

EIP

Costs assessment following interim measures at UPC

SSAB Swedish Steel GmbH & SSAB Europe Oy v Tiroler Rohre GmbH (UPC_CFI_640/2024)

Orders of 10 February 2025 (Order nos. ORD_68941/2024[1] and ORD_65844/2024[2])

This is a decision on the determination of costs. Following the withdrawal by Tiroler Rohre GmbH (the “**Respondent**”) of its application for interim measures[3], the Munich Local Division ordered that the Respondent must bear all the costs of those proceedings, including the costs of filing the protective brief. SSAB Swedish Steel GmbH and SSAB Europe Oy (Collectively the “**Applicants**”) applied for the costs of the proceedings for interim measures to be determined.

The Respondent responded to the Applicants’ claimed costs in three ways, including:

- Arguing that the costs the Respondent is liable for be limited only up to € 30,000;
- Rejecting the Applicants’ evidence on their application for the determination of costs as inadmissible; and
- Rejecting specific items of the claimant’s costs as excessive.

On the Respondent’s argument of limiting their liability to € 30,000, the Judge-Rapporteur stated that the successful party must in principle be reimbursed for their reasonable costs up to the upper limit specified in the Rules of Procedure (“**RoP**”). The value of the dispute was set at € 1,200,000, and so the upper limit in the present case is € 200,000; there was no reason to limit it to € 30,000. The Respondent also tried to limit costs to € 30,000 by claiming that the Applicants’ costs were excessive so should overall be reduced, but this was also rejected by the Judge-Rapporteur, who stated that the

burden was on the Respondent to give detailed justifications for reducing the costs of each item.

The Judge-Rapporteur further rejected the Respondent's request to rule that the Applicant's evidence on their costs was inadmissible. Although in principle, the RoP do not require a specific breakdown of the costs claimed for a cost assessment procedure, the Judge-Rapporteur has the discretion to request the submission of written evidence for all costs claimed pursuant to Rule 156.1 of the RoP. Therefore, he did not think that the Applicants' evidence was objectionable by itself nor in terms of its level of detail.

The Judge-Rapporteur then finally assessed the individual items in the Applicant's cost evidence. Most of the assessment is fact specific, but a learning point here is that the court will assume that a party may be represented by both lawyers and patent attorneys in accordance with Art. 48(3) UPCA. The UPCA and RoP do not specify an appropriate number of representatives for the purpose of determining whether the costs are reasonable and proportionate as required by Art.69(1), instead, the court looked at the number of representatives both parties used in the proceedings. Here, the Respondent challenged the Applicant's number of representatives as excessive but also used a similar number of representatives themselves, which led to the Judge-Rapporteur rejecting the Respondent's request on this ground.

The decision concluded largely in the Applicant's favour, with most of the Respondent's requests being dismissed aside from some individual items being written off; a total of € 84,033 was awarded including travel expenses and other costs.

[1] <https://www.unified-patent-court.org/en/node/62133>

[2] <https://www.unified-patent-court.org/en/node/62134>

[3]UPC_CFI_98/2024