



**Local division Munich**  
**UPC\_CFI\_300/2023**

**Decision**  
**of the Court of First Instance of the Unified Patent Court local division**  
**Munich**  
**issued on 11 October 2024**  
**concerning EP 3 225 320 B1**

KLÄGERIN

**MSG Maschinenbau GmbH**, Hünegräben 17a, 57392 Schmallenberg, Germany,

represented by: Rechtsanwalt Jacobsen, CBH Rechtsanwälte, Ismaninger Straße 65a,  
81675 Munich, Germany.

DEFENDANT

**EJP Maschinen GmbH**, Max-Planck-Straße 4, 52499 Baesweiler, Germany,

represented by: Patentanwalt Dr Naeven, König Naeven Schmetz, Kackertstraße 10,  
52072 Aachen, Germany.

STREITPATENT

European patent EP 3 225 320

ADJUDICATING BODY / CHAMBER

Panel 2 of the Munich local division

PARTICIPATING JUDGES

This decision was issued by presiding judge Ulrike Voß (rapporteur), legally qualified judge Dr Daniel Voß and legally qualified judge Mjoca Mlakar.

LANGUAGE OF THE PROCEEDINGS

German

SUBJECT MATTER OF THE PROCEEDINGS

Action for infringement and action for annulment -  
Withdrawal, discharge and  
reimbursement of fees, Rule 265 RoP, Rule 360 RoP, Rule 370.9 RoP

BRIEF PRESENTATION OF THE FACTS

The plaintiff is the proprietor of the European patent EP 3 225 320 B1, which relates to a device and a method for measuring the straightness of a rod-shaped workpiece (Annex CBH 4, hereinafter patent in suit). The defendant manufactures, offers and markets devices for measuring the straightness of rod-shaped products in Germany under the designation "Straightness Control Type TQC" (contested embodiment 1) and "Total Quality Control Type TQC 2.0" (contested embodiment 2).

According to the plaintiff, the challenged embodiments realise the technical teaching of the patent in suit, which is why it is claiming injunctive relief, disclosure of information, disclosure of books, destruction, recall, payment of the costs of publication of the judgment and damages or an award of damages from the defendant for patent infringement (ACT\_569315/2024, UPC\_CFI\_300/2023). The defendant denies use of the patent in dispute.

The defendant has filed a counterclaim for revocation of the patent in suit (CC\_597425/2023). The plaintiff has opposed the counterclaim for revocation and has filed applications for amendment of the patent in the alternative (App\_11005/2024).

The Board of Appeal of the EPO revoked the patent in suit in full at the oral proceedings on 4 July 2024 (T-0367/23-3.4.02).

As a result of the legally binding revocation, the plaintiff believes that the action has lost its basis, which is why she feels compelled to withdraw the action pursuant to Rule 265.1 RoP (App\_42913/2024). As the written procedure has not yet been concluded, she is also seeking reimbursement of the court fees in the amount of 60 % pursuant to Rule 370.9 (b) (i) RoP (App\_42919/2024). In the event that the defendant does not withdraw the action for annulment, the plaintiff has, as a precautionary measure, declared in its application for withdrawal of the action that it agrees to settlement in accordance with Rule 360 RoP. The defendant has declared that it has no legitimate interest within the meaning of Rule 265.1 p. 3 RoP.

With regard to the revocation counterclaim, the defendant seeks a declaration pursuant to Rule 360 RoP that the revocation counterclaim has become irrelevant due to the revocation of the patent in suit and that the proceedings have been terminated (App\_45647/2024). As the written procedure has not yet been concluded, the defendant further requests that the

Reimbursement of the court fees of the counterclaim in the amount of 60 % pursuant to Rule 370.9 (b)

(i) RoP and Rule 370.9 (c) (i) RoP by analogy (App\_45658/2024).

#### APPLICATIONS

The applicant claims that the Court should,

the withdrawal of the infringement action pursuant to Rule 265 RoP,

the reimbursement of court fees in the amount of 60 % pursuant to Rule 370.9 (b) (i) RoP.

