



UPC_CFI_360/2026
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 10/06/2026

HEADNOTES

1. Section 55 of Florida Statutes which make the recognition of foreign court judgments conditioned to the assessment that there is no conflict with the *ordre public*, that reciprocity must be guaranteed, and that the principles of a fair trial must be upheld, does as such not give reasons to assume that the enforcement of a cost decision by the UPC in Florida could be doubtful. These principles are international standards and equally present in European jurisdictions and do not justify the ordering of a security according to R. 158 RoP.
2. If a claimant's assets essentially consist of a patent portfolio, whose value not only naturally depends on the outcome of the patent infringement proceedings (see CoA, Order of 17 September 2024 – UPC_CoA_217/2024), but where all licenses to such patents, as well as all income, royalties, proceeds and liabilities are already pledged to someone else, claimant is rendered basically assetless in an economical sense, which justifies the ordering of a security according to R. 158 RoP.

KEYWORDS

Art. 69(4) UPCA, R. 158 RoP, Security for costs; Florida, U.S., domicile; patent portfolio.

APPLICANT

- | | |
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| 1. INFOBLOX INC.
(Applicant) - 2390 Mission College Blvd Ste
501 95054-1554, Santa Clara, CA, United
States | Statement of claim served on 11/03/2026
Represented by Marcus Grosch |
| 2. INFOBLOX GERMANY GMBH
(Applicant) - The Squire 12, Am Flughafen,
The Squire Business Center, 60549
Frankfurt am Main, Germany | Statement of claim served on 22/02/2026
Represented by Marcus Grosch |

3. **NOMIOS GERMANY GMBH**
(Applicant) - Stockholmer Allee 24, 44269
Dortmund, Germany,

Statement of claim served on 22/02/2026
Represented by Marcus Grosch

RELEVANT PARTY

Nixu FL IP Protection LLC
(Claimant) - 16690 Collins Avenue, Suite
1001, Sunny Isles Beach, FL 33160 , USA

Represented by Hosea Haag

PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP2005696	FusionLayer Oy

DECIDING JUDGE

Judge-rapporteur Dr. Stefan Schilling

LANGUAGE OF PROCEEDINGS:

English

PRESENT APPLICATION:

Request for security for costs, R. 158 RoP,

SHORT SUMMARY OF FACTS

- 1 With its Statement of Claim, dated 30 January 2026, Claimant filed an infringement action against Defendants 1), 2) and 3) for directly and indirectly infringing claim 2 of EP 2 005 696 B1 in the Federal Republic of Germany, the Republic of France, Finland and the United Kingdom.
- 2 The Claimant – like Defendant 1) – is domiciled in the United States (U.S.).
- 3 With this application, the Defendants seek an order against Claimant to provide adequate security for the legal costs and other expenses incurred and/or to be incurred by Defendants.

POINTS AT DISPUTE

- 4 According to the Defendants a security for costs is justified as the Claimant was only recently established, does not have assets to provide recourse for a potential cost award, and as being incorporated in the State of Florida enforcement of a cost award is costly and uncertain.

Defendants' position

- 5 Defendants claim that a first reason why it is appropriate to order the security for costs is because the Claimant ("Nixu") is a newly established legal entity which evidently serves as a mere litigation vehicle. Nixu was incorporated in the State of Texas on 26 March 2025. Its current registered address is in Florida, another U.S. state. As Claimant itself referred to, Nixu (allegedly) purchased the Patent from FusionLayer Oy, the original applicant "with effective date of April 17, 2025", just days after its incorporation.
- 6 Defendants argue that the (alleged) transfer of the Patent to Nixu just days after its incorporation strongly suggests that its sole purpose is to engage in patent litigation. The current proceedings were initiated less than two weeks after the (alleged) transfer of ownership was recorded (i.e. 30 January 2026).
- 7 The amended Form S-15, filed with the US Securities and Exchange Commission on 5 June 2025 by the holding company behind Claimant, Spectral IP, Inc. (since renamed to SIM IP Inc), submitted as Exhibit HRM 06, show that Nixu's expenses (such as the costs of these proceedings) are covered by "advances made from time to time" by [REDACTED] and any assets it acquires are pledged to [REDACTED]. It also pledged all licenses to such patents, as well as "all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of [Nixu's patents]" according to Section 2 of the Patent Security Agreement.
- 8 According to the Defendants this means that any future licensing income that Nixu may generate as already pledged to [REDACTED] cannot be relied upon by Defendants to satisfy a potential cost award, regardless of the question whether Nixu is generating such income in the first place. This also means, that even the patent asserted and the rest of the portfolio cannot provide recourse for a cost award because all patents were also pledged to [REDACTED].
- 9 Furthermore, the Defendants point out that the portfolio of which the Patent is a part is not even fully paid yet as the excerpt from the Form S-1 (Exhibit HRM 06, p. 72, last paragraph) states that there is a "remaining balance" of USD 2 million, which will have to be paid with the "proceeds" generated by Nixu. Defendants claim that none of the other publicly available resources reveal any liquidity or assets either. Because Claimant was only established so recently, the first Public Information Report was not filed yet, which makes it impossible to verify the Claimant's current financial status via public records.
- 10 Defendants claim that Claimant is part of a well-established investment scheme. They refer to an out-of-court settlement offer and consider Claimant's demands being

