

**ORDER**  
**of the Court of Appeal of the Unified Patent Court**  
**issued on 1 June 2026**  
**concerning security for costs (R. 158 RoP)**

HEADNOTES:

The qualification of a party as an SME or the submission of a declaration purporting to establish a party's SME status pursuant to R. 370.8 RoP is not, in itself, sufficient to dispense with the obligation for said party to provide a security for costs in accordance with R. 158 RoP, if the requirements for the application of that rule are met.

The amount of the security for costs should be set starting from the ceiling of Annex A ("scale of ceilings for recoverable costs") to the Decision of the Administrative Committee of 24 April 2023, weighed according to all the relevant circumstances of the case presented by the parties. Where appropriate, the Court may take the SME status of a party into account to determine the amount of the security for costs.

KEYWORDS:

Security for costs ; SME.

APPELLANT (AND CLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

**La Siddhi Consultancy Limited.**, Hempstead, United Kingdom  
(hereinafter referred to as "Appellant")

represented by Christian Meyer, Attorney-at-law, Maiwald GmbH, Düsseldorf, Germany

RESPONDENTS (AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Athena Pharmaceutiques SAS**, Louveciennes, France
2. **Substipharm**, Paris, France

(hereinafter jointly referred to as "Respondents")

all represented by Jegannath Korukottu, European, UK Chartered Patent Attorney, Grünecker Patent- und Rechtsanwälte PartG mbB, München, Germany

PATENT AT ISSUE

EP 3 592 333 with unitary effect

LANGUAGE OF THE PROCEEDINGS

English

PANEL AND DECIDING JUDGES

Panel 3

Ulrike Voß, presiding judge

Nathalie Sabotier, legally qualified judge and judge-rapporteur

Bart van den Broek, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Order of the Central Division Milan issued on 13 March 2026 in the revocation proceedings UPC\_CFI\_927/2025

ORAL HEARING

The parties agreed to proceed without an oral hearing following the proposition of this Court (Art. 52(3) UPCA).

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. On 25 September 2025, the Appellant filed a revocation action against the patent at issue before the Central Division, section Milan (Central Division Milan).
2. On 16 December 2025, with their Defence to revocation, the Respondents lodged an application for security for their legal costs in accordance with R. 158 RoP.
3. On 13 February 2026, with its Reply to the Statement of defence and Reply to the Application to amend the patent, the Appellant requested that the Respondents' application be dismissed.
4. By order dated 13 March 2026 (the impugned order), the Central Division Milan ordered the Appellant to provide security for legal costs and other expenses in the amount of € 75,000 by way of a deposit or a bank guarantee provided by a bank licensed in the European Union, within six weeks from the date of service of the impugned order. Leave to appeal was granted.
5. On 27 March 2026, the Appellant lodged an appeal against the impugned order together with an application for suspensive effect. The Appellant requests that the Court of Appeal:
  - I. sets aside the impugned order and dismisses the Respondents' request for security for costs;
  - II. alternatively, reduces the amount of security to a proportionate level not exceeding € 20,000;
  - III. grants suspensive effect of the impugned order; in the further alternative, extends the time limit for providing any security pending the outcome of the appeal;
  - IV. orders the Respondents to bear the costs of the appeal.
6. By order dated 14 April 2026, the Court of Appeal rejected the application for suspensive effect.
7. In their Statement of response dated 14 April 2026, the Respondents request that the Court of Appeal:
  - I. dismisses the Appellant's appeal in its entirety;

- II. dismisses the Appellant's alternative request for an extension of the time limit for providing security pending the outcome of the appeal; and
- III. orders the Appellant to bear the costs of the appeal proceedings.

