the application to amend the patent lodged on 13 February 2026, claimant requested that the defendants' application be dismissed.

REQUESTS OF THE PARTIES

3 The **defendants** request (statement of defence, margins 776 et sequi) that the Court order the Claimant to provide security for costs in the amount of 112.000 € within four weeks from the date of service of the Court order, and rule that failure to do so will result in dismissal of the revocation action by default, upon the defendants' request.

4 The **claimant** requests that the defendants' request for security for costs be dismissed (reply to the statement of defence, margin 35).

5 In the alternative, the claimant requests that any security for costs be reduced to a reasonable amount, taking into consideration the status of the claimant as an SME (reply to the statement of defence, margin 36).

SUBMISSIONS OF THE PARTIES

6 The **defendants** estimate their minimal potential adverse cost risk at 112.000 €, based on the value of the revocation action at 1.000.000 € (statement of defence, margins 756 et sequi).

7 They maintain that the claimant's financial position gives rise to a serious risk of non-recovery (statement of defence, margins 762 et sequi). Based on the account statement dated 31 December 2024 (made up to 31 March 2024), filed as exhibit GRUN 14, the defendants highlight that the claimant's current liabilities (as of March 2024) exceed their current assets, that claimant has limited shareholder funds' relative to the cost exposure in the revocation action, has significant liabilities and minimal reserves and relies on intra-group or shareholder support. The defendants further stress that the director is a major creditor of the claimant, and that a significant portion of the claimant's liabilities and a

substantial part of its debtors are tied up with related associated companies, the "going concern" assumption therefore resting on the continued financial support from these entities. Shareholder funds amount to 27.103 GBP. Therefore, the defendants submit that a costs order amounting to about 112.000 € would be disproportionately large compared to the claimant's equity and free assets and would entirely depend on voluntary funding by associated companies or the director.

8 The defendants are in sum of the opinion that the enforcement of a costs order would be unduly difficult or burdensome as the claimant is thinly capitalized and not based in the UPC jurisdiction (margin 770).

9 They further stress that the claimant has no identified commercial products or services of its own affected by the patent, appears to be used primarily as a vehicle to attack the defendant's patent and has claimed SME status to pay reduced court fees justifies the R158-order (statement of defence margins 771, 772).

10 The defendants maintain that ordering security would not deny access to justice to the claimant (statement of defence, margins 773 et sequi).

11 The **claimant submits** that the defendants' arguments are legally and factually unfounded. They are of the opinion that the defendants have failed to put forward any concrete, well-reasoned facts indicating that a cost decision would not be successfully enforceable against the claimant. They stress that the defendants' arguments rest solely on generalized assumptions based on the claimant's size and legal form. Since the claimant is an SME, the defendants' approach would disproportionately restrict the claimant's access to justice and in effect deter small and medium-sized enterprises from challenging invalid patents (reply to the statement of defence, margins 33 et sequi). They underline that they have submitted the required declaration regarding its status as a micro-enterprise. The defendant's assessment that this declaration is insufficient "does not confer upon them any competence to assess the claimant's SME status" (reply, margin 37).

GROUNDS FOR THE ORDER

12 The defendants' request is admissible and well founded in principle. The Court exercises its discretionary power to order the claimant to provide adequate security for any costs and expenses of the proceedings to be reimbursed by the defendant.

I. Legal background

13 **1.** 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. Rule 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.

14 The Court of Appeal held that when exercising its discretion under Art. 69.4 UPC and R.158 RoP, the Court must determine, in the light of the facts and arguments brought forward by the parties, whether the financial position of the claimant gives rise to a legitimate and real concern that a possible order for costs may not be recoverable and/or how likely it is that a possible order for costs by the Court may not be enforceable, or that enforcement may be unduly burdensome. The burden of substantiation and proof of why an order for security for costs is appropriate in a particular case is on the party applying for security for costs (UPC_CoA_890/2025, order issued on 18 February 2026, margin 19, 20 – Syntorr v Arthrex; UPC_CoA_431/2025 APL_23095/2025, order issued on 9 July 2025, margin 10 – Chint v Jingao; CoA_218/2024 APL_25922/2024, order of 17 September 2024 - Audi v NST). 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_890/2025, order issued on 18 February 2026, margin 20 – Syntorr v Arthrex; CoA, UPC_CoA_6596/2024, APL_55849/2024, order issued on 12 July 2025, margin 21 – Suinno v Microsoft). Failing any guarantees or other special circumstances, it is irrelevant if the claimant belongs to a financially sound group of companies. Relevant is only the financial position of the claimant itself (UPC_CoA_548/2024, APL_52969/2024, order issued on 29 November 2024, margin 21 – Aarke vs SodaStream).

