Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC-CoA-49/2026

DECISION

of the Court of Appeal of the Unified Patent Court
issued on 5 November 2026
concerning a cost application (R. 157 and R. 221.3 RoP)

HEADNOTES:

For the unsuccessful party to be able to comment on both the necessity and the proportionality of the costs for representation, the applicant for a cost decision should provide a sufficiently substantiated specification of the costs in view of the circumstances of the case, which would generally include breakdowns corresponding to each service provided in relation to the case, the date on which such service was provided, and the number of hours and rate billed for that specific service.

Exceeding the ceiling does not as such entitle a party to reimbursement of the ceiling set by the Administrative Committee pursuant to R.152.2 RoP.

KEYWORDS:

- reasonable and proportionate costs (Art.69(1) UPCA, R.152.1 RoP)
- Substantiation of costs for representation (R. 156 RoP)

APPLICANT (RESPONDENT IN COST APPLICATION AND APPLICANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Guardant Health, Inc., 3100 Hanover Street, 94304 Palo Alto, California, United States of America

(hereinafter referred to as: "Guardant")

represented by Ms. Agathe Michel-de Cazotte, attorney at law, Carpmaels & Ransford LLP, London, United Kingdom

RESPONDENTS (APPLICANTS IN COST APPLICATION AND DEFENDANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. **Sophia Genetics SA**, La Pièce 12, CH-1180, Rolle, Switzerland
2. **Sophia Genetics SAS**, Technopole Izarbel, 158 allée Fauste d'Elhuyar , 64210 Bidart, France
3. **Sophia Genetics SRL**, Via Michelangelo Buonarroti 39, 20145, Milan, Italy
4. **Sophia Genetics GmbH**, Engelbergerstr. 19, 79106 Freiburg, Germany

(hereinafter referred to as: "Sophia")

represented by Ms. Liz Cohen and other representatives, attorneys at law, Bristows (Ireland) LLP, Dublin, Ireland

PATENTS AT ISSUE

EP 3 470 533 ("EP'533") withdrawn
EP 3 591 073 ("EP'073")
EP 3 443 066 ("EP'066")
EP 3 766 986 ("EP'986")

STANDING JUDGE

This order has been adopted by Nathalie Sabotier, standing judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Paris Local Division, 16 March 2026, issued in UPC-CFI 0000591/2026, (linked to the provisional measures proceedings UPC_CFI_808/2025)

LANGUAGE OF THE PROCEEDINGS

English

ORAL HEARING

Both parties agreed to proceed without an oral hearing being held.

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. On 29 August 2025, Guardant lodged an application for provisional measures before the Local Division Paris against Sophia to prohibit the continuation of the alleged infringement of four of its European patents (EP'533, EP'073, EP'066 and EP'986). At the stage of the reply to the objection to the application for provisional measures, Guardant withdrew its request regarding EP'533.

2. By order dated 23 January 2026, the Local Division Paris rejected the application for provisional measures under EP'073, EP'066 and EP'986 and ordered Guardant to pay an interim award of costs of the proceedings amounting to EUR 400,000. This order specifies that Guardant assessed the value of the case at EUR 6,000,000, which was not contested by Sophia.

3. On 9 February 2026, Guardant appealed the order only with regard to EP'066 and costs.

4. On 12 February 2026, Sophia lodged an application for a cost decision pursuant to R. 150 RoP requesting the judge-rapporteur to order Guardant to pay to Sophia its cost of representation up to EUR 600,000. On the same date, Sophia filed a confidentiality application concerning information in the cost application itself and the supporting exhibits SG106 (invoices of costs incurred by Sophia).

5. In its written comments dated 2 March 2026, Guardant raised the inadmissibility of the cost application and, in the alternative, requested its dismissal as not well-founded. Concerning the confidentiality application, Guardant did not dispute the classification of the concerned information as confidential but requested a wider confidentiality circle than the one sought by Sophia.

6. By order dated 16 March 2026 (the impugned order), the judge-rapporteur ruled both on the confidentiality circle and the cost application, setting the costs to be paid by Guardant to Sophia at the amount of EUR 600,000, before Guardant had access to the unredacted version of the application and evidence.

7. On 31 March 2026, Guardant lodged an application for leave to appeal against this cost order, in accordance with R. 157 and R. 221 RoP.

8. By an order dated 17 April 2026, after comments from Sophia were requested, leave to appeal was granted by the standing judge and comments from Guardant were requested after it had been given access to the unredacted version of the application and exhibit SG106 by the CFI's registry in accordance with R. 262A.7 RoP.