completely disproportionate, already because it paid only USD 4 million for the entire Nixu portfolio.

- 11 Defendants further assert that as Claimant is domiciled in Florida there is a realistic risk that a Florida court will refuse enforcement of a UPC cost award. According to sec. 55.605(2)(c) Florida Statutes, recognition is denied, if the cause of action or claim for relief on which the judgement is based is repugnant to the public policy of the State of Florida. Section 55.605(2)(g) requires that the foreign jurisdiction would give recognition to a similar judgment in the State of Florida. Section 55.605(2)(j) requires compatibility of the foreign decision with principles of due process as they exist in the U.S. Defendants argue that it is far from clear that Defendants could enforce such an award in Florida as the UPC follows the loser-pays rule, is a new court and uses a front-loaded system with limited discovery and rare expert hearings.
- 12 Defendants suggest that given the high out-of-court settlement offer the value in dispute for the infringement proceedings should be set at EUR 5 million. The value of the prospective revocation counterclaim may be assumed as being equal to the value of the infringement action plus up to 50%. Assuming the same ceiling for the counterclaim for revocation, the ceiling for recoverable costs for both proceedings is EUR 1.2 million (EUR 600,000 each).

Claimant's position

- 13 The Claimant argues that the assessment under R. 158 RoP requires a concrete and fact-specific analysis, focusing in particular on the financial position of the claimant and the practical enforceability of a cost decision at the claimant's place of domicile. General assertions or abstract concerns are insufficient. In particular, reliance on structural characteristics of the claimant, such as its incorporation in a foreign jurisdiction, its size, or its business model, including the fact that it may qualify as a non-practising entity, does not, in itself, establish the required risk. The defendant must provide substantiated evidence of the claimant's financial situation and, where enforcement concerns are invoked, must set out in detail the legal and practical obstacles to enforcement, including the applicable foreign legal framework and its operation in practice.
- 14 Claimant argues to have a stable financial position and is domiciled in a country (Florida, U.S.) where the enforcement of claims is secured. Claimant's representative has decades of experience and has been named to IAM's Market Makers Top 40 in 2025 and 2026. Defendants have not produced a single instance in which any entity founded or managed by him failed to meet a financial obligation.
- 15 Disclosure of financial figures, contractual provisions subject to confidentiality obligations and general assets is not in Claimant's interest, in particular not in a competitive environment. Against this background, it should be noted that, whilst Defendants cited publicly available contracts relating to Claimant, Defendants did not at any point claim or state in their application that Claimant has a poor credit rating.

