

EIP

Security for costs refused in revocation action

AYLO PREMIUM LTD v DISH Technologies L.L.C. (UPC_CFI_198/2024)

Order of 18 February 2025 (Order no. ORD_59528/2024[1])

Written by Emily Williams

The Central Division (Paris Seat) has rejected a request for security made by the claimant in the above patent revocation action. The parties submitted observations before an interim hearing was held on the matter.

The claimant sought an order requiring the defendant (patentee) to provide security for legal costs and other expenses incurred or to be incurred in the future by the claimant of at least €400,000. They argued that if the defendant failed to provide security, then a decision by default should be issued. The defendant responded by asking for the request to be dismissed or alternatively for a lower amount to be ordered.

The claimant submitted that the defendant had a very high risk of insolvency. They raised concerns about the defendant's existing outstanding payments, future debts and necessary capital requirements. The claimant made reference to an order of the Local Division Mannheim setting out that the defendant must provide security in parallel infringement proceedings between the parties. The claimant attempted to rely on the opinions of market experts in a lawsuit filed in New York against DISH Network LLC as well as published market observations.

The defendant argued that the claimant's request was based on outdated information as their group had recently secured more than \$8 billion in funding. The defendant is a wholly owned subsidiary of DISH DBS Corporation which is itself a wholly owned subsidiary of DISH Network Corporation which is in turn a wholly owned subsidiary of

EchoStar Corporation. At the time of the interim hearing, EchoStar had already committed to meet the liabilities of DISH Network and its subsidiaries for a period of 12 months. Additionally, EchoStar had undertaken to reimburse Aylo Premium Ltd, the claimant, for legal costs of up to €400,000 in the event that the defendant was unsuccessful. The defendant noted that the group of companies to which they belong was no longer subject to a “going concern” qualification.

The Court highlighted that strict requirements would apply where the claimant was the party seeking security for costs to reflect that it was their initial decision to litigate. It was held that the evidence in this case was insufficient to show the defendant would be unable to meet litigation costs and therefore they would not be required to provide security. Substantial weight was given to the fact that the going concern qualification in the SEC report had been formally lifted. The Court further stated that they could not consider the statements of an opposing party in separate proceedings and the opinions of market analysts would need to be supported by further evidence. It was also stressed that it is not the Court’s duty to assess the impact of investments or business decisions. While the defendant did not prove to the satisfaction of the Court that they possessed sufficient funds, they did not have the burden of proof in this case and the Court found there was no reason to doubt the intention behind EchoStar’s declaration.

Although it was decided that the claimant was not successful in this application, it was recognised that a request for security for costs does not need to be made by the defendant. However, the burden of proof will lie with the applicant to demonstrate that an order for security for costs is required in the circumstances of the case and there will be strict requirements imposed when the claimant is the party requesting security.

[1] <https://www.unified-patent-court.org/en/node/60592>