The defendant claims,

- a) declare that the counterclaim has become devoid of purpose as a result of the revocation of European patent EP 3 225 320 and that the proceedings have been terminated,
- b) to settle the proceedings relating to the counterclaim,
- c) the reimbursement of the court fees for the counterclaim in the amount of 60 % pursuant to Section 4.  
Rule 370.9 (b) (i) RoP analogue and Rule 370.9 (c) (i) RoP analogue and
- d) order the applicant and defendant to pay the costs of the counterclaim proceedings.

#### FACTUAL AND LEGAL POINTS OF CONTENTION

1. The plaintiff is of the opinion that in the basic decision on costs to be made pursuant to Rule 265.2 (c) RoP, Article 69 (3) UPCA must be observed, according to which unnecessary costs are to be borne by the party that caused them. This leads to an obligation on the part of the defendant to bear costs, as it has not behaved in a manner conducive to the proceedings and, in particular, has caused considerable and unnecessary expense for both parties with its submission in the statement of defence. After she, the plaintiff, had specifically described the contested embodiment 1 in the statement of claim, the defendant had not made any fruitful response to this. Only in the duplicate was it confirmed that the defendant itself assumed that the patent in dispute had been realised. The defendant had deflected with the statements on the contested embodiment 2, to which the defendant had submitted on its own initiative. In any event, the statement of defence did not provide sufficient information on the functionality of the contested embodiment 2. The defendant's submission in this regard remained incomplete and incomplete. In order to deal with the case on the plaintiff's side, it was therefore necessary to identify, analyse and process further sources to a considerable extent and to make an in-depth precautionary submission on an embodiment that had not even been challenged. If the defendant had behaved in a manner conducive to the proceedings, the majority of the Statement of Defence, the Reply and the Duplicate Reply would not have been necessary. As a precautionary measure, the fact that the plaintiff had incurred considerable and unnecessary additional costs as a result is assured by the lawyer. A statement of the specific costs incurred will be the subject of the cost assessment proceedings, in which the individual cost items will be substantiated in detail, should this be supported by a corresponding basic cost decision.

2. The applicant is also of the opinion that it was not necessary to file a revocation counterclaim against the background of the pending appeal in the opposition proceedings before the EPO with an imminent date for oral proceedings.
3. With regard to the revocation counterclaim, the plaintiff is of the opinion that this should be dismissed without withdrawal of the action in the event of irrelevance and discharge pursuant to Rule 360 RoP. It is questionable whether the revocation of the patent in suit is a terminating event for the revocation counterclaim and, if so, whether this means that there is no need to adjudicate. In this regard, it must be considered whether the discharge presupposes the prior admissibility and merits of the revocation counterclaim. If this is assumed, it must be taken into account in the present case that the revocation counterclaim is in any case partially unfounded and that the patent in suit is unfounded in any case to the extent of the first auxiliary request not examined by the Board of Appeal of the EPO. Examination of these requirements would, however, result in additional and ultimately useless expenditure due to the revocation of the patent in suit. According to Rule 360 RoP, however, it does not seem to matter whether the action was originally admissible and well-founded. It seems justifiable that with the revocation of the patent in suit, the action has become devoid of purpose and has been disposed of in accordance with Rule 360 RoP. However, the consequence of the dismissal of the action provided for in Rule 360 RoP is unlikely to reflect the interests of the defendant.
4. The plaintiff also suggests that a decision on the upper limit for the recoverable costs should be made directly with the decision on the withdrawal of the action and the decision on the action for annulment (in each case). Since the present proceedings had come to an end at an early stage, in which essential and also complex procedural steps had not yet taken place, it was appropriate to adjust the upper limit for the recoverable costs to this and thus to set it proportionately and significantly lower. An orientation aid could be seen in Rule 370.9 (b) RoP. If the idea set out there is applied to the determination of the parties' recoverable costs in accordance with the information provided by the Administrative Committee, an upper limit of 40% of the value of the table should be applied, based on the respective amounts in dispute of € 500,000.00, i.e. € 22,400.00 in each case. At most, however, an upper limit of 50% of the table value could still be reasonable.
5. The defendant is of the opinion that the decision on costs pursuant to Rule 265.2 (c) RoP is not a basic decision on costs, but a downstream decision on the recoverable costs pursuant to R. 150 et seq. RoP. The Rules of Procedure obviously presuppose that the plaintiff has to bear the costs if the action is withdrawn. The plaintiff's allegation that the defendant had not behaved in a manner conducive to the proceedings and had thus caused considerable and unnecessary expense for both parties must be rejected. In fact, the plaintiff's allegations in the statement of claim regarding the device, which was explained and offered to a witness at the defendant's premises, were erroneous. Apparently, the plaintiff had been incorrectly informed by the witness in this regard. In any event, the plaintiff no longer denied that the challenged embodiment 2 (and not the challenged embodiment 1) had been explained and offered to the witness. On the contrary, in its Reply it had expressly extended the claim for this reason. Her submission on the contested embodiment 2 was detailed. The plaintiff failed to provide any indication as to what the alleged unnecessary additional expense caused by the defendant should be.

