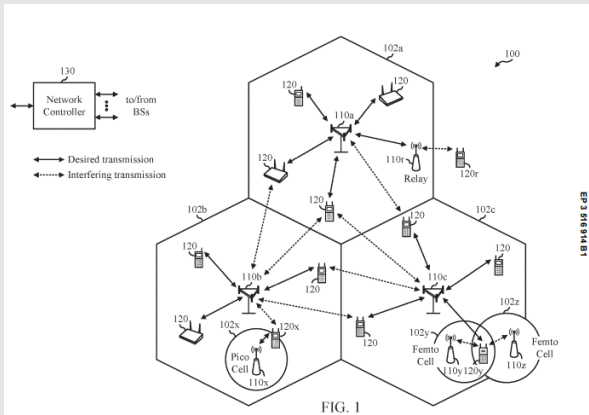


UPC CFI, Central Division Paris, 24 October 2024,
Qualcomm

*resource allocation patterns for scheduling services
in a wireless network*



PATENT LAW – PROCEDURAL LAW

No reimbursement of court fees following interlocutory rectification by EPO of contested decision after previous Court order that there was no reason for full or partial reimbursement of the fee for the action (R. 370 RoP, R. 91 RoP, R. 333 RoP, R. 220 RoP)

- Even if it is foreseen by R. 370.11 RoP that an application may also be filed at a later stage, it remains in the present case that the Court of First Instance cannot review its previous order on the same subject-matter and decide in a different way, considering – should it be a case management order – that the decision was taken by a single judge (without possible panel review) and the Order can be appealed.

Source: [Unified Patent Court](#)

**UPC Court of First Instance,
Paris Central Division, 24 October 2024**

(Butin)

Order

of the Court of First Instance of the Unified Patent Court pursuant to [R. 370](#) and [91\(2\) RoP](#) delivered on 24/10/2024

in the proceedings 52964/2024 - UPC_CFI_427/2024

HEADNOTE:

- Court may, upon prior reasoned request, order full or partial reimbursement of the fee for the action pursuant to [R. 88 RoP](#).

- There is no possible review if the case is handled by a single judge.

KEYWORDS:

- Application pursuant to [R. 370.11 RoP](#) - reimbursement of fees

APPLICANT

QUALCOMM INCORPORATED

5775 MOREHOUSE DRIVE - 92121-1714 – San Diego – US

Represented by: Francesco Celluprica

PATENT AT ISSUE

Patent no. [EP 3516914](#)

Proprietor/s QUALCOMM INCORPORATED

DECIDING JUDGE

Presiding judge Florence Butin

LANGUAGE OF PROCEEDINGS: English

SUMMARY OF FACTS

By an application dated 19 July 2024 (App_42538/2024 UPC_CFI_427/2024), Qualcomm Incorporated (hereinafter “*the Applicant*”) requested the Court of First instance of the UPC – Paris Central division – to annul a decision of the European Patent Office in carrying out the tasks referred to in [Art. 9 of Regulation \(EU\) No 1257/2012](#).

By a notification issued on 13 August 2024 (EPO interlocutory revision No 46904/2024), the EPO:

- informed the Court under [R. 91\(1\)\(b\)](#) that the contested decision dated 10 July 2024 had been rectified in accordance with the order or remedy sought by the Claimant;

- provided the communication dispatched to Qualcomm Inc. accordingly.

By an order dated 13 September 2024, the Court closed the case pursuant to [R. 91.2](#) and held that there was no particular reason to order full or partial reimbursement of the fee for the action.

INDICATION OF THE APPLICANT’S REQUEST:

By a generic application filed on 23 September 2024 (No. App_52964/2024), Qualcomm Inc. asks the Court to:

1. Mainly, totally reimburse the fee paid;
2. Subsidiarily, reimburse 60% of the fee;
3. Further subsidiarily, reimburse 25% of the fee.

The Applicant argues that according to [R. 91.2 RoP](#) in combination with [R. 370.11 RoP](#), the Court should consider to reimburse the fee without any reference to a claimant request/activity and that:

- the contested decision has been rectified in accordance with the request;

- there is no rule that requires to mention particular circumstances in order to obtain a reimbursement other than the prevailing in the proceeding;

- the proceeding has been closed before the closure of the written procedure and has been handled by a single judge.

GROUND FOR THE ORDER

The disputed order was issued pursuant to [R. 91.2 RoP](#), which reads as follows “*where the court is informed that the contested decision has been rectified, it shall inform the Claimant that the action is closed and may order full or partial reimbursement of the fee for the action against a decision of the Office in accordance with part. 6*”.

According to this provision, the Court may order a reimbursement of the fee in total or in part along with the notification that the case is closed – thus in the same decision – while pursuant to [R. 37 0.11](#) (Part.6 of the RoP referred to in above) “[*t*]he party seeking reimbursement under paragraphs 9 and 10 shall lodge a reasoned Application for reimbursement to the Court. The Court shall deal with the application without delay

and if satisfied that the reimbursement is appropriate shall direct the Registrar to make the payment as soon as practicable”.

Moreover, [R.370.9](#) states that “fixed and value-based fees may be reimbursed as follows:

(a) If the action is heard by a single judge [Rule 345.6.] the party liable for the Court fee will be reimbursed by 25 % of the fee.

(b) (...)

(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”.

It results from these provisions that the Court may, upon prior reasoned request, decide on the reimbursement of the court fees incurred in total or partly. Even if it is foreseen by [R. 370.11 RoP](#) that an application may also be filed at a later stage, it remains in the present case that the Court of First Instance cannot review its previous order on the same subject-matter and decide in a different way, considering – should it be a case management order – that the decision was taken by a single judge (without possible panel review) and the Order can be appealed.

It follows from the above that the Application for reimbursement must be dismissed.

ORDER

1- The Application for reimbursement pursuant to R. 370.11 is dismissed;

2- An appeal may be brought against the present order pursuant to [R.220 \(b\) RoP](#).

Issued on 24 October 2024

Florence Butin – Presiding Judge

ORDER DETAILS

ORD_53290/2024 issued in ACTION NUMBER:
App_52964/2024

UPC number: UPC_CFI_427/2024

Action type: Application pursuant to [R. 370.11 RoP](#)
(reimbursement of fees)