- 16 Claimant purchased its patent portfolio for a very significant price consistent with the market price of such a high-quality patent portfolio, stemming from a European leader in IP resource management. The European patent portfolio itself shall be considered as a highly valuable asset, which could be seized by Defendants. The purchase price itself shows the financial capabilities of Claimant.
- 17 According to the Claimant its settlement demand does not evidence financial weakness. The making of a settlement demand is a normal and lawful feature of commercial litigation. As stated correctly by Defendants, the present proceeding is the only active enforcement of Claimant's rights, meaning no parallel infringement proceedings are pending. Contrary to Defendant's conclusion, this actually serves to minimise the financial risk for Claimant.
- 18 Claimant argues that because Claimant has pledged its patent portfolio and all future income to ██████████ under the Patent Security Agreement, the portfolio still can serve as recourse for a potential cost award as a pledge does not extinguish ownership. Claimant remains the legal owner of the patent portfolio. A security interest granted to ██████████ creates a contingent right of enforcement upon default. It does not transfer title, nor does it place the assets beyond the reach of third-party creditors as a matter of course.
- 19 Claimant refers to the fact that Defendants acknowledged that ██████████ provides ongoing funding advances to Claimant. This confirms that ██████████ is an active and financially capable funder. It is not a passive holding company.
- 20 Claimant is of the opinion that it is established case-law that the enforcement of an order for costs in the United States, where Claimant is domiciled, is neither impossible nor associated with disproportionate difficulties. The Florida Statutes establishes a general rule of recognition, subject only to narrowly construed exceptions, and thus does not support any inference of a "realistic risk" of non-recognition. The fact that the UPC applies a "loser pays" principle pursuant to Article 69(1) UPCA, whereas U.S. litigation often follows the so-called American Rule, does not come close to the high threshold required for a public policy exception under U.S. law.
- 21 Defendants' request for security for costs of EUR 1.2 million is based on an exaggerated and legally unsupported assessment of potential costs. The correct ceiling is EUR 400,000, not EUR 1.2 million. Claimant's initial starting point for negotiations related to a lump-sum licence for its entire patent portfolio. The present proceedings concern the enforcement of one patent only. The purchase price of the entire patent portfolio (as described in the Form S-1) amounted to USD 4.0 million, or approximately USD 117,647 per patent. Hence, the Claimant considers the value of EUR 1 million therefore more than adequately reflecting, if not indeed surpassing, any objectively justifiable measure of the economic interest pursued by Claimant in these proceedings.
- 22 Finally, the Claimant points out that Defendants have not provided any indication of the amount of their actual cost. In light of this and given the courts' established practice of

exercising their discretion and the comparability of this case with others, half of this amount (50 %) is appropriate. This brings the security for costs to EUR 200.000,00.

23 Reference is made in addition to the parties' submissions under the present application.

REQUESTS BY THE PARTIES

24 Defendants request the Court:

I. to order Claimant to provide adequate security for legal costs and other expenses incurred by Defendants which Claimant may be liable to bear, in the amount of **EUR 1 million** or such amount as the Court considers reasonable;

II. to issue a decision by default against Claimant if Claimant fails to provide adequate security within the time limit set by the Court.

25 The Claimant requests:

1. The application for security for costs dated 15 April 2026 is dismissed.

2. In the alternative, the security for costs is set to an amount not higher than EUR 200.000,00.

GROUND FOR THE ORDER

26 The application for an order to provide a security is admissible and justified to the extent laid out in this order. R. 158 RoP does not exclusively reserve orders on security for costs for a panel of the Court. It is by consequence possible for the judge-rapporteur or the presiding judge to issue such orders. This flexibility allows the judges to organise the proceedings in the most efficient and cost-effective manner (preamble of the RoP, para 4; CoA, Order of 14 January 2025 - UPC_CoA_651/2024 – Total Semiconductors v Texas Instruments, mn. 12).

1. Principles

27 Article 69(4) UPCA provides that the Court may, upon application by the defendant, order the claimant to provide adequate security for the court costs and other expenses incurred by the defendant and to be borne by the claimant, in particular in the cases referred to in Articles 59 to 62 UPCA. Rule 158.1 RoP incorporates this provision into the Rules of Procedure and provides that, at any stage of the proceedings, the Court may, upon a reasoned application by a 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 applicant, which the other party may be required to bear.

28 The purpose of security for costs under Art. 69(4) UPCA is to protect the opposing party from difficulties in enforcing a claim for reimbursement of costs. This justifies to order security for costs if the financial position of the claimant/appellant gives rise to a legitimate and real concern that a possible order for costs may be recoverable and/or the

likelihood that a possible order for costs by the UPC may not, or in an unduly burdensome way, be enforceable (CoA, Order of 28 April 2026 – UPC_CoA_21/2026 – Sunnio v Microsoft, mn. 15). The scope of application of Art. 69(4) UPCA and Rule 158.1 RoP is thus not limited to the prevention of enforcement risks, but also covers the risk of insufficient solvency of the opposing party.