6. At the time the revocation counterclaim was filed, according to the defendant, the oral proceedings in the appeal proceedings before the EPO had not yet been scheduled. Both the recitals to the UPCA and the preamble to the Rules of Procedure emphasise that the UPC should be able to ensure rapid decisions. Against this background, it is appropriate to ensure, by filing a revocation counterclaim, that the arguments against the protectability of the now revoked patent in dispute can be considered before a decision on its alleged infringement. The revocation counterclaim would also have been successful in its entirety. The plaintiff's auxiliary requests were partly inadmissible and otherwise unfounded.
7. With regard to the counterclaim for revocation, the defendant argues that this has become irrelevant due to the revocation of the patent in suit and that the main action has been settled. Rule 360 RoP applies. The proceedings should therefore be "dismissed". There was no longer any room for the question of whether the admissibility and merits of the counterclaim were a prerequisite for a discharge, since the plaintiff had already declared its consent to the discharge in its application for withdrawal of the action (as a precaution) and then it, the defendant, had applied for a declaration that the counterclaim was discharged. It refrained from withdrawing the action as this would place it in the role of the losing party. In view of the revocation of the patent in suit, this was appropriate and by no means unnecessary.
8. The defendant is also of the opinion that it should be reimbursed part of the court fees for the revocation counterclaim. It is true that there are no provisions for reimbursement in the event that the counterclaim is settled due to a complete and final revocation of the patent in suit. However, Rules 370.9 (b) (i) and (c) (i) RoP were applicable by analogy.
9. Since the reasonableness of the costs whose reimbursement is sought is reviewed by the courts in the cost assessment proceedings, there is no need, in the defendant's view, to reduce the upper limit of the reimbursable costs across the board in the basic cost decision.

#### REASONS FOR THE DECISION

##### I.

10. The withdrawal of the action must be authorised pursuant to Rule 265.1 RoP. The plaintiff filed the application to withdraw the action before a final decision was issued. In its response to this application, the defendant stated that it had no legitimate interests within the meaning of Rule 265.1 RoP. Such legitimate interests cannot be recognised in any other way either.
  1.
    11. Pursuant to Rule 265.2 (a) and (b) RoP, the consequence of admitting the withdrawal of the action is the termination of the proceedings and the entry of the decision in the register.

2.

12. Pursuant to Rule 265.2 (c) RoP, the court must also make a decision on costs in accordance with Part 1 Chapter 5 if the withdrawal of the action is granted.

a)

13. Although the wording of the provision explicitly refers only to the rules of the cost determination procedure, i.e. to Rules 150 et seq. RoP, the court must (also) make a basic decision on costs within the meaning of Art. 69 UPCA even if an action is withdrawn.

