

EIP

Milan Central Division issues Decision by Default, Clarifying the Requirements

EOFLOW v INSULET UPC_CFI_597/2024

Decision of 22 July 2025 (ORD_69390/2024[1] and ORD_69391/2024[2])

This decision, granting a decision by default against EOFLOW after EOFLOW declined to pay the security for costs that the court had ordered, shows clearly the different criteria for a decision by default, depending on whether the defaulting party is the claimant or the defendant in the action. These criteria were recently clarified by the UPC Court of Appeal in *Suinno v Microsoft*.^[3]

The dispute began when INSULET sought a provisional injunction against EOFLOW to restrain infringement of its patent EP4201327, relating to insulin pumps. The injunction was denied by the Milan Central Division,^[4] but granted by the UPC Court of Appeal on 30 April 2025.^[5] In the meantime, EOFLOW responded by commencing a revocation action at the Milan Central Division. INSULET defended the action but also filed a counterclaim for infringement.

INSULET sought an order for security for costs, on the basis that EOFLOW may become insolvent, and EOFLOW was ordered to pay a security deposit of €500,000 by 2 May 2025. No deposit was made, and at the Interim Conference, EOFLOW's lawyers declared that the security had not been paid and that the company was unwilling to proceed with any payment. INSULET then requested a decision by default.

The Court noted that a decision by default can be made against a defaulting **claimant**, resulting in dismissal of the case, without considering the substantive case; however,

according to Rule 355.2, a decision by default can only be given against a **defendant** if facts put forward by the claimant justify the remedy sought. This analysis is consistent with the recent Court of Appeal decision in *Suinno v. Microsoft* [3].

Thus, the Court concluded that the revocation action could be dismissed without further consideration, but concluded that for the counterclaim for infringement a hearing should be held, notwithstanding EOFLOW's default. Based on the written submissions and the statements of the parties at the hearing, the Court was convinced that the patent was infringed by EOFLOW's EOPatch pump.

The Court therefore granted the injunction requested by INSULET, and awarded €230,000 as preliminary damages, with final damages to be the subject of a separate proceeding. The Court ordered recall of infringing products from commercial customers and channels of commerce, to be provided to a bailiff to be appointed by INSULET for the purpose of their destruction, together with any products still in EOFLOWs direct or indirect possession. The Court also ordered detailed information about past infringements to be provided.

The Court made a detailed assessment of the costs that should be reimbursed by EOFLOW to INSULET.

In relation to the costs of the provisional injunction, the requested costs were hugely reduced, for a number of reasons, the main one being that INSULET used two different law firms for similar PI proceedings against EOFLOW and Menarini (the distributor of the infringing device in Europe, and subject of a separate action). The Court felt that this duplication was disproportionate, and therefore subtracted from the reimbursable costs 90% of the amount already contributed by Menarini to EOFLOW's costs according to their settlement agreement. This reduced the costs award from €702,292 to €162,292.

For the main action, the Court made an interim award of €200,000 (one third of the cap based on the value in dispute) bearing in mind that the main action was substantively similar to the PI action. However, INSULET is free to have the costs of the main action assessed in detail.

This case shows clearly that a claimant cannot rely on a defendant's default to obtain the relief that it seeks, but must still substantiate its case – even to the extent that a defendant may still be heard after defaulting.

[1] <https://www.unifiedpatentcourt.org/en/node/136580> in revocation action

[2] <https://www.unifiedpatentcourt.org/en/node/136581> in counterclaim for infringement

[3]

[https://eip.com/global/latest/article/court of appeal clarifies upc rules on decisions by default](https://eip.com/global/latest/article/court%20of%20appeal%20clarifies%20upc%20rules%20on%20decisions%20by%20default)

[4]

[https://eip.com/global/latest/article/upc denies provisional injunction on insulin pump/](https://eip.com/global/latest/article/upc%20denies%20provisional%20injunction%20on%20insulin%20pump/)

[5] <https://www.unifiedpatentcourt.org/en/node/116116>