15 **2.** When assessing the adequate amount of security, the Court must consider the amount of costs that may legally accrue in the proceedings. Art. 69.1 UPCA specifies that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity requires otherwise, up to a ceiling set in accordance with the Rules of Procedure.

16 The proposed security does not have to be set to the maximum amount of reimbursable costs according to the “Scale of ceilings for recoverable costs”. The Court, exercising its discretion, must not only take into account the defendant’s interest to secure an amount that will cover their potential costs, but must also take into account the claimant’s interests and right to an effective access to justice (see, e.g. UPC_CFI_525/2024 (LD Hamburg), order issued on 30 May 2025, page 7 - Visibly v Easee; UPC_CFI_729/2025 (LD Munich), order issued on 28 October 2025, margin 38, 39 – BfexaQC v NVIDIA).

17 The aforementioned equity reasons may be taken into account when assessing the adequate amount of security (see UPC_CFI_244/2024 und UPC_CFI_786/2024 (LD München), order issued on 27 January 2025 – SnowPixie). SMEs are not generally precluded from providing security for cost in favour of a larger company (UPC_CFI_525/2024 (LD Hamburg), order issued on 30 May 2025, page 6 - Visibly v Easee).

18 **3.** The annex to the commission recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC) defines a microenterprise as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million (see Art. 2.3 of said annex). This commission recommendation shall be applied when deciding if an enterprise is small or medium sized (see UPC_CFI_244/2024 und UPC_CFI_786/2024 (LD München), order issued on 27 January 2025, page 8 – SnowPixie).

II. Present case

19 Against this legal background, the Court exercises its discretionary power to order the claimant to provide security for any costs and expenses of the proceedings to be reimbursed by the defendant.

20 **1.** The situation of the claimant gives indeed rise to legitimate and real concern that a possible order for costs may not be recoverable.

21 The financial situation as presented by the defendant is to be deemed undisputed by the claimant and gives rise to a concern that a possible order for costs in the amount addressed above may not be enforceable by the defendant.

22 The defendant has explained the claimant's financial situation by referring to GRUN14, undisputedly the claimant's most recent account statement. The claimant's reply that the defendants' arguments are "legally and factually unfounded" does not constitute substantiated disputing. Therefore, the financial situation presented by the defendants by referring to GRUN14 are deemed undisputed, Rule 171.2 RoP.

23 From the facts presented by the defendant with regard to GRUN14 it follows that assets amount to GBP 1.622.620 (fixed assets plus current assets), while liabilities (amounts falling due within one year) amount to GBP 1.595.517, leaving a margin (total assets less current liabilities) of GBP 27.103, about 31.000 €. This margin leaves doubt if the claimant will be able to pay the defendant the potential costs of the first instance. The amount of potential costs of the first instance is addressed below.

24 The Court does not fail to recognize that the balance sheet provided by the defendant represents the situation as of March 2024. However, as it is (undisputedly) the most current publicly available one, it would have been for the claimant to explain to the Court that the situation represented in GRUN14 has changed for the better over the last two years.

25 **2.** The recoverability of costs depends on the amount of potential costs that might be accrued during the proceedings. The Court estimates the costs at 75.000 €.

26 To assess the amount of potentially recoverable costs, the Court for the sake of this order follows the parties' consensual estimation that a value of 1.000.000 is reasonable in the matter (see statement of claim, margin 159; statement of defence, margin 756). According to the "Scale of ceilings for recoverable costs", the ceiling of recoverable costs

is up to 112.000 €. The claimant has not disputed that the costs incurred by these proceedings could amount to 112.000 €.