14. This is because an indirect reference is made to this provision. The rules of the determination procedure expressly referred to in Rule 265.2(c) RoP cannot be considered in isolation from Article 69 UPCA. Rather, they are based on this higher-ranking provision, which contains the basis for the allocation of the costs of the legal dispute on the merits. This becomes clear, among other things, from the fact that Rules 150 et seq. RoP take up the terms used in Art. 69 UPCA, such as prevailing party, appropriateness and reasonableness, and the determination of costs is based on the provisions of Art. 69 UPCA. In individual cases, the determination of costs specifies the amount of costs to be reimbursed or borne by the party who bears the burden of costs in accordance with Art. 69 UPCA.

15. Due to the inseparable connection between Art. 69 UPCA and Rules 150 et seq. RoP, the decision on costs pursuant to Rule 265.2 (c) RoP may also (only) be a basic decision on costs (cf. e.g. Düsseldorf local division, decision of 6 August 2024, UPC\_CFI\_87/2024; The Hague local division, decision v. 01.05.2024, UPC\_CFI\_379/2023), which may contain the provision made by the parties on the basic allocation of costs in the event of a withdrawal of the action due to an amicable agreement between the parties (cf. e.g. Düsseldorf local division, decision of 6 August 2024, UPC\_CFI\_87/2024). The decision on costs pursuant to Rule 265.2 (c) RoP can, however, also be a decision in which the amount of the costs to be reimbursed is determined, which, incidentally, implicitly also makes a statement as to who is to bear the costs on the merits.

16. The indirect reference in Rule 265.2 (c) RoP to Art. 69 UPCA means not only that the "he who loses pays" rule enshrined in paragraph 1 is relevant in the context of the decision on costs, but also that the other paragraphs of the standard also apply. Consequently, the question must also be asked whether Art. 69 para. 3 UPCA applies, according to which a party who has caused unnecessary costs to the court or another party must bear these costs.

17. Unnecessary costs within the meaning of Art. 69 para. 3 UPCA are those that are caused by a measure that was not necessary and/or inappropriate for the enforcement or defence of the right and that can be separated as such. What is not meant, however, are the (ultimately) unnecessary costs incurred as a result of unsuccessful legal enforcement or defence. These are already covered by the basic rule of Art. 69 para. 1 UPCA (cf. for the case that a defendant has not given cause for bringing an action: Court of Appeal, Order of 04.10.2024, UPC-CoA2/2024). Whether a separable measure was unnecessary must be assessed from the ex ante perspective of a reasonable and commercially sensible party. An objective standard must be applied.

18. When assessing whether the requirements of Art. 69(3) UPCA are met, it must also be borne in mind that the court must carry out the examination at the time of its decision in accordance with Rule 265.2(c) RoP. Since the proceedings are terminated by the withdrawal of the action and there is no decision on the merits, which ultimately only provides certainty about the necessity of individual measures, the examination of the existence of the requirements of Art. 69 para. 3 UPCA can only be carried out summarily. And in principle on the basis of the facts that are undisputed at the time the withdrawal of the action is authorised. It is not the task of the decision on costs pursuant to Rule 265.2 (c) RoP (implicitly) to clarify and determine how the decision on the merits would have turned out if the proceedings had been continued in order to determine, for example, whether individual separable measures were actually unnecessary. Nor is it necessary in principle to take evidence on disputed facts within this framework. This would obviously thwart the purpose of allowing the withdrawal of the action and the associated time and labour savings, including for the court. It would also be contrary to Art. 41 para. 3 sentence 1 UPCA.

**b)**

19. Unnecessary costs within the meaning of Art. 69 para. 3 UPCA are not apparent in the present case. Separable measures taken by the defendant which, from the ex ante point of view of a reasonable and economically rational party, were unnecessary and therefore triggered unnecessary costs, are not recognisable on summary examination at the present time, even on the basis of the plaintiff's partially disputed submissions.

20. The fact that a defendant has allegedly not sufficiently dealt with a plaintiff's submission on a challenged embodiment in the statement of defence and/or duplicate statement cannot be regarded as a separable measure in itself. A party's submission on a challenged embodiment, whether it is sufficient or not, for the purpose of legal defence is not a separate measure. It is part of the legal defence as such.

