



File number:
UPC_CoA_1/2024
App_36394/2024

Arrangement

of the Court of Appeal of the Unified Patent Court issued on

29 July 2024

GUIDING PRINCIPLE

1. The application for determination of costs must be submitted to the court of first instance and will be decided by the judge-rapporteur of that court.
2. This also applies if the application is made following an order or decision of the court of appeal and therefore relates exclusively or partially to the costs of the appeal proceedings.

KEYWORDS

Determination of costs following an order or decision of the court of appeal

APPLICANTS/DEFENDANTS/RESPONDENTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

INSTANCE

1. **Hanshow Technology Co. Ltd**
1288 Kanghe Road, 314031, Jiaxing City, Xiuzhou District, Zhejiang Province, China
2. **Hanshow Germany GmbH**
Ria-Thiele-Straße 2a, 40549 Düsseldorf, Germany
3. **Hanshow France SAS**
88 Rue du Dôme, 92100, Boulogne-Billancourt, France
4. **Hanshow Netherlands B.V.**
Transformatorweg 86, 1014 AK, Amsterdam, Netherlands

hereinafter referred to as "Hanshow": Hanshow,

represented by Roland Küppers, LL.M., attorney-at-law, and Dr Alexander Rubusch, LL.M., attorney-at-law, Taylor Wessing PartGmbH

DEFENDANT/APPELLANT/APPLICANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

VusionGroup SA (formerly SES-imagotag SA)

55 Place Nelson Mandela, 92000 Nanterre, France

hereinafter referred to as "VusionGroup":

VusionGroup,

represented by Dr Jochen Herr, attorney-at-law and European patent attorney, Alexandre Hoffmann, European patent attorney, and Daniel Seitz, attorney-at-law, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP

DISPOSAL PATENT

EP 3883277 DECIDING

JUDGE

Peter Blok, legally qualified judge and rapporteur LANGUAGE OF

PROCEEDINGS

German

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Court of First Instance of the Unified Patent Court, Munich Local Division, dated 20 December 2023
- Reference number of the Court of First Instance: UPC_CFI_292/2023
ACT_567009/2023
ORD_596193/2023

FACTS AND APPLICATIONS

3. In the contested order, the Court of First Instance:
 - i) rejected VusionGroup's application for interim measures,
 - ii) declares that VusionGroup shall bear the costs of the proceedings and the other costs of Hanshow, including the costs incurred in filing the protective brief, up to a maximum of €200,000.00, and
 - iii) set the amount in dispute at € 2,000,000.00.
4. By application dated 22 January 2024, Hanshow applied to the Munich Local Court for the costs of the proceedings at first instance to be fixed. No decision has yet been made on this application.

5. VusionGroup appealed against the contested order. In its order of 13 May 2024, the Court of Appeal dismissed the appeal and declared that VusionGroup was to bear the costs of the appeal proceedings (UPC_CoA_1/2024, APL_8/2024).
6. On 18 June 2024, Hanshow filed an application for costs with the Court of Appeal, requesting that costs be awarded:
 - to retroactively extend the deadline for the application for the determination of costs, which expired on 13 June 2024, by 3 working days until 18 June 2024, and
 - to determine the costs of the appeal in the amount of € 131,874.80.
7. After being given the opportunity to do so by the judge-rapporteur, the parties commented on the question of whether an application for the determination of costs following an order of the Court of Appeal should be submitted to the Court of Appeal or to the Court of First Instance.

REASONS FOR THE ORDER

8. Both parties are of the opinion that Hanshow should have submitted its application for costs to the Court of First Instance, even if the application relates to the costs of the appeal proceedings. The Court of Appeal shares this judgement for the following reasons.
9. The determination of costs is the subject of a special and separate procedure (Rules 150 et seq. of the Rules of Procedure), which also includes a special appeal procedure (Rules 157 and 221 of the Rules of Procedure). Like most other proceedings before the Unified Patent Court, the proceedings for the determination of costs also begin at the Court of First Instance. The application for the determination of costs must therefore be submitted to the Court of First Instance and is decided by the judge-rapporteur of this instance.
10. This also applies if the application is made following an order or decision of the court of appeal and therefore relates exclusively or partially to the costs of the appeal proceedings. The Rules of Procedure do not provide for a special procedure for the determination of costs following an order or decision of the Court of Appeal. Therefore, the general procedure of R. 150 et seq. VerfO is also applicable in this case. If the proceedings were to begin before the Court of Appeal instead, no appeal would be possible against the decision on costs, as provided for in R. 157 and 221 of the Code of Procedure.
11. The Court of Appeal rejected Hanshow's argument that, as its application for an order for costs in relation to the first instance proceedings was still pending, it could add the costs of the appeal proceedings to the pending proceedings without having to make a new application within the period of one month after service of the Court of Appeal's order. If the successful party wishes to apply for an order for costs following a decision in principle on the obligation to pay costs, it must submit an application within one month of notification of this decision (R. 151 VerfO). This means that Hanshow must make an application that specifically relates to the costs of the appeal proceedings, as it is seeking an order for costs following the order in which the Court of Appeal ruled that VusionGroup should pay the costs of the appeal proceedings.

has to bear. This application must be made within one month of service of the order of the Court of Appeal, without prejudice to the court's power to extend the time limit pursuant to R. 9(3)(a) of the Rules of Procedure. The Judge-Rapporteur may make use of the applicable powers of the Director of Proceedings in order to coordinate the new costs proceedings with the pending proceedings.

12. As this is the first application for a costs order following an order of the Court of Appeal and it is not clear from the UPCA and the Rules of Procedure where the application should be filed in such a situation, the Court of Appeal will refer Hanshow's application to the Judge-Rapporteur of the Court of First Instance with the instruction that the date of filing of the application with the Court of Appeal, i.e. 18 June 2024, can be considered as the date of filing with the Court of First Instance. For practical reasons, Hanshow will have to resubmit his application in the Case Management System.
13. Hanshow's request for an extension of the time limit for filing the application must be decided by the Judge-Rapporteur of the Court of First Instance, as the Court of First Instance has jurisdiction to hear the application.

ARRANGEMENT

The application is referred to the Judge-Rapporteur of the Court of First Instance with the instruction that the date of submission of the application to the Court of Appeal, i.e. 18 June 2024, may be deemed to be the date of submission to the Court of First Instance.

This order was issued on 29 July 2024.

Peter  Digitally signed
by Peter Hendrik
Blok

Hendrik Blok Date: 2024.07.29
11:56:45 +02'00'

Peter Blok, legally qualified judge and rapporteur.