



LISBON – LOCAL DIVISION

UPC_CFI_757/2024

DECISION

**of the Court of First Instance of the Unified Patent Court
Local Division in Lisbon
delivered on 29 July 2026
concerning EP 2 819 131**

CLAIMANT

TELEFONAKTIEBOLAGET LM ERICSSON

21 Torshamnsgatan, Kista, 164 83 Stockholm, Sweden.

represented by Mr. Wim Maas

DEFENDANT

ASUSTEK COMPUTER INC

15, Lide Road, Beitou Dist., Taipei City 112019, Taiwan.

represented by Mr. Alexander Wiese

PATENT AT ISSUE:

EUROPEAN PATENT NO EP 2 819 131 B1

PANEL/DECIDING JUDGES:

Presiding judge and Judge-rapporteur: Rute Lopes

Legally qualified judge: Sam Granata

Legally qualified judge: Petri Rinkinen

Technically qualified judge: Johannes Mesa Pascasio

LANGUAGE OF THE PROCEEDINGS:

English

SUBJECT-MATTER

Confirmation of a settlement under R. 365 RoP

FACTS AND SUBMISSIONS

- 1 TELEFONAKTIEBOLAGET LM ERICSSON (hereinafter “Ericsson” or “Claimant”) and ASUSTEK COMPUTER INC (hereinafter “AsusTek” or “Defendant”) are opposing parties in the infringement action filed by Ericsson. AsusTek filed a counterclaim for revocation.
- 2 During the Interim Conference that took place, following a suggestion by the Judge-Rapporteur, the parties indicated their mutual willingness to reach an agreement on costs and to notify the Court of any agreement reached. The Court further directed that, if no agreement had been reached by two weeks before the oral hearing, the parties were to submit their respective cost estimates by 10 March.
- 3 On 10 March 2026, the following agreement on costs was submitted:
 - a. If AsusTek is successful in its Counterclaim for Revocation and successfully defends itself against Ericsson’s Infringement Action, Ericsson will bear the costs in the total amount of EUR 150 000 (one hundred and fifty thousand euros);
 - b. If Ericsson is successful in the Counterclaim for Revocation proceedings, but the Court rules that the Patent is not infringed, then the costs will be split between the parties;
 - c. If Ericsson is successful in its Infringement Action and successfully defends itself against AsusTek’s Counterclaim for Revocation, AsusTek will bear the

costs in the total amount of EUR 150 000 (one hundred and fifty thousand euros).

In view of the decision issued by the Local Division Düsseldorf on 14 April 2025 in the cases with numbers UPC_CFI_363/2023 and UPC_CFI_677/2024, the parties hereby clarify that, as a consequence of their agreement, the parties waive their right to claim reimbursement for any additional costs, such as travel expenses. The reimbursement costs are therefore limited to representation costs, and the recoverable ceiling is set to the fixed amount of EUR 150 000 (one hundred and fifty thousand euros).

- 4 On 6 May 2026, a decision on the merits of the case was issued. The Court upheld the infringement claim and dismissed the counterclaim for revocation. In the decision, the Court stated the following in para. 261: *“Parties have settled on costs, and the Court refers to the settlement (see above para. 5). No confirmation of the Court was required by the parties (R. 365.1 RoP). In that regard, nothing is to be ordered on costs”*.
- 5 On 6 July, an appeal against the Decision of the Court was filed by AsusTek.
- 6 On 7 July, Ericsson requested that the Court issue a decision as to costs in accordance with the terms of the cost agreement between the parties, i.e. to confirm that AsusTek must reimburse EUR 150 000 to Ericsson. Ericsson further requested that the Court set a deadline, at its discretion, for AsusTek to make the payment.
- 7 To justify its request, Ericsson held that, after Ericsson asked AsusTek to transfer the agreed amount, AsusTek counsel responded that “our client will, of course, arrange for payment as soon as the court issues a corresponding decision on costs”. Ericsson further states that in the email exchange, AsusTek responded to Ericsson that “there is no dispute that ASUSTEK considers itself bound by the cost agreement with Ericsson. Accordingly, AsusTek does not contest the amount of the agreed cost reimbursement”. Ericsson argues that, in light of AsusTek’s response, AsusTek still agrees that it must reimburse Ericsson and that AsusTek also indicated that the cost agreement between the parties “does not constitute an independent basis for liability”, and that “as soon as the court has issued a corresponding order on costs, AsusTek will pay the costs based on the respective order”.
- 8 AsusTek opposed Ericsson's request, arguing that the agreement (and not a settlement) on costs submitted on 10 March 2026 only concerned the ceiling of the recoverable costs of the proceedings and so a procedure under R. 150 et seq. RoP was still required within a month of the issuing of the final decision. AsusTek further argued that there is no legal basis to apply R. 365 RoP, as it requires the consent of both parties and AsusTek has not joined the Claimant’s application, and R. 365.4 RoP does not apply autonomously. Finally, AsusTek argued that Ericsson’s request requires an inadmissible substantive assessment, at least as to the deadline for payment.