9. Access to the unredacted version of the application and exhibits has been effective only on 11 May 2026. The standing judge therefore set a further deadline for the parties to comment.

10. In its Statement dated 2 June 2026, Guardant requests that the Court of Appeal:
    I. set aside the impugned decision dated 16 March 2026 in UPC-CFI-0000591/2026; and
    II. dismiss Sophia's costs application as inadmissible;
    III. alternatively, order Sophia to substantiate its cost application.

11. In its Statement of response dated 9 June 2026, Sophia requests that the Court of Appeal:
    I. uphold the impugned decision dated 16 March 2026 (UPC_CFI_591/2026) and reject Guardant's appeal,
    additionally, only in the event the Court of Appeal considers it necessary that Sophia provide additional evidence regarding the costs incurred,
    II. set a deadline for Sophia to file such further evidence, proposed as two weeks,
    III. set a further deadline for Guardant to comment on the further evidence, such submissions being limited to the further evidence only, proposed as two weeks.

12. By final order dated 2 July 2026, the Court of Appeal, insofar as relevant, set aside point 3 of the order of 23 January 2026 (interim award of costs), ordered Guardant to bear the costs and other expenses incurred by Sophia in the CFI proceedings (and on appeal), and ordered Guardant to pay Sophia as interim award of costs for the CFI proceedings an amount of EUR 300,000.

13. By procedural order dated 31 July 2026, the standing judge ordered Sophia to file further evidence of its costs regarding representation in relation to the case UPC-CFI-808/2025 under the confidentiality regime set out in the impugned order and Guardant has been given the opportunity to comment on the new evidence filed.

14. By further procedural order, the standing judge requested the parties' comments on the possibility of referring the action back to the Court of First Instance.

INDICATION OF PARTIES' SUBMISSIONS

15. Guardant first argues that the cost application was inadmissible and that the reasons given by the judge-rapporteur in the impugned order to consider the application admissible contradict both the wording of R. 150 RoP, which expressly refers to a "decision on the merits", and the settled case law, which only allows admissibility of a cost application in case an action on the merits has not been brought. In the case at hand, Guardant asserts that an action on the merits could not be excluded given the appeal lodged before the application for a cost decision and the possibility that the order denying the grant of provisional measures be overturned. Guardant adds that the cost application was all the more inadmissible here, as the order dated 23 January 2026 did not rule that Guardant should bear the costs in its operative part, and the judge-rapporteur could not rectify this in the cost order.

16. Guardant further argues that the application, in particular the item 'legal expenses' is not sufficiently substantiated as [redacted] are allegedly billed to Sophia with no breakdowns as to what the amounts relate to. Guardant adds that the 'travel expenses' contain discrepancies. For these reasons, Guardant submits that the cost application should be rejected or, in the alternative, be further substantiated by Sophia.

17. Commenting on the table provided by Sophia in order to further evidence its costs, Guardant emphasizes that this table contains no dates, no narratives and no rates and that the figures (the total number of hours allocated to different categories of services) are insufficient to establish that those hours were reasonably or proportionately incurred. In effect, according to Guardant, such table does not allow to comment on whether the work billed was necessary for the conduct of the first instance proceedings, whether the time was recorded more than once for substantially the same work, and whether the time claimed was reasonable for the task concerned. Guardant adds that the ceiling is a maximum limit which by no means creates a right to recover that amount.

18. Guardant agreed with the referral back of the action to the Court of First Instance.

19. Sophia, for its part, concerning the admissibility of its application for costs, first recalls that, in the SharkNinja v. Dyson order, the Court of Appeal clearly stated that R. 150 and 151 RoP should apply *mutatis mutandis* in case an application for provisional measures was unsuccessful. Sophia concludes that the judge-rapporteur rightly declared its application for a cost decision admissible. Sophia further states that the pending appeal does not alter its right to apply for a cost decision, and it is even more so, that parts of the application, pertaining to three of the four patents at stake before the Court of First Instance, are not pursued by Guardant before the Court of Appeal. Therefore, according to Sophia, even if Guardant was to prevail on appeal in relation to EP'066, Sophia would still be entitled to claim the reimbursement of its costs concerning the first instance proceedings in relation to EP'533, EP'073 and EP'986. Sophia adds that, because of the appeal, a stay could have been decided in the cost proceedings by the judge-rapporteur, but it is a case management issue that does not render the application inadmissible.