21. Insofar as the plaintiff expresses in its submissions on the challenged embodiment 2 that the defendant introduced it into the legal dispute on its own initiative, without being asked, it does not follow from this that unnecessary costs were caused, even if the introduction of a further challenged embodiment into a legal dispute could in principle be regarded as a separable measure. However, from the point of view of a reasonable and economically minded party, it is not objectionable if a defendant points out an alleged error and/or misunderstanding and/or draws attention to the fact that a different embodiment than the one previously in dispute is the one it is offering and marketing. Rather, in such a case, it is within the scope of a proper legal defence to correct misconceptions and disclose one's own devices or product portfolio. In addition, this creates clarity with regard to the scope of a possible conviction, which can prevent any problems during enforcement and prevent a shift to enforcement proceedings. This is also not to be denied as part of a proper legal defence or regarded as unnecessary. The costs allegedly incurred as a result of the introduction of the contested embodiment 2, to which the plaintiff then extended the action, cannot therefore be described as unnecessary.

22. The plaintiff's arguments in favour of filing a counterclaim for annulment are also unsuccessful in this case. The nullity counterclaim is not a separable measure of legal defence in the context of the infringement proceedings, but a (separate) counterclaim to be distinguished from it. Apart from this, in accordance with Art. 33(8) UPCA, an action for revocation or a counterclaim for revocation can be brought before the UPC even if the opposition period has not yet expired or if opposition or appeal proceedings are pending before the EPO. This opens up the possibility of parallel validity proceedings before the UPC and the EPO. There is no restriction in the UPCA on such parallel proceedings which refers to the status of the pending proceedings before the EPO. The coordination of parallel pending proceedings or the relationship between the proceedings is determined for the UPC solely by Art. 33(10) UPCA and Rule 295(a) RoP.
23. In view of the above, the general rule of Art. 69 (1) UPCA remains that the unsuccessful party must bear the costs of the proceedings. In the present case, this is the plaintiff. As a result of the withdrawal of the action due to the revocation of the patent in suit, it has not achieved the objective pursued with the action.

c)

24. It is not necessary to determine costs in this decision. Both parties assume that this will or should take place at a later date in separate proceedings. As a result, neither party has submitted a specific amount of the costs to be reimbursed. The reimbursement of a specifically quantified amount has not been requested.
25. The plaintiff's suggestion that the decision on costs pursuant to Rule 265.2 (c) RoP should also include a decision on the upper limit of the costs and that the idea of Rule 370.9 (b) (i) RoP should be applied is not complied with. The upper limit for reimbursable costs only comes into play when costs are determined. However, the parties have not currently applied for such an order.
26. Apart from this, the upper limit for reimbursable costs, which according to the Rules of Procedure only applies to the reimbursement of representation costs, see Rule 152.2 RoP, is not decided by the court in each individual case. Rather, in accordance with Rule 152.2 RoP, the Administrative Committee drew up a table of the upper limits for reimbursable costs resulting from the value in dispute of the proceedings in its decision of 24 April 2023. Once the amount in dispute of a case has been determined, the upper limit for reimbursable costs of representation is also fixed. It is therefore not necessary to make a decision in each individual case. The applicable upper limit can only be raised or lowered in individual cases upon application by a party in accordance with Art. 2 of the Administrative Committee's decision of 24 April 2023. The conditions under which an increase or reduction is possible are listed in detail in Art. 2 of the Administrative Committee's resolution. There is no scope for a further reduction or a reduction based on other criteria. The idea behind Rule 370.9 (b) (i) RoP therefore has no relevance for the upper limit for reimbursable costs of representation.



**3.**

27. Pursuant to Rule 370.9 (b) (i) RoP, 60% of the court fees paid for the action are to be refunded to the plaintiff. The action was withdrawn before the conclusion of the written procedure.
28. The amount in dispute in the action is € 500,000.00. The plaintiff has stated this amount in dispute in the statement of claim; the defendant has not objected to this statement. There are no indications that could cast doubt on the stated amount in dispute. The court fee therefore amounts to € 11,000.00 in accordance with Rule 370.2 (a) RoP, so that € 6,600.00 is to be refunded.