- 29 The granting of an application for security is consistent with European Union law and international treaties, provided that the application of the relevant provisions is not discriminatory and allows the Court to take into account the specific facts of the case (LD Hamburg, Order of 14 May 2024 – UPC_CFI_151/2024 – Ballino v Kinexon).

2. Claimant's place of business

- 30 The Claimant's place of business in Florida, U.S., does not justify the ordering of security for costs.
- 31 It is standing practice of the UPC that the fact that a claimant is domiciled in the U.S. does not justify an order under Rule 158 RoP. The judge-rapporteur has no doubt that in the U.S. judgments of foreign courts and related orders on costs may not only in principle be recognized and enforced (LD Munich, Order of 29 September 2023 – UPC_CFI_15/2023 ORD_576853/2023 – Edwards Lifesciences v Meril; LD Munich, Order of 23 April 2024 – UPC_CFI_514/2024 – Volkswagen et al. v NST; LD Paris, Order of 21 May 2024 – UPC_CFI_495/2023, ORD_23494/2024 – ARM v ICPillar), but with respect to European Court decisions, including the UPC, also in practice. There is no reason to assume that the situation might be divergent in the State of Florida. Defendants have neither shown that a practice of non-recognition could already be in place nor that this is seriously to be expected (cf. LD Munich, Order of 23 April 2024 – UPC_CFI_514/2024 – Volkswagen et al. v NST). The rules of Section 55 of Florida Statutes Defendants refer to, are based on recognized international rules governing the recognition of foreign court judgments, namely given that there is no conflict with the *ordre publique*, reciprocity is guaranteed, and the principles of a fair trial are observed. These principles are, in fact, international standards and equally present in European jurisdictions and do as such not give reasons to assume that the enforcement of a cost decision by the UPC could be doubtful in the State of Florida. In particular, these rules do not imply that the Courts of the State of Florida would likely deny recognition of decisions of the UPC as of any other European Court who is following a loser-pays rule, using a front-loaded system or is restrictive on discovery or expert hearings.

3. Claimant's financial position

- 32 However, the undisputed facts regarding the Claimant's financial position justify the ordering of security for costs.
- 33 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 to challenge those grounds and facts in a reasoned manner, particularly as that party generally has

knowledge of and evidence regarding its financial situation (Court of Appeal, 17 September 2024 – UPC_CoA_217/2024_APL_25919/2024).

- 34 In accordance with these principles, the Defendants have set out sufficient facts in their application to show that the Claimant’s financial position gives rise to a legitimate and genuine concern that a potential order for costs might not be recoverable.
- 35 First, the Claimant is a newly established legal entity incorporated on 26 March 2025 (and then moved from Texas to Florida), who purchased the patent in suit directly afterwards just days after its incorporation. The current proceedings were initiated less than two weeks after the (alleged) transfer of ownership was recorded (i.e. 30 January 2026). This is a strong indication that the Claimant was established as a single-purpose entity just for the present proceedings.
- 36 Second, as the Claimant – obviously – has no credit history its assets have to be evaluated carefully. It is of relevance that the Claimant’s assets essentially consist of a patent portfolio, whose value not only naturally depends on the outcome of the patent infringement proceedings (see Court of Appeal, 17 September 2024 – UPC_CoA_217/2024_APL_25919/2024), but also on its current usability to satisfy a potential cost award. While it is not the case that the Claimant has sued numerous other companies for alleged patent infringement, which, should it lose the case, could give rise to correspondingly high claims for reimbursement of costs. However, it is undisputed that the Claimant had pledged “all of its patents and patent licences” and “all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing” to ██████████ according to Section 2 of the Patent Security Agreement, thus rendering the Claimant basically assetless in an economical sense. Regardless of continuous legal ownership, the complete pledge of its assets and revenue highly questions that the patent portfolio can effectively serve as recourse for a potential cost award. Furthermore, it is undisputed that the patent portfolio is not even fully paid yet as the excerpt from the Form S-1 (Exhibit HRM 06, p. 72, last paragraph) states that there is a “remaining balance” of USD 2 million, which will have to be paid with the “proceeds” generated by the Claimant, rendering Claimant also mainly illiquid. As a result, Claimant is currently depending on ██████████ willingness to provide ongoing funding, which is no hard claim the Defendants could reasonably rely on when it comes to an enforcement of a possible positive cost decision.