20. Sophia further argues, on the substance of the present appeal, that Guardant has not provided any convincing argument that the representation costs of EUR 600,000 claimed here, as an equitable assessment of its legal costs, are not proportionate and reasonable in the circumstances of the present proceedings.

21. In its last written submission dated 6 October 2026, Sophia argues, in substance, that the action should be referred back to the Court of First Instance only in case the standing judge considers the evidence submitted insufficient for the assessment of its costs.

REASONS FOR THE DECISION

22. The appeal is well-founded and the action shall be referred back to the Court of First Instance.

I- On the admissibility of the application for costs

23. 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.

24. According to R. 150.1 RoP, a cost decision may be the subject of separate proceedings following a decision on the merits.

25. If the applicant does not start proceedings on the merits of the case pursuant to R. 213 RoP, for example, if the application for provisional measures was unsuccessful, R. 150 and 151 RoP do not appear to be applicable, on a strict literal reading as Guardant rightly observes. However, to fulfil the objectives of Art. 69(1-3) UPCA that the successful party can have its reasonable and proportionate legal costs and other expenses compensated by the unsuccessful party, an application of R. 150 and R.151 RoP *mutatis mutandis* would be justified in that situation (UPC-CoA-297/2025, 20 January 2025, SharkNinja; UPC-CoA-618/2024, 6 June 2025, Hanshow).

26. Therefore, it is up to the successful defendant to either file an application within the one-month period following the service of the order in first instance in the provisional measures proceedings or to await a decision on the merits (UPC-CoA-618/2024, 6 June 2025, Hanshow, para. 43).

27. Consequently, the judge-rapporteur rightly considered the application for a cost decision as admissible despite the absence of a decision on the merits in this case.

28. In addition, the fact that an explicit order for costs within the meaning of R. 118.5 RoP is missing in the operative part of the final order dated 23 January 2026 was rectified in the appeal proceedings by this Court (see point V of the operative part of the final order dated 2 July 2026).

29. Finally, as Sophia rightly observed, the fact that a stay until, at least, the final order of the Court of Appeal may have been appropriate and preferable here, does not render the application for costs itself inadmissible.

30. The application for costs was therefore admissible.

II - On the assessment of reasonable and proportionate costs

A - Legal framework

31. Art. 69 UPCA, cited above, implements Article 14 of Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights, according to which "Member States shall ensure 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 does not allow this."

32. In accordance with Art. 69 UPCA, R. 152.1 RoP provides that the applicant shall be entitled to recover reasonable and proportionate costs for representation.

33. Reasonableness and proportionality are cumulative conditions that must be assessed in each case according to its specific characteristics (CJEU, judgement of 28 April 2022, NovaText GmbH, C-531/20, para. 55).

34. Concerning Article 14 of Directive 2004/48, the Court of Justice of the European Union has already held that excessive costs due to unusually high fees agreed between the successful party and its lawyer or due to the provision, by the lawyer, of services that are not considered necessary in order to ensure the enforcement of the intellectual property rights concerned or to ensure an appropriate defence to such enforcement, to be unreasonable (CJEU, judgment of 28 July 2016, United Video properties, C-57/15, para 25; 28 April 2022, NovaText GmbH, C-531/20, para. 46).

35. The requirement of proportionality means that the successful party should have the right to reimbursement of, at the very least, a significant and appropriate part of the reasonable costs actually incurred by that party (CJEU, judgment of 28 July 2016, United Video Properties, C-57/15, para 29; 28 April 2022, NovaText GmbH, C-531/20, para. 48).

36. R. 152.2 RoP further states that the Administrative Committee shall adopt a scale of ceilings for recoverable costs by reference to the value of the proceedings.

37. The ceilings provided for in the Decision on the scale of recoverable cost ceilings are to be regarded as an absolute cap on recoverable representation costs applicable in every case (see preamble of the Decision of 24 April 2023). Exceeding the ceiling does not as such entitle a party to reimbursement of the ceiling set by the Administrative Committee pursuant to R.152.2 RoP (UPC-CoA-84/2026, 3 November 2026, headnote V and para. 37).

38. According to R. 151(d) RoP, when the successful party wishes to seek a cost decision, it shall within one month of service of the decision lodge an Application for a cost decision which shall contain an indication of the costs for which compensation is required, which may include recovery of court fees and costs representation, of witnesses, of experts, and other expenses.