**II.**

29. The action for annulment has become devoid of purpose pursuant to Rule 360 RoP and has been disposed of on the merits. The action for annulment must be dismissed. The plaintiff shall bear the costs of the action for annulment. By analogous application of Rule 370.9 (b) (i) RoP, the defendant shall be reimbursed 60% of the court fees paid for the counterclaim.

**1.**

30. If the court finds that an action has become devoid of purpose and the main action has been disposed of, it may dismiss the action at any time on the application of a party or of its own motion by Order in accordance with Rule 360 RoP.

**a)**

31. In the present case, the parties rightly agree that the revocation counterclaim has become irrelevant as a result of the revocation of the patent in suit by the Technical Board of Appeal of the EPO on 4 July 2024. The patent in suit has been completely destroyed by final judgement. The purpose of the revocation counterclaim has thus ceased to exist; there is no longer any need for a decision on the merits.
32. Since the revocation of the patent in suit, which became final after the revocation counterclaim was filed, renders the revocation counterclaim unfounded, it is also a finalising event in the main action.
33. Whether the agreement already declared by the plaintiff as a precautionary measure in the withdrawal of the action is sufficient for a concurrent declaration of settlement requires no further explanation. A concurrent declaration of settlement is not required by Rule 360 RoP. The application of one party is sufficient. It is also possible to issue an Order ex officio.

**b)**

34. Although the court, like panel 1 of the Munich local division (Order of 19 December 2023, UPC\_CFI\_249/2024) and the Paris central division (seat) (Order of 16 May 2024, UPC\_CFI\_372/2023), considers the German language version to be

The wording chosen for Rule 360 RoP, according to which the action is to be "dismissed", is unfortunate. In any case, in a constellation such as the present one, it seems more appropriate to speak of a termination or conclusion of the proceedings. However, following the Order of the Court of Appeal of 4 October 2024 in the proceedings UPC\_CoA\_2/2024, App\_83/2024, the court leaves it at the wording chosen by the Rules of Procedure.

35. The action for annulment is therefore dismissed.

## 2.

36. Even if Rule 360 RoP, unlike for example Rule 265.2 (c) RoP, does not prescribe the making of a decision on costs, such a decision must nevertheless be made in the present case on the basis of the defendant's application.

37. The same applies to a decision on costs on settlement of the main proceedings as to the decision on costs based on Rule 265.2 (c) RoP. It may be a basic decision on costs or, if already possible, a determination of costs. The principles of Art. 69 UPCA must be taken into account (Court of Appeal, Order of 4 October 2024, UPC\_CoA\_2/2024). The question to be asked is which party is the successful party within the meaning of Art. 69 para. 1 UPCA and whether, exceptionally, the circumstances of the individual case may require a deviation from the general rule due to the existence of special circumstances within the meaning of Art. 69 para. 1 to 3 UPCA. In this examination, it must be borne in mind that, due to the termination of the proceedings before a decision on the merits is issued, it is generally not clear at the time of settlement of the main action whether and, if so, to what extent, the action would have been successful. For the decision on costs after the main action has been settled in accordance with Rule 360 RoP, only a summary examination of the prospects of success of the action can therefore be made at the time of the settling event. The decision on costs is an equitable decision. Questions of doubt do not require a final clarification and/or decision. The court can decide on the obligation to bear the legal costs without having to further examine the facts of the case (Court of Appeal, Order of 4 October 2024, UPC\_CoA\_2/2024).

38. On this basis, the applicant must bear the costs of the action for annulment. It is true that the action for annulment is dismissed using the terminology of Rule 360 RoP. In the present case, however, this does not lead to the finding that the defendant is to be regarded as the unsuccessful party within the meaning of Art. 69 (1) UPCA. The plaintiff has not prevailed. The termination of the proceedings and the dismissal of the revocation counterclaim is based on the complete and final revocation of the patent in suit by the Technical Board of Appeal of the EPO. The (main) objective of the defendant's revocation counterclaim, the destruction of the patent in suit with ex-tunc effect, has been achieved as a result of this revocation. The fact that the plaintiff has filed applications for amendment of the patent in suit in the alternative does not change this. Apart from this, on summary examination it is not sufficiently certain that the plaintiff would have been successful with its first auxiliary request, which was not examined by the Technical Board of Appeal of the EPO. The alleged lack of necessity to file a revocation counterclaim is irrelevant for the reasons already explained.

