

**UPC CFI, Regional Division Nordic-Baltic, 27 February 2025, Fapa Vital v Valentis Baltic**



**PATENT LAW – PROCEDURAL LAW**

**Withdrawal of application for provisional measures by party consent ([R. 265 RoP](#)) and reimbursement of Court fees ([R. 370.9 RoP](#) by analogy)**

Source: [Unified Patent Court](#)

**UPC Court of First Instance, Regional Division Nordic-Baltic, 27 February 2025**  
(Johansson, Härmand, Knijff)  
UPC\_CFI\_743/2024

**Decisions**

of the Court of First Instance of the Unified Patent Court delivered on 27 February 2025

**Headnote:** The provisions on reimbursement of Court fees can be applied by analogy when an application for provisional measures is withdrawn.

**Keywords:** withdrawal, provisional measures, reimbursement of Court fees

**APPLICANT**

**Fapa Vital AG**, Eschnerstrasse 64, 9487 Gamprin-Bendern, Lichtenstein

Represented by Michael Woller

**DEFENDANT**

**Valentis Baltic, UAB**, Molėtų pl. 11, 08409 Vilnius, Lithuania

Represented by Tjibbe Douma

**PATENT AT ISSUE**

EP 1 978 949

**DIVISION**

Nordic- Baltic Regional Division

**COMPOSITION OF PANEL – FULL PANEL**

Stefan Johansson Presiding judge and judge-rapporteur

Kai Härmand Legally qualified judge

Marije Knijff Legally qualified judge

**LANGUAGE OF THE PROCEEDINGS**

English

**SUBJECT-MATTER OF THE PROCEEDINGS**

Withdrawal of application for provisional measures and reimbursement of Court fees

**GROUND FOR THE DECISION**

**Closure of the proceeding**

The Applicant has informed the Court that the Parties have reached a settlement and submitted an application to withdraw its application for provisional measures. Since the settlement also covers the costs of the proceedings, the Applicant has requested the Court to

declare the proceedings closed without issuing a cost decision.

The Defendant has informed the Court that it consents to the withdrawal of the proceedings without a cost decision.

For these reasons, the proceedings shall be declared closed and the decision shall be entered on the register. Since the Parties' settlement covers the costs of the proceedings and they prefer that the Court does not issue a cost decision, the Court will refrain from deciding on costs.

Since the value of a proceeding on provisional measures only is relevant for determining the ceiling for recoverable costs (cf. [Rule 152.3 RoP](#)) and the Parties prefer that the Court does not issue a cost decision in this case, the Court will also refrain from deciding on the value of the proceeding.

**Reimbursement of Court fees**

The Applicant has, with reference to the settlement and withdrawal, requested the Court to reimburse 60 % of the Court fees and argued as follows. The Application has been withdrawn before the closure of the written procedure. As a consequence, the Applicant should be reimbursed 60 % of the Court fees, i.e. EUR 6,600 out of EUR 11,000 total court fees ([RoP 370.9 \(b\) and \(c\)](#)). According to [Rule 370.9 \(b\) and \(c\) RoP](#), fixed and value-based fees may be reimbursed as follows:

(b) In case of the withdrawal of an action [[Rule 265](#)] the party liable for the Court fees will be reimbursed by:

(i) 60 % if the action is withdrawn before the closure of the written procedure

(ii) 40 % if the action is withdrawn before the closure of the interim procedure

(iii) 20 % if the action is withdrawn before the closure of the oral procedure

(c) If the parties have concluded their action by way of settlement the party liable for the Court fees will be reimbursed by:

(i) 60 % if the action is settled before the closure of the written procedure

(ii) 40 % if the action is settled before the closure of the interim procedure

(iii) 20 % if the action is settled before the closure of the oral procedure.

This provision explicitly refers to the withdrawal of an Action, i.e. not an Application, and it is based on the assumption that the case is subject to three different stages (written, interim and oral procedure), which is not the case with an application for provisional measures. For these reasons, the provision is not directly applicable when an application for provisional measures is withdrawn.

However, the Court has previously found that this regulatory gap must be unintended and that the provisions on reimbursement in [Rule 370.9 \(b\) RoP](#) should be applied by analogy when an application for provisional measures is withdrawn (see e.g. [Order 61204/2024, issued by Munich LD on 15 November 2024 in case CFI 515/2024](#); cf. [Decision 39595/2024, issued by Düsseldorf LD on 3 July 2024 in case CFI](#)

133/2024). There is no reason for a different interpretation in this case.

The application was withdrawn before the the closure of the written procedure. Therefore, 60 % of the Court fees, i.e. EUR 6 600 out of EUR 11 000, shall be reimbursed.

**DECISION**

1. The Court declares these proceedings closed.
2. The decision on the closure of the proceedings to be entered on the register.
3. The Court shall reimburse the Applicant EUR 6 600, which is 60 % of the Court fees paid by the Applicant in these proceedings.

-----