#### **SUMMARY OF THE PARTIES' SUBMISSIONS**

8. The Appellant first argues that the Court of First Instance applied an incorrect legal standard concerning the substantiation of the need for a security for costs and, in particular, that, in the *Syntorr v. Arthrex* order, the Court of Appeal made clear that the burden of proof lies entirely with the party seeking security for costs. The Appellant submits that in the present case, the Respondents failed to demonstrate on the basis of concrete and specific facts that there is a risk that a future cost order would be unduly difficult to enforce, and, as a result, the order is based on general assumptions and irrelevant financial indicators. The Appellant further argues that the Court of First Instance wrongly applied R.171.2 RoP when stating that the financial information contained in Exhibit GRUN 14 was to be treated as undisputed, as this rule presupposes that the non-disputed fact has already been credibly established, which was not the case here. The Appellant adds that this rule was unfairly applied here as the Court of First Instance did not give it any opportunity to provide further financial information. Before the Court of Appeal, the Appellant submits an additional declaration on its SME status (Exhibit MW21). The Appellant further states that the amount of € 75,000 is not based on any reasoning or methodology and, therefore, appears to be arbitrarily set, merely applying the level of the ceiling of recoverable costs, which is not intended to operate as a flat rate. The Appellant finally argues that its interests have not been given equal consideration compared to the Respondents' rights. In particular, the mere fact that the United Kingdom is not a party to the Brussels Regulation or the Lugano Convention cannot constitute a legitimate and real concern regarding the enforcement of a cost order. Moreover, its SME status has not been considered, which is inconsistent with the Rules of Procedure that intend to facilitate effective access to the Court for SMEs by reducing court fees for SME's (R. 370.8 RoP).
9. The Respondents, for their part, state that the Court of First Instance rightly exercised its discretion and applied the established standards of burden of proof. In particular, the Respondents argue that they substantiated their application with publicly available information (Exhibit GRUN 14) that shows the low margin derived by the Appellant from its activities and, therefore, the legitimate and real concern that a possible cost order may not be recoverable. The Respondents add that the Court of First Instance was right to treat the financial situation of the Appellant as undisputed, as the Appellant failed to dispute the facts embodied in the publicly available information in a credible manner and merely asserted that the arguments were "legally and factually unfounded". Indeed, in light of the evidence submitted by the Respondents, it was for the Appellant to substantiate its financial position with relevant counter-evidence, which the Appellant is best placed to provide. The Respondents add that the declaration submitted as Exhibit MW21 should be disregarded in accordance with R. 222.2 RoP. The Respondents also argue that Appellant's alleged SME status cannot, in itself, justify refusing to grant a security and that application of R. 370.8 RoP should not exclude the application of R. 158 RoP, as those provisions of the Rules of Procedure fulfil different objectives. The Respondents conclude that the Court of First Instance did not simply set the amount of the security at the level of the ceiling of recoverable costs but moderated this ceiling according to the circumstances of the case, thus reasonably exercising its discretion under R. 158 RoP.

## **REASONS FOR THE ORDER**

10. The appeal is dismissed. The Central Division Milan was right to order the Appellant to provide security for costs in the amount of € 75,000.

### **A. Need to provide security for costs**

#### **Legal Framework**

11. According to Art. 69(4) UPCA, at the request of the defendant, the Court may 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, in particular in the cases referred to in Art. 59 to 62 UPCA. The ratio behind Art. 69(4) UPCA is the protection of a defendant against a claimant, who initiates an action, without having sufficient means to compensate the defendant for the legal costs incurred in the proceedings the defendant was involved in at the initiative of the claimant (CoA Order of 20 June 2025, UPC\_CoA\_393/2025, AorticLab v. Emboline, paras. 15 and 28; CoA Order of 18 February 2026, UPC\_CoA\_889/2025, Syntorr v. Arthrex, para. 17).
12. The burden of substantiation and proof why an order for security for costs is appropriate in a particular case is on the applicant making such a request. However, once the reasons and facts in the request have been presented in a credible manner, it is up to the other party to challenge these reasons and facts in a substantiated manner, especially since that party will normally have knowledge and evidence of its financial situation (CoA Order of 17 September 2024, UPC\_CoA\_218/2024, UPC\_CoA\_220/2024, UPC\_CoA\_222/2024, Volkswagen v. Network System Technologies, para. 8; CoA Order of 12 July 2025, UPC\_CoA\_596/2025, Suinno v. Microsoft, para. 21; CoA Order of 18 February 2026, UPC\_CoA\_889/2026, Syntorr v. Arthrex, para. 20).
13. In order to challenge the presentation of facts made by the defendant, it is, in particular, for the claimant to substantiate that it has sufficient financial funding to cover a possible cost order and argue that and why a security order would unduly interfere with its right to an effective remedy (CoA Order of 17 September 2024, UPC\_CoA\_218/2024, UPC\_CoA\_220/2024, UPC\_CoA\_222/2024, Volkswagen v. Network System Technologies, paras. 8 and 15).
14. From R. 172.1 RoP, it follows that there is a duty to provide evidence that is already available to a party, regarding a statement of fact that is contested or likely to be contested. The Court has discretionary power to request the production of evidence pursuant to R.172.2 RoP but is not obliged to do so (CoA Order of 16 September 2024, UPC\_CoA\_301/2024, ICPillar v. ARM, paras. 29 and 33).
15. In addition, when deciding on security for costs pursuant to R. 158.1 RoP, the Court of First Instance has a margin of discretion. The review by the Court of Appeal is limited in this regard (CoA Order of 17 September 2024, UPC\_CoA\_217/2024, Audi AG v Network System Technologies, paras. 8 and 9; CoA Order of 9 July 2025, UPC\_CoA\_431/2025, Chint v JingAO, para. 11; CoA Order of 12 July 2025, UPC\_CoA\_596/2025, Suinno v. Microsoft, para. 22). The review only targets errors of discretion, i.e.

non-use, misuse or exceeding of discretion (CoA Order of 18 February 2026, UPC\_CoA\_889/2026, Syntorr v. Arthrex, para 21).