4. Amount of security

- 37 The amount, the type of security and the period within which the security is to be provided are at the discretion of the court. Rule 158.1 RoP refer to the expected costs and expenses of the proceedings. In particular, according to R. 158.1 RoP the adequate security has to be based on the amount of 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, not any other financial harms. As the parties correctly pointed out the value of the infringement action and the potential counterclaim for revocation shall be taken into account, however, jointly.

- 38 The basic criteria for determining the value of a case before the UPC is the claimant's interest, particularly in relation to a licence fee assessment. In the present case the Claimant seeks an injunction against the Defendants in the territory of three UPC Contracting Member States plus the United Kingdom, whereas the latter has been excluded with respect to Defendant 1) by the judge-rapporteur's order dated 8 June 2026 due to Defendant 1)'s preliminary objection. This scope justifies the value indicated by the Claimant for the infringement action. As the UPCA has foreseen a counterclaim for revocation against an alleged patent infringement as a standard means of defence this has also be taken into account. Hence, it seems appropriate - for the time being, at least - to determine the value of the infringement action to 1 Mio EUR plus 1,5 Mio EUR for the potential counterclaim for revocation, adding to a combined potential value of the case of 2,5 Mio. EUR. The Court remains the right to reconsider the value of the dispute at a later stage.
- 39 As the Claimant correctly asserted, the correct ceiling for such a combined value of infringement action and counterclaim would be 400,000 EUR. However, it is not automatic that the proposed security has to follow the ceiling for recoverable costs, as this set of rules only provides guidance on the maximum amount of reimbursable costs. In exercising its discretion, the Court has also to take into account that an order to provide security can, depending on the circumstances, limit a party's right to an effective remedy and to a fair hearing as guaranteed under Union law, including Art. 47 of the Charter and the Enforcement Directive, which must be avoided (LD Düsseldorf, Order of 27.12.2024 – UPC_CFI_99/2924, App_41756/2024; LD The Hague, Order of 13.02.2024, UPC_CFI_239/2023, App_586761/2023; LD Hamburg, Order of 29.05.2025 – UPC_CFI_525/2024 – Visibly vs Easee B.V. et al.). Therefore, the Claimant's interest in security on one hand and the Defendants' interest in the effective defence against allegations based on a european patent on the other, must always be balanced. In setting the amount of the security equal to 50% of the prospected ceiling, meaning at € 200,000, the conflicting interests of the opposing parties are brought to a balance.
- 40 The security may be provided by the Claimant in form of the deposit to the UPC account dedicated to security deposits or in the form of a bank guarantee provided by a bank licensed in the European Union within four weeks. The Claimant may choose the form of security it prefers to provide. The time period is deemed sufficiently long to make the necessary arrangements for the Claimant.

ORDER

1. The Court orders the Claimant to provide security for Defendants' legal costs and other expenses incurred by Defendants which Claimant may be liable to bear in the (total) amount of € 200.000, whereby the security may be provided either by deposit into the relevant bank account of the Unified Patent Court or by the provision of a written, irrevocable, unconditional and open-ended guarantee from a credit

institution established in the member states of the UPC Agreement and authorised to carry out activities in those member states.

2. The security has to be provided within four weeks from the reception of this order.
3. If Claimant chooses to provide the security by deposit, it has to be to the following bank account of the UPC:

Account Holder: JURIDICTION UNIFIEE DU BREVET,
Account name: JURIDICTION-SECURITY RECEIPT,
BIC: BCEELULL,
IBAN: LU55 0019 7355 1895 9000,
BANK: SPUERKEESS,
Address :1 PLACE DE METZ L-2954 Luxembourg

4. The Claimant is informed, that pursuant to Rule 158(5) of the Rules of Procedure, a default decision may be issued under Rule 355 of the Rules of Procedure if it to provide adequate security within the specified time limit.

INFORMATION ON THE APPEAL

Since an order pursuant to R. 158 RoP is a case management order it is as such subject to panel review, not an appeal CoA, Order of 14 January 2025 - UPC_CoA_651/2024 – Total Semiconductors v Texas Instruments, mn. 16).

INSTRUCTION TO THE SUB-REGISTRY

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

SIGNATURES

Judge rapporteur Dr. Stefan Schilling

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