

EIP

Ceiling for recoverable costs still applies in the case of multiple Defendants

**Imbox Protection A/S v. Brunngård Group AB & Footbridge Group AB
(UPC_CFI_527/2024)**

Order of 17 February 2025 (Order no. ORD_68981/2024[1]) relating to EP 2 276 862)

The Stockholm Local Division of the Court of First Instance held that the ceiling for recoverable costs serves as a joint ceiling for all Defendants' representation costs.

Background

The Applicant, Imbox Protection A/S ("Imbox"), requested an evidence preservation order against the Defendants, Brunngård Group AB ("Brunngård") and Footbridge Group AB ("Footbridge"), to determine possible infringement of the Applicant's patent, EP 2 276 862. The patent in question relates to a method of applying a surface treatment to items of clothing. The two Defendants had close legal and commercial links, Footbridge having acquired Brunngård in 2024, and were represented by the same attorney.

After studying the application, the Court used its discretion to provide the Defendants with the opportunity to respond. Subsequently, the Defendants provided proof of non-infringement to the Applicant and requested compensation for legal costs and other expenses, at which point the Applicant withdrew its request for the evidence preservation order. The Defendants did not object to the withdrawal, but did maintain their request for costs.

Submissions

Arguments focussed on whether the Decision[2] of 24 April 2023 by the UPC Administrative Committee, on the scale for recoverable costs ceilings, could be applied to disputes with costs relating to more than one party. The valuation of the proceedings in this case, which was not in dispute, was set as €249,000, which implied an associated cost ceiling of €38,000.

The Defendants argued that the Administrative Committee's Decision could not be understood as imposing a joint costs ceiling for all Defendants. The Defendants submitted that representing and coordinating multiple clients requires more effort, time and costs than representing a single client because of the effort required to analyse the specific circumstances of each party, coordinate with multiple clients, and ensure that each client's distinct legal and commercial interests are adequately represented. Further, the Defendants argued that a joint ceiling would effectively compel multiple Defendants to use the same legal counsel.

In response, the Applicant emphasised the close corporate relationship between the two Defendants, which it argued meant that arguments relating to increased costs of representing multiple clients did not apply. Further, the Applicant argued that the matter was withdrawn after only two documents were exchanged – given the ceiling is intended to cover full proceedings, the costs awarded should fall within the very lower end of the range €0 to €38,000.

Decision

In its judgment, the Court held that the ceiling on recoverable representation costs is a safety net in the form of an absolute cap on recoverable representation costs applicable in every case, and which may only be raised in limited situations such as in cases of unusual complexity.

The Court also noted that the Administrative Committee specified that the ceilings of recoverable costs apply to representation costs (not other expenses) and that they apply "regardless of the number of parties, claims or patents concerned"[3]. As the ceiling only applies to representation costs, the reimbursement of other expenses may be added. The Court understood the language that the ceilings shall apply 'regardless of the number of parties' to mean that, when an application against several Defendants is dismissed, the ceiling serves as a joint ceiling for all of the Defendants' representation costs.

The ceiling can be raised upon application, taking into the account the complicating factors mentioned by the Defendants in their submission. However, in this scenario the

Court held that, being a matter that was dealt with fairly straightforwardly, the case was not so complex that raising the ceiling for recoverable representation costs can be justified.

The absolute cap for the Defendants' joint recoverable representation costs was accordingly set at €38,000.

The Court found no reason to doubt that the representation costs requested by the Defendants were in fact incurred by the Defendants, and the Applicant did not dispute these costs. In making its decision with regard to costs, the Court considered that the Defendants felt a strong need to defend themselves, given the risk of an order forcing them to provide a competitor with confidential information. However, it also considered that the application was withdrawn at an early stage.

The Court therefore found it reasonable to award each Defendant a total amount of SEK 225,000 (around €20,000) resulting in a total award of SEK 450,000 (around €40,000), which included expenses not covered by the ceiling (the cost of technical consultants).

The Court had no reason to doubt that the costs should be split equally between Brunngård and Footbridge and, as the Defendants were connected and jointly represented, there was little reason for them to argue about the split. In future cases with unconnected Defendants that may not be the case.

[1] <https://www.unified-patent-court.org/en/node/60583>

[2] https://www.unified-patent-court.org/sites/default/files/upc_documents/d-ac_10_24042023_ceiling_e_for-publication.pdf

[3] Article 1(3) of the Decision