**3.**

39. By analogous application of Rules 370.9 (b) (i), (c) (i) RoP, the defendant shall be reimbursed 60 % of the court fees paid for the action for annulment.
40. Under Rule 370.9 (b) (i) RoP, court fees paid may be reimbursed in varying amounts under certain conditions in the event of withdrawal of the action. Rule 370 (c) (i) RoP provides for the same regulation for the termination of proceedings by settlement. However, there is no such provision for the termination of proceedings due to lack of purpose and settlement of the main action pursuant to Rule 360 RoP. In this respect, there is an unintended regulatory gap. Furthermore, since the interests of the settled matters and the unresolved matters are comparable - due to the termination of the proceedings, a decision on the merits is no longer required, which saves work on the part of the court - an analogous application of Rules 370.9 (b) (i), (c) (i) RoP is required in the present case (Central Chamber Paris (seat), Order of 16 May 2024, UPC\_CFI\_372/2023; see also for a further analogy Central Chamber Munich (division), Order of 23 July 2024, UPC\_CFI\_75/2023 and UPC\_CFI\_80/2023).
41. As the action for annulment was settled before the conclusion of the written procedure, the defendant is to be reimbursed court fees in the amount of 60%.
42. The value in dispute of the action for annulment is € 500,000. The defendant has proposed this value and the plaintiff has not contested it. There are no indications that this value in dispute is incorrect. According to the rule 370.4 (b) RoP, the court fee therefore amounts to € 11,000.00, so that € 6,600.00 is to be refunded.

**4.**

43. The Order or decision must be entered in the register in accordance with Rule 351.3 RoP or Rule 350.5 RoP.

## ORDERS

### I.

1. Withdrawal of the action is authorised.
2. The infringement proceedings are declared terminated.
3. This decision is to be included in the register.
4. The plaintiff shall bear the costs of the infringement proceedings.
5. **O r d e r s** the Registrar to pay the applicant 60 % of the court fees paid by it in the present proceedings, namely the sum of € to be reimbursed.
6. The amount in dispute in the infringement proceedings is set at € 500,000.00.

### II.

1. It is established that the counterclaim for annulment is irrelevant and that the main action has been settled.
2. The action for annulment is dismissed.
3. This decision is to be included in the register.
4. Orders the plaintiff to pay the costs of the action for annulment.
5. The Registrar is ordered to pay to the defendant 60 % of the court fees paid by it in these proceedings, amounting to € to be reimbursed.
6. The amount in dispute in the revocation counterclaim proceedings is set at € 500,000.00

## INFORMATION ON THE DECISION

Procedure number:	ACT_569315/2023
UPC number infringement action:	UPC_CFI_300/2023
UPC number cancellation counterclaim:	CC_597425/2023

<p>Ulrike Voß Presiding judge and rapporteur</p>	<p>Digitally signed <b>Ulrike Voß</b> by Ulrike Voß Date: 2024.10.11 15:09:44 +02'00'</p>
<p>Dr Daniel Voß Legally qualified judge</p>	<p>Digitally signed <b>Daniel Voß</b> from Daniel Voß Date: 2024.10.11 15:48:12 +02'00'</p>
<p>Mojca Mlakar Legally qualified judge</p>	<p><b>MOJCA MLAKAR</b> Digitalno podpisal MOJCA MLAKAR Date: 2024.10.11 15:58:10 +02'00'</p>
<p>For the Deputy Chancellor</p>	<p><b>Anja Mittermeier</b> Digitally signed by Anja Mittermeier Date: 2024.10.14 13:12:28 +02'00'</p>