



Appeal n°:

UPC-COA-051/2026

ORDER
of the Court of Appeal of the Unified Patent Court
concerning an application for leave to appeal against a cost decision (R. 221 RoP)
issued on 29 June 2026

APPLICANT (DEFENDANT IN THE PROCEEDINGS FOR COST DECISION BEFORE THE COURT OF FIRST INSTANCE)

Suinno Mobile & AI Technologies Licensing Oy, Fabianinkatu 21, 00130, Helsinki, Finland
(hereinafter "**Suinno**")

represented by Petri Eskola, attorney-at-law, Backström & Co Attorneys

RESPONDENT (APPLICANT IN THE PROCEEDINGS FOR COST DECISION BEFORE THE COURT OF FIRST INSTANCE)

Microsoft Corporation, One Microsoft Way, WA 98052-6399, Redmond, USA
(hereinafter "**Microsoft**")

represented by Prof. Dr. Tilman Muller-Stoy and Nadine Westermeyer, attorneys-at-law, BARDEHLE
PAGENBERG Partnerschaft mbB Patentanwälte Rechtsanwälte

PATENT AT ISSUE

EP 2 671 173

DECIDING JUDGE

Emmanuel Gougé, legally qualified judge and Standing judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Decision of the Court of First Instance of the Unified Patent Court, Central Division, Paris

Seat, dated 31 March 2026

- Reference number: UPC-CFI-0000544/2026

FACTS AND REQUESTS OF THE PARTIES

1. On 9 February 2026, Microsoft lodged an application for a cost decision, pursuant to R. 151 RoP, requesting the Court of First Instance, Paris section of the Central Division (hereinafter “CFI” or “CD Paris”) to determine the costs incurred in the counterclaim for revocation proceedings registered as UPC_CFI_433/2024 in the amount of EUR 360,940.60. Suinno requested the CFI to reject Microsoft’s cost application as claimed and to reduce the amount, primarily to EUR 3 000 or alternatively to EUR 41,290.20 as a maximum.
2. The CFI determined the costs incurred by Microsoft in the counterclaim for revocation proceedings in the amount of EUR 300,000.00 and ordered Suinno to pay these costs within three weeks from the date of service of its decision (impugned decision of 31 March 2026).
3. On 8 April 2026, Suinno lodged an application for leave to appeal, pursuant to R. 221 RoP, against the impugned decision, requesting the Court of Appeal to grant leave to appeal the impugned decision and to amend the impugned decision so that “the costs ordered are EUR 3 000 or secondarily, at the very maximum, EUR 41,290.20€, including the court fee”.
4. Suinno argues mainly that the impugned decision must be set aside because “it is explicitly, according to the grounds thereof, against Article 69(1) and (3) of the UPCA, as well as contrary to Order Public”. Suinno also claims that “it is a fact known to the Court that Microsoft has misrepresented facts in their action, and the Court is being misled by this”.
5. On 10 April 2026, the Standing judge provided Microsoft with an opportunity to be heard about the application for leave to appeal. Microsoft submitted its comment on 14 April 2026 requesting that the application for leave to appeal filed by Suinno against the impugned decision be rejected and that Suinno bears the costs of the proceedings.

GROUNDINGS FOR THE ORDER

6. Pursuant to Art. 69(1) UPCA, 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.
7. The actual (or final) determination of the costs is subject to separate proceedings for cost decision pursuant to R. 150 RoP. In the proceedings for a cost decision before the Court of First Instance, the judge-rapporteur decides in writing on the costs to be awarded or apportioned in accordance with Art. 69(1) to (3) UPCA (R. 156.2 RoP).
8. The judge-rapporteur who decides on costs will typically have managed the case step by step throughout the various stages of the proceedings. The legal review on appeal is consequently limited to a marginal review of whether the judge-rapporteur’s assessment of costs results in the successful party being compensated for legal costs and other expenses beyond what is reasonable and proportionate, or otherwise deviates from the principles inherent in Art. 69(1) UPCA, as specified in R. 150 et seq. RoP (CoA, Order of 3 July 2025, UPC_CoA_153/2025 APL_8639/2025, Tiroler vs SSAB).
9. R. 152.2 RoP provides that the Administrative Committee shall adopt a scale of ceilings for recoverable costs by reference to the value of the proceedings, thus ensuring the applicant can recover reasonable and proportionate costs for representation as set out under R. 152.1 RoP.

10. By reference to the Scale of ceilings for recoverable costs as adopted by the Administrative Committee of 24 April 2023, the CFI decided that the applicable ceiling is EUR 600,000.00 for a value of the revocation action set at EUR 5,000,000.00. Taking into account the ceiling established by the CFI, it can be considered that the awarded costs of EUR 300,000.00 are proportionate.
11. Moreover, pursuant to R. 370.6 RoP, the assessment of the value of the relevant action shall reflect the objective interest pursued by the filing party at the time of filing the action. In this respect, Suinno did not demonstrate that the CD Paris was wrong in considering that the costs are “reasonable, as they relate to activities essential for the counterclaim, and do not exceed the necessary scope for that objective”. As stated by the CD Paris in the impugned decision, “this also applies to the costs relating to the activities of the French branch of the law firm, as such activities are considered to be covered by the mandate granted by the client and do not exceed what is reasonably necessary for an appropriate defence, based on an *ex-ante* assessment by a diligent and cautious party”.
12. Moreover, Suinno’s argument that the costs claimed are not recoverable insofar as they relate to a knowing alleged misrepresentation of facts by Microsoft, and that the CD Paris has been misled by such misrepresentation in its decision on the merits are not to be decided in proceedings for a costs decision and shall not preclude their reimbursement, as correctly pointed out by the CD Paris (impugned decision, para. 10).
13. Suinno did not demonstrate that the judge-rapporteur at the CFI has made a thorough and detailed assessment of the costs, considering in particular that the redacted costs claimed by Microsoft, even in the unredacted version of the document filed (comprising all invoices received), were not taken into account given that it was impossible to ascertain their amount. In addition, the CFI did not consider certain cost items indicated in the respective invoices as they were related to activities concerning the distinct infringement action proceedings, which have already been determined. It is also noted in the impugned decision that the invoices also included some activity carried out after the conclusion of the relevant proceedings, “which, likewise, were not taken into account, as not strictly correlated with the need to prosecute the counterclaim”.
14. Against this background, there are no indications that this assessment resulted in the successful party being compensated for legal costs and other expenses beyond what is reasonable and proportionate. It can therefore not be considered that the impugned decision deviates from the principles inherent under Article 69(1) and (3) UPCA.

ORDER

Leave to appeal is denied.

This order was issued on 29 June 2026.

Emmanuel Gougé
Legally qualified judge and Standing judge