27 As explained above, the Court does not automatically order the claimant to provide security in the amount of the maximum of recoverable costs. The Court takes into account that the defendant relies solely on the "Scale of ceilings for recoverable costs". No cost estimation has been submitted so far. The parties do not necessarily exhaust the maximum amount provided for in the "Scale of ceilings for recoverable costs". Absent a cost estimation, the panel estimates that the costs will be about 75.000 € and exercises its discretion to set the security to this amount at this point.

28 The Court uses its discretion to at this point only assess the costs of the first instance. The costs of a possible appeal can be addressed in an application at a later stage. The Court understands that the defendants' application does not include costs accrued in potential appeal proceedings.

29 The Court, based on the parties' submissions, does not see any reason to reduce the security due to the alleged characterization of the claimant as an SME. The position of one party as an SME may be taken into account in the cost decision as an equity aspect. However, the defendants dispute the claimant's characterization as an SME, underlining that the declaration MW1, on which the claimant relies, does not state if the claimant is an autonomous enterprise, a partner enterprise or a linked enterprise, and there aren't any data on headcount, the annual turnover and the balance sheet total (statement of defence, margin 746). The claimant in response to this submission only notes that the defendants' statement that the declaration MW1 is allegedly insufficient "does not confer upon them any competence to assess the Claimant's SME status" (reply margin 37). The claimant does not address the points of issue specifically addressed by the defendants, namely missing information on headcount, annual turnover and balance sheet. It is correct that to fall under the definition of a micro enterprise, the claimant needs to show that they employ less than 10 persons, as explained above. The statement MW1 does not mention any facts why the claimant qualifies as an SME, it just states it does. Based on the defendant's substantiated disputing, this statement cannot be deemed substantiation enough to prove the claimant's microenterprise status for the sake of assessment of equity reasons in the sense of Art. 69.1 UPCA, regardless of the requirements of Rule 370.8 RoP.

30 **3.** The security can be provided in form of a deposit on the UPC account dedicated for security deposits or by a bank guarantee provided by a bank licensed in the European Union. Claimant may choose which form of security they prefer to provide.

31 **4.** The Court considers a time limit of six weeks for providing security for legal costs within the meaning of Rule 158.1 RoP reasonable. The information on the consequences of late provision of the security is based on Rule 158.4 RoP.

ORDER

For these reasons, having heard the parties on all aspects of relevance for the following order, the Court

1. orders the claimant to provide security for legal costs and other expenses pursuant to Art. 69.4 UPCA, R 158.1 RoP
   in the amount of 75.000 €
   by way of deposit on the UPCA account dedicated for security deposits (https://www.unifiedpatentcourt.org/en/court/payments), alternatively by way of bank guarantee provided by a bank licensed in the European Union
   within six weeks from the date of service of this order.
2. Claimant is advised that a default judgment may be issued in accordance with Rule 355 RoP if security is not provided within the specified period (Rule 158.4 RoP).
3. Insofar as the defendant requested a security higher than the security set with this order to be provided within a shorter time frame than provided for in this order, the request is rejected.
4. Leave to appeal is granted.

INFORMATION ON THE APPEAL

The order for security is subject to the right of an appeal in accordance with Art. 73 UPCA, Rule 220.2 RoP. Leave to appeal is granted. The present Order may be appealed within 15 days of service of this Order which shall be regarded as the Court's decision to that effect (Art. 73(2)(b)(ii) UPCA, Rule 6 220.2, 224.1(b) RoP).

INSTRUCTION TO THE PARTIES

If the security is not provided in due time, a default judgment may be issued according to Rules 158.5, 355.1 (a) RoP.

INSTRUCTION TO THE REGISTRY

The order has to be sent to the financial team of the Court in Luxemburg.

Issued on 13 March 2026

Presiding Judge
Andrea Postiglione

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Judge Rapporteur
Anna-Lena Klein

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Andrea Postiglione
On behalf of Technically Qualified Judge
Dr. Michael Alt

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