



Reference numbers:

App_22758/2025

APL_66414/2024

UPC_CoA_808/2024

Order
of the Court of Appeal of the Unified Patent Court
concerning the reimbursement of Court fees
issued on 28 May 2025

APPELLANT (DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

17 Quincy Street – 02138 Cambridge, MA – USA

hereinafter: Harvard,

represented by attorney-at-law Axel Berger, assisted by other representatives of Bardehle Pagenberg Partnerschaft mbB Patentanwälte Rechtsanwälte

RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

NANOSTRING TECHNOLOGIES EUROPE LIMITED

Suite 2, First Floor, 10 Temple Back – BS1 6FL Bristol – United Kingdom

hereinafter: NanoString,

represented by European patent attorney Daniela Kinkeldey, assisted by other representatives of Bird & Bird LLP

PANEL AND DECIDING JUDGES

First panel

Klaus Grabinski, presiding Judge

Peter Blok, legally qualified judge and judge-rapporteur

Rainer Friedrich, technically qualified judge

Emmanuel Gougé, legally qualified judge

Cornelis Schüller, technically qualified judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Decision of the Central Division, Munich Section, dated 17 October 2024
- Reference numbers:
ACT_551180/2023
UPC_CFI_252/2023
ORD_598480/2023

FACTS AND REQUESTS OF THE PARTIES

1. On 27 July 2023, NanoString brought an action for revocation of European Patent 2 794 928 (hereinafter: the patent at issue) against Harvard before the Munich Section of the Central Division of the Court of First Instance.
2. By decision of 17 October 2024 (hereinafter: the impugned decision), the Central Division revoked the patent at issue entirely and ordered Harvard to bear the legal costs incurred by NanoString.
3. Harvard lodged an appeal against the impugned decision. NanoString responded to the appeal.
4. On 14 May 2025, NanoString filed an application to withdraw the action. By order of today, the Court of Appeal permits the withdrawal.
5. On 23 May 2025, Harvard lodged an application for reimbursement of 60% of the Court fees it paid for the appeal.

GROUNDINGS FOR THE ORDER

6. In the event of the withdrawal of the action, the party liable for the Court fees will upon request receive a refund of 60% in accordance with R.370.9(b)(i) of the Rules of Procedure of the Unified Patent Court (hereinafter: RoP) if the action is withdrawn before the closure of the written procedure.
7. According to the Rules of Procedure (Part 4, "Procedures before the Court of Appeal"), the written procedure before the Court of Appeal is limited for the appellant to the submission of a statement of appeal and a statement of grounds of appeal and for the respondent to the submission of a statement of response, unless a cross-appeal has been lodged pursuant to R. 237 and 238 RoP (Court of Appeal 1 November 2024, UPC_CoA_520/2024 App_57474/2024 APL_51079/2024). Upon expiry of the period for lodging these statements, the interim procedure begins (R. 239.1 RoP).
8. Accordingly, the written procedure in this case was closed when NanoString lodged its Statement of response on 16 April 2025 and the time limit of R. 235 RoP expired. The fact that the judge-

rapporteur, by his order of 5 May 2025, gave Harvard the opportunity to reply in writing to certain requests made by NanoString and gave both parties the opportunity to submit a reasoned request to file further written submissions, does not constitute an extension of the written procedure. The preliminary order was issued by the judge-rapporteur as part of his duty in the interim procedure to make all necessary preparations for the oral hearing, exercising his case management powers of R. 101 and R. 331 et seq. in conjunction with R. 239.1 RoP.

9. It follows that, in the present case, the action was not withdrawn before the closure of the written procedure, but before the closure of the interim procedure. Accordingly, Harvard is entitled to a reimbursement of 40% of the Court fees it paid for the appeal pursuant to R. 370.9(b)(ii) RoP, instead of 60% pursuant to R. 370.9(b)(i) RoP.

ORDER

The Court of Appeal orders that 40% of the appeal Court fees be reimbursed to Harvard.

This order was issued on 28 May 2025.

Klaus Grabinski President of the Court of Appeal	
Peter Blok Legally qualified judge and judge-rapporteur	
Rainer Friedrich Technically qualified judge	
Emmanuel Gougé Legally qualified judge	
Cornelis Schüller Technically qualified judge	