

EIP



UPC takes strict approach on costs reimbursement

Insulet v. EOFlow

UPC_CFI_773/2025 and UPC_CFI 774/2025 (Milan CD), decision of 15 October 2025[1]

The dispute began when Insulet sought a provisional injunction against EOFlow to prevent infringement of its patent EP4201327, which relates to insulin pumps. The Milan Central Division denied the injunction, but the UPC Court of Appeal granted it on 30 April 2025. Meanwhile, EOFlow commenced a revocation action at the Milan Central Division. Insulet defended this action and filed a counterclaim for infringement.

The revocation action ended in a decision by default against EOFlow due to failure to provide security for costs, and Insulet was successful in its counterclaim for infringement. In the decision, the court ordered an interim award of costs of €200,000 to Insulet[2].

Following the decision, Insulet lodged an application for a costs decision.

No appeal

EOFlow did not appeal the decision. As a result, the court considered that the decision, including the interim award of costs of €200,000, was res judicata. The implication seems to be that an interim award of costs cannot be modified downwards in a separate cost procedure.

Strict approach to evidence

With the application, Insulet submitted its representatives' invoices and payment sheets, proving that the expenses they were requesting have been invoiced and actually paid by Insulet.

The court took a strict approach to the required evidence, stating

Pursuant to Rule 156 RoP, the party requesting cost compensation must indicate exactly which cost item it is requesting payment for... The party must therefore make a choice: either submit the costs to the Court or keep them confidential and waive their payment.

Following this approach, the court excluded from the recoverable costs that were unintelligible due to being totally or partially redacted.

Reasonable & proportionate costs

According to Article 69 UPCA, reasonable and proportionate legal costs and other expenses incurred by the successful party are borne by the unsuccessful party. In this decision, the court sets out a number of examples of costs that it considered to be unreasonable and/or disproportionate.

The court excluded costs that related to the rescheduling of the interim conference due to a conflicting hearing of one of Insulet's representatives, stating

It is not clear why the losing party should pay for the personal schedule problems of one of the lawyers representing the counterparty. This cost item lacks proportion and reasonability.

When considering proportionality, the court also took into account the fact there was significant overlap between the present case and the appeal in the application for provisional measure, and that the proceedings were significantly simplified following EOFlow's refusal to provide the ordered security for costs. The court therefore applied a 30% reduction to all costs incurred after April 2025, when the appeal was decided and security for costs was ordered.

It is not clear from the decision why the court did not think that the costs incurred after April 2025 already reflected the simplification of the case.

Costs must always relate to the case on the merits

Finally, the court also excluded any costs relating to enforcement, stating that all costs relating to the enforcement phase must also be excluded. Enforcement costs, like enforcement procedures in general, fall outside the jurisdiction of the UPC. The cost decision is always logically dependent on the merits phase and cannot include costs

accrued after proceedings are terminated. Costs must always relate to the case on the merits.

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[1] <https://www.unifiedpatentcourt.org/en/node/159495>

[2] As reported here: <https://eip.com/global/latest/article/milan-central-division-issues-decision-by-default-clarifying-the-requirements/>