39. R. 156 RoP adds that the judge-rapporteur may request the applicant to provide written evidence of all costs requested in R. 151(d) RoP. The judge-rapporteur shall allow the unsuccessful party an opportunity to comment in writing on the costs requested including any item of costs that should be apportioned or borne by each party in accordance with Article 69 (1) to (3) of the UPCA.

40. For the unsuccessful party to be able to comment on both the necessity and the proportionality of the costs for representation, the applicant for a cost decision should provide a sufficiently substantiated specification of the costs in view of the circumstances of the case, which would generally include breakdowns corresponding to each service provided in relation to the case, the date on which such service was provided, and the number of hours and rate billed for that specific service.

B - Application to the present case

41. According to the Decision of the Administrative Committee of 24 April 2023, the ceiling for recoverable costs of representation is set at EUR 600,000 given the value of the case set here by the Court of First Instance at EUR 6,000,000 (see para 12 of the order of 23 January 2026).

42. Sophia's application requesting the reimbursement of costs amounting to the applicable ceiling is based on a witness statement from Sophia's leading representative in the dispute before the CFI and four invoices that provide the only following information: "Supply of legal services in relation to Guardant Health – UPC – Defence of PI proceedings (EP3470533, EP3591073, EP3766986 and EP3443066)", the date and the amount billed, totalling [redacted].

43. The cost determination was based on the following grounds: "This dispute involves four different patents and deals with a highly complex technology field (…); moreover, in a PI dispute, the deadline are very short, which requires the intense commitment of an entire team."

44. These are general assertions and not a sufficient substantiation for the request for a cost determination in accordance with the provisions of the Agreement and the Rules of Procedure cited above, leaving aside the violation of the adversarial principle.

45. In addition, in this case, the broad mention "supply of legal services" in the invoices filed to evidence the costs incurred is not a correct substantiation of the costs regarding representation within the meaning of R. 151(d) RoP, allowing Guardant to provide comments on the necessity and the proportionality of the costs actually incurred. Moreover, as Guardant rightly argued, the fact that its actual costs exceed the ceiling does not as such entitle a party to reimbursement up to the ceiling.

46. The cost decision must therefore be set aside.

III - On the referral back to the Court of First Instance

47. As stated in R. 150 RoP, the assessment of costs (the cost determination) is the subject of a specific and separate procedures, which also includes a specific appeal procedure. As with most other proceedings before the UPC, the proceedings for the assessment of costs therefore also commence before the Court of First Instance. The application for the assessment of costs must therefore be filed with the CFI, and the decision on this is taken by the judge-rapporteur of that instance (UPC-CoA-1/2024, order of 29 July, 2024, Hanshow v. VusionGroup ; UPC-CoA-302/2025, 30 March 2026, Rematec v. Europe Forestry, para. 9).

48. The judge-rapporteur who decides on costs has 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 (UPC-CoA-153/2025, 3 July 2025, Tiroler v. Saab ; UPC-CoA-911/2025, 24 December 2025, Suinno Mobile v. Microsoft, para. 7).

49. According to R. 221.4 RoP, if leave to appeal a cost decision is granted the standing judge shall decide the appeal.

50. Art. 75 UPCA, however, stipulates that the Court of Appeal may in exceptional cases and in accordance with the Rules of Procedure refer the case back to the Court of First Instance for decision. According to R. 242.2(b) RoP, it shall not normally be an exceptional circumstance justifying a referral back that the Court of First Instance failed to decide an issue which it is necessary for the Court of Appeal to decide on appeal.

51. Exceptional circumstances exist in the present case since the cost decision, allowing Sophia the maximum cap, has been issued before Guardant had been given the opportunity to obtain access to the evidence filed to substantiate the application and to provide any comment on it.

52. In addition, the present case goes beyond the mere failure of the Court of First Instance to decide an issue which is necessary for the Court of Appeal to decide on appeal.

53. It would not be appropriate for the standing judge in this case, who has not managed the case throughout the various stages of the proceedings, to conduct the cost determination for the first time on appeal.

54. The action shall therefore be referred back to the Court of First Instance. The action shall continue before the judge rapporteur.

ORDER

The standing judge:

I. sets aside the decision dated 16 March 2026 (UPC_CFI_591/2026) insofar as it sets the costs to be paid by Guardant Health to Sophia Genetics within one month of the date of the order as follows: representation costs (including travel expenses): EUR 600,000,
II. refers the action back to the judge-rapporteur to decide on Sophia's application for a cost decision,
III. rejects any further request made by the parties.

Issued on 5 November 2026.

Nathalie, Jeanne, Danielle SABOTIER

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Nathalie Sabotier, standing judge