### Present Case

16. The Respondents sufficiently substantiated with publicly available financial information related to the Appellant (Exhibit GRUN 14), that its situation gives rise to a legitimate and real concern that a possible order for costs may not be recoverable or in an unduly burdensome way. The facts presented by the Respondents, and relied on by the Court of First Instance, cannot be qualified as “general assumptions”. The submitted evidence provides sufficient details about the financial position of the Appellant, and it was subsequently up to the Appellant and not for the Respondents, to provide more detailed or more recent counter-evidence. The contrary assertions of the Appellant are based on an erroneous interpretation of the established case law of the Court of Appeal.

### *The alleged SME status of the Appellant*

17. At first instance, to counter the evidence gathered by the Respondents, the Appellant merely stated that the Respondents’ arguments were “legally and factually unfounded” and referred in this context to its alleged SME status, based on the declaration it submitted to obtain a reduction of Court fees in accordance with R. 370.8 RoP (Exhibit MW1). In this declaration, the Appellant asserts that it is a micro-enterprise within the meaning of the Annex to the Commission Recommendation 2003361/EG of 6 May 2003 concerning the definition of micro-, small- and medium-sized enterprises (i.e. an enterprise that employs fewer than 10 persons and has an annual turnover that does not exceed € 2 million). This is insufficient to set aside R. 158 RoP for the following reasons.
18. The fact that a claimant qualifies as an SME within the meaning of the Annex to the Commission Recommendation 2003361/EG of 6 May 2003 does not automatically exempt the claimant from the obligation to provide security for costs.
19. Art. 69(4) UPCA and R. 158 RoP also apply to SMEs. Neither of these provisions contain an exception or restriction with regard to SMEs. These provisions do not distinguish between different types of parties. This is different, for example, in R. 370.8 RoP in which the legislature did recognise the need to introduce a provision taking into account the financial resources of SMEs, which could lead to a reduction in the legal costs borne by SMEs. Likewise, in Art. 2(2) of the Decision of the Administrative Committee of 24 April 2023 on the scale of recoverable cost ceilings (“Scale of ceilings for recoverable costs”), specific reference is made to the status of a party as an SME, providing the possibility for that party to request the Court to lower the ceiling for recoverable costs in case the amount of recoverable costs, if awarded, would threaten the economic existence of the requesting party. The fact that the legislature has not provided an exception or restriction for SMEs regarding security for legal costs in accordance with R. 158 RoP must be regarded as a deliberate choice. In view of this, the applicability of R. 370.8 RoP bears no consequence for the applicability of R. 158 RoP. As the Respondents rightly observed, the provisions on reduced court fees (R. 370.8 RoP) and security for costs (R. 158 RoP) pursue distinct objectives and operate independently.

20. The application of Art. 69 UPCA and R. 158 RoP to SMEs is also consistent with the above-mentioned ratio behind Art. 69(4) UPCA. The protection of a defendant against a claimant, who initiates an action, without having sufficient means to compensate the defendant for the legal costs incurred in the proceedings the defendant was involved in at the initiative of the claimant, may be necessary regardless of whether the claimant is an SME or not.
21. Consequently, the qualification of a party as an SME or the submission of a declaration purporting to establish SME status of a party is not, in itself, sufficient to dispense with the obligation for said party to provide a security for costs pursuant to R.158 RoP, if the requirements for the application of this rule are met.