Rule 365.1 RoP - Scope

- 9 R. 365.1 RoP states that if the parties have concluded their action by way of a settlement, they shall inform the judge-rapporteur. If requested by the parties, the Court shall confirm the settlement by a decision that may be enforced as a final decision of the Court. According to the RoP, a settlement is the means by which the parties may resolve a dispute or a potential dispute.
- 10 The main objective of R. 365.1 RoP is for the Court to embody or endorse a settlement reached by the parties, thereby giving it the enforceability of a decision. In that regard, for the Court to confirm a settlement under R. 365.1 RoP, as pointed out by the CD Munich on 23 July 2024 (*Astellas v. Healios*), it is necessary that the parties provide the actual terms of the settlement that the parties seek to have confirmed by the Court in a decision.
- 11 R. 365.1 RoP may apply to partial settlements (LD Düsseldorf, 2 June 2025, UPC_CFI_504/2023 accepted a partial settlement relating to certain parties to the proceedings) and it also applies to settlements limited to costs. In fact, as long as the settlement resolves an existing or potential dispute, regardless of whether it is submitted pending main proceedings on the merits as a partial settlement of the overall dispute it falls under R. 365.1 RoP. AsusTek's view that R. 365.1 RoP only applies to settlements bringing the proceedings to an end would be contrary to the principle of party disposition according to which parties may dictate the scope of the litigation. The CD Munich decision in *Astellas v. Healios*, on which AsusTek relies, is not contrary to this understanding, as it only concerns a case where the parties in fact settled the entire case, putting an end to it.
- 12 Whether an agreement on costs constitutes a settlement within the meaning of R. 365.1 RoP must be assessed in light of its substance. If the agreement is intended to resolve an existing or potential dispute, it constitutes a settlement. Accordingly, the qualification depends on the substance of the arrangement rather than on the terminology used by the parties.
- 13 The Court is to confirm a settlement under R. 365.1 RoP, if requested by the parties. It is not clear, contrary to AsusTek's position, that R. 365.1 RoP always requires that both parties specifically request confirmation. AsusTek relies on that interpretation to conclude that, since it did not agree to the confirmation, Ericsson's request must be denied.
- 14 The interpretation of the RoP by the Court must be reasonable and balanced, avoiding excessively formal or disproportionate outcomes. When a rule is open to more than one interpretation, the preferred is the one that most respects the legitimate interests of all parties, whilst avoiding unjustified procedural advantages for any one of them that would be contrary to the principles of fairness and equity.

- 15** Although the Court acknowledges that AsusTek's interpretation might be inferred by the wording: "requested by the parties", that wording must be interpreted in the overall context of the rule, particularly in circumstances where the settlement and its terms have already been jointly submitted to the Court before a request for confirmation is made.
- 16** The submission of a settlement and its terms to the Court signals to both parties and to the Court a commitment that both parties are willing to comply with in good faith and in a transparent manner with the terms of said commitment. A party that in good faith submits such a settlement to the Court accepts that it is to be honoured, which implies it accepts that the settlement may, where appropriate under R. 365.1 RoP, be rendered enforceable through confirmation by the Court. In that regard, mandatorily requiring a second joint request, despite the parties having already jointly concluded and submitted the settlement, would serve no legitimate procedural purpose and would place the enforceability of the settlement exclusively within the discretion of one party in a scenario where both parties submitted the settlement. The stricter interpretation AsusTek relies on would leave unprotected the party that relied on the jointly submitted settlement and acted procedurally accordingly.
- 17** The Court thus concludes that the requirements of R. 365.1 RoP are satisfied when only one party submits the request for confirmation, after both parties have already jointly submitted the settlement and its terms.

The present case

- 18** In this case, on 10 March 2026, Ericsson submitted what it called an agreement that the parties had reached on costs. AsusTek acknowledged and confirmed that submission at the oral hearing, which must be interpreted as meaning that, at least at the oral hearing, AsusTek had also submitted the settlement. The Court subsequently mentioned the settlement in the decision, but made no order at that time because no request for confirmation had been made. On 7 July, only Ericsson requested that the Court issue a decision as to costs in accordance with the terms of the settlement between the parties, i.e. to confirm that AsusTek must reimburse EUR 150 000 to Ericsson. Ericsson further requested that the Court set a deadline, at its discretion, for AsusTek to make the payment. Ericsson grounded its request on R. 365 RoP. It is a request for confirmation of the settlement.
- 19** The Court finds that the submission of 10 March that AsusTek acknowledged at the oral hearing constitutes a settlement within the meaning of Rule 365.1 RoP. The wording and the context in which it was submitted clearly indicate that the parties effectively wanted to resolve an existing or potential dispute with regard to costs. Under that settlement, the unsuccessful party in both the infringement and revocation proceedings would bear costs totalling EUR 150 000 (one hundred and fifty thousand euros). The parties further waived their right to claim reimbursement for any additional costs that might arise. As the parties did not then request confirmation of the settlement, the Court ordered nothing in that regard.

- 20** The Court does not accept AsusTek's argument that the settlement only fixed a ceiling for recoverable costs, and that a procedure under R. 150 et seq. RoP was required. That interpretation is not supported by the wording of the settlement. Nor does it follow from the reference the parties made to the decision issued by the Local Division Düsseldorf on 14 April 2025 (UPC_CFI_363/2023 and UPC_CFI_677/2024), where it was acknowledged that the agreement of the parties only regarded the maximum amount for recoverable costs. In fact, it is the Court's understanding that this clarification points precisely to the fact that the parties did not, in this case, only wish to fix a ceiling for recoverable costs while leaving the determination of recoverable categories and amounts to a subsequent procedure, but to prevent the possibility that the agreement would have a similar interpretation to the cited case.
- 21** The Court further notes that it still has jurisdiction to confirm the settlement. The decision on the merits did not decide on the issue of confirmation of the settlement because no such request had yet been made. The present request does not seek to amend or alter in any way the decision on the merits. It only regards confirmation under R. 365.1 RoP of a settlement previously jointly submitted to the Court.
- 22** Furthermore, AsusTek's argument that the request is too late is not backed by the RoP, which does not set a time limit or a procedural step (such as filing an appeal) for requesting a confirmation decision. AsusTek's argument with regard to the inadmissibility of the late application seems to be related to the fact that Ericsson is now, at a late stage, "seeking to alter the procedural consequences of the proceedings". This argument is, however, not explained in relation to the alleged delay, and the Court also finds no support for the claim that Ericsson's request constitutes any alteration of the procedural consequences of the proceedings.
- 23** Finally, AsusTek's argument that the request by Ericsson that the Court sets a deadline for the payment to be due implies an inadmissible assessment is not correct. The decision confirming the settlement is immediately enforceable upon service (R. 118.8 RoP does not apply), if no deadline is set. Establishing a deadline will allow the party that has to pay, in this case AsusTek, for a longer deadline to comply. The Court finds that one week from the date of the service of this decision is a reasonable deadline.
- 24** In light of the interpretation adopted above, all requirements of R. 365.1 RoP are met and, consequently, Ericsson's request to confirm the settlement must be granted.

ORDER

1. The Court confirms the settlement submitted on 10 March 2026.
2. AsusTek must pay EUR 150 000 to Ericsson, according to clause C of the settlement.
3. The settlement submitted on 10 March 2026, confirmed by this decision, may be enforced as a final decision of the Court within one week of service of this decision.

RUTE LOPES PRESIDING JUDGE AND JUDGE-RAPporteur	
PETRI RINKINEN LEGALLY QUALIFIED JUDGE	Digitally signed Rinkinen Petri Olavi 2026-07-28 14:29:55 +0200 Unified Patent Court Einheitliches Patentgericht Jurisdiction unifiée du brevet
SAMUEL GRANATA LEGALLY QUALIFIED JUDGE	Samuel Rocco M Granata Digitally signed by Samuel Rocco M Granata Date: 2026.07.28 13:31:19 +02'00'
JOHANNES MESA PASCASIO TECHNICALLY QUALIFIED JUDGE	Digitally signed Mesa Pascasio Johannes 2026-07-28 16:00:55 +0200 Unified Patent Court Einheitliches Patentgericht Jurisdiction unifiée du brevet
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LEAVE TO APPEAL IS GRANTED. THE PRESENT ORDER MAY BE APPEALED WITHIN 15 DAYS OF SERVICE OF THIS ORDER (ART. 73(2)(b)(ii) UPCA, RULE 220.2).