#### *Financial position of the Appellant*

22. The Court of First Instance, by deciding on the application for security for costs on the basis of the facts and evidence presented by the parties, rightly considered the arguments of the Respondents as “undisputed” and rightly held the facts regarding the Appellant’s financial position therefore to be true as between the parties under R. 171.2 RoP.
23. The Appellant did not submit, and did not even offer to further submit, any financial information that it had in its possession to dispute the relevance of the evidence presented by the Respondents, and, in particular, to substantiate its allegation that the publicly available financial information was outdated. Exhibit MW1 was insufficient in this regard.
24. It was the Appellant’s duty to submit more recent data before the Court of First Instance if that would have shed a different light on its financial position, and not for the Court of First Instance to order this production. The Appellant nevertheless chose not to submit any relevant information on its financial position before the Court of First instance, while it had ample opportunity to do so. Under these circumstances, the Court of First Instance rightly exercised its discretion pursuant to R. 172.2 RoP by not ordering the production of further evidence.
25. Before the Court of Appeal, the Appellant did submit new evidence on its alleged status as an SME (Exhibit MW21). However, this does not lead to a different result.
26. Given that this declaration could have been submitted during the proceedings before the Court of First Instance and given the relative relevance of this declaration to the decision at hand, the Court of Appeal decides to disregard this new submission pursuant to R. 222.2 RoP.
27. Even if this declaration would be admissible, it would not alter the fact that the Appellant is obliged to provide security for the costs of the proceedings. As stated above, the fact that a party is an SME does not in itself mean that the party is not obliged to provide security for legal costs. Consequently, the mere submission of a declaration intended to substantiate the Appellant’s SME status is not sufficient to counter the Respondents’ arguments. In addition, the declaration contains no factual information regarding the Appellants’ financial position that would rebut the Respondents’ substantiated submissions. Rather, the declaration is unsubstantiated in this respect. It is a mere statement, supported by no further evidence.

28. The fact that the Court of First Instance did not refer in the impugned order to the fact that the Appellant is based in the UK where a cost order could allegedly be easily enforced, is of no relevance either. Indeed, as the Respondents correctly state, the order of the Court of First Instance concerning security for costs, was based on the finding that the Appellant's financial position gave rise to a legitimate and real concern about the recoverability of a cost order, rather than on potential difficulties with enforcing that order.

## **B. Amount of the security for costs**

### Legal Framework

29. If a defendant prevails in the main action, it is, pursuant to Art. 69(1) UPCA, R. 152.1 and R. 152.2 RoP, entitled to recover reasonable and proportionate legal costs, the ceiling of which is set in Annex A ("Scale of Ceilings for Recoverable Fees") of the Decision of the Administrative Committee of 24 April 2023 on the "Scale of ceilings for recoverable costs". Considering this, it is established by this Court that the amount of the security of costs should be set starting from this ceiling, weighted according to all the relevant circumstances of the case (CoA Order of 30 April 2026, UPC\_CoA\_1/2026, Adobe v. Keeex, para. 33).
30. Although the SME status of a claimant may be taken into account where appropriate as one of these circumstances when setting the amount of the security (CoA Order of 30 April 2026, UPC\_CoA\_1/2026, Adobe v. Keeex, para. 33), there is no need, in principle, to adopt a different approach for SMEs or to reduce the ceiling for that reason alone.
31. It is recalled that an SME can request the Court to lower the applicable ceiling of recoverable costs following the procedure and applying the conditions of Art. 2(2) to Art. 2(5) of the Decision of the Administrative Committee of 24 April 2023 on the "Scale of ceilings for recoverable costs". One of these conditions is that the requesting party establishes that the amount of recoverable costs to be awarded to the successful party would threaten its economic existence.

### Present case

32. The Court of First Instance was right to refer to the applicable ceiling of recoverable costs (€ 112,000) when assessing the amount of the security needed in the present case, and rightly adjusted this ceiling to the amount of € 75,000, given the relative complexity of the case and the contemplated legal costs of the Respondents.
33. The Court of First Instance could not further elaborate on the alleged SME status of the Appellant here, given the absence of sufficient financial evidence in this respect, in particular regarding the headcount, annual turnover and balance sheet of the Appellant as raised by the Respondents. The Court of First Instance further correctly applied the standard of recoverable costs, in the absence of any circumstances to the contrary, such as an application by the Appellant under (the conditions of) Art. 2(2) of the Decision of the Administrative Committee of 24 April 2023.
34. By not ordering a security equivalent to the full amount of recoverable costs (€ 112,000), but around 60% of that amount (€ 75,000), the Court of First Instance awarded a reasonable amount as security,

thereby sufficiently taking into account all the relevant circumstances of the case presented to it by the parties. The Court of Appeal fails to see any misuse of discretion by the Court of First Instance in the present case and rejects the Appellant's argument that the Court of First Instance did not give equal consideration to its interest compared to the interests of Respondents.

**C. Costs**

35. The request for a cost order is denied. No decision on the reimbursement of legal costs will be made since the present order is not a final decision nor a decision concluding an action.

ORDER

The appeal is dismissed.

Issued on 1 June 2026

Ulrike Voß, presiding judge

Nathalie Sabotier, legally qualified judge and judge-rapporteur

Bart van den Broek, legally qualified judge