

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 18 February 2026
Application for suspensive effect (R. 223 RoP)

APPLICANT AND APPELLANT (APPLICANT BEFORE THE COURT OF FIRST INSTANCE)

Guardant Health, Inc., Palo Alto, California, United States of America

(hereinafter: "Guardant")

represented by attorney at law Agathe Michel-De Cazotte, Carpmaels & Ransford LLP, London, United Kingdom

RESPONDENTS (AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Sophia Genetics SA**, Rolle, Switzerland
2. **Sophia Genetics SAS**, Bidart, France
3. **Sophia Genetics SRL**, Milan, Italy
4. **Sophia Genetics GmbH**, Freiburg, Germany

(hereinafter: "Sophia")

represented by attorneys at law Liz Cohen and other representatives from Bristows (Ireland) LLP, Dublin, Ireland

PATENT AT ISSUE

EP 3 443 066

PANEL AND DECIDING JUDGE

Panel 2

This order has been adopted by

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, judge-rapporteur and legally qualified judge

Ingeborg Simonsson, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Paris Local Division, 23 January 2026, in the provisional measures proceedings UPC_CFI_808/2025

LANGUAGE OF THE PROCEEDINGS

English

FACTS

1. On 29 August 2025, Guardant lodged an Application for provisional measures before the Paris Local Division, against Sophia, for infringement of four of its European Patents EP-3470533-B2 ("EP'533") EP-3591073-B1 ("EP'073") EP-3443066-B1 ("EP'066"), EP-3766986-B1 ("EP'986"). At the stage of the Reply to the Objection, Guardant withdrew its request with regard to EP'533.
2. The Paris Local Division "noted" the withdrawal of the request under EP'533 and rejected the Application for provisional measures under EP'073, EP'066 and EP'986.
3. The Paris Local Division ordered Guardant to pay an interim award of costs of the proceedings amounting to EUR 400,000.
4. Guardant appealed the order only with regard to EP'066.

PARTIES' REQUESTS

5. Guardant requests that the Court of Appeal grant suspensive effect regarding the interim award of costs order.
6. In summary, Sophia requests that the Court of Appeal
 - 1) reject the Application for suspensive effect,
 - 2) set a deadline for payment of the interim award of costs, one week from the date of the Court's order on the Application for suspensive effect,
 - 3) order Guardant to pay costs incurred by Sophia in responding to the Application for suspensive effect.

PARTIES' SUBMISSIONS

7. In summary, Guardant submits the following:
 - The CFI made a manifest error in awarding interim costs to Sophia without making an order for costs and, more importantly, without Sophia having requested an interim award of costs.
 - The CFI failed to establish the amount of costs (approximately) incurred.
 - Furthermore, the CFI also erred by granting an interim award of costs without making an order for costs (in particular, in the absence of a requirement for subsequent main proceedings). If the interim award of costs order is not set aside by the Court of Appeal, Guardant is left with no procedural means to challenge the reasonableness and proportionality of the amount awarded because there is no *prima facie* requirement on Sophia to commence separate proceedings for a cost decision.
 - These manifest errors justify suspensive effect to prevent Guardant potentially paying Sophia in excess of the amount of costs actually incurred by them.

- If the Court is minded to maintain an interim award of costs for the first instance proceedings, Guardant requests that the following points are considered:
 - An interim award ceiling for the first instance proceedings should in fact be half of $\frac{3}{4}$ of the cost of ceiling, namely half of EUR 450k, which is EUR 225k. At most, if the cost ceiling is considered to be EUR 600k then the interim award ceiling should be EUR 300k.
 - Sophia's failure to respond appropriately to Guardant's correspondence regarding the patent that was withdrawn, caused unnecessary costs that should be borne by Sophia (Art. 69(3) UPCA).
 - Sophia's costs of producing the invalid submission of 9 December 2025 were unnecessary, so should be borne by Sophia.
 - For all these reasons, even if interim costs are awarded (contrary to Guardant's appeal), Guardant requests that the Court of Appeal sets the ceiling for any interim award of costs at EUR 225k for Sophia.

8. In summary, Sophia submits the following:

- During the first instance proceedings, both parties requested interim reimbursement of costs amounting to EUR 600,000.
- On 12 February 2026, Sophia filed an Application for a cost decision under R. 150 and R. 151 RoP at the CFI. This Application proves that costs exceeding EUR 600,000 have been incurred by Sophia during the first instance proceedings.
- Guardant's Application for suspensive effect is inadmissible. This follows from R. 223.5 RoP. An interim award of costs in provisional measures proceedings is not an order referred to Art. 62 UPCA.
- It should be noted that Guardant clearly anticipated that EUR 600,000 would be a reasonable amount to spend on legal representation in relation to the provisional measures proceedings. Guardant requested an interim award of costs in the amount of EUR 600,000. Sophia also anticipated the same, requesting an interim award of costs of the same amount. This request was never challenged by Guardant in the proceedings before the CFI.
- Guardant argues there is no mechanism to challenge "the reasonableness and proportionality of the amount awarded because there is no *prima facie* requirement on Sophia to commence separate proceedings for a cost decision." This is a rather academic point because this would only be the case if a) Guardant did not appeal the decision and b) Sophia never initiated further costs proceedings at the CFI.
- The missing requirement on Sophia to commence separate proceedings for a cost decision could have easily been addressed by Guardant requesting, in the event that Sophia remains successful on appeal, that the Court of Appeal orders that Sophia commence cost proceedings within a suitable deadline.
- The value of the interim costs award is not a matter for the Court of Appeal to deal with under an application for suspensive effect, as it is not a manifest error. Notably, Guardant does not even allege that the value itself is a manifest error.
- Sophia has still not received payment of the interim award of costs, which it understands is immediately enforceable. Sophia therefore requests that the Court of Appeal set a deadline for this payment in its order regarding suspensive effect.

REASONS

I. Application for suspensive effect

Admissibility

9. The Application for suspensive effect is admissible.
10. According to R. 223.5 RoP there shall be no suspensive effect for an appeal of an order pursuant to R.220.2, R.220.3 or 221.3 RoP. It follows from the fact that an appeal under R.220.1(c) RoP is not mentioned in R. 223.5 RoP that R. 223.5 RoP does not apply. Contrary to Sophia's opinion, the interim award of costs order qualifies as order "referred to in Art. 62 UPCA". An interim award of costs may also be ordered in favour of the defendant in proceedings for provisional measures. R. 211.1(d) RoP applies mutatis mutandis (see CoA, 28 November 2025, UPC_CoA_317/2025, *Barco vs Yealink*, para. 96)

Merits

11. Guardant's Application for suspensive effect must be dismissed as unfounded for the following reasons.
12. Pursuant to Art. 74 para. 1 UPCA, an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. The Court of Appeal can therefore only grant the application if the circumstances of the case justify an exception to the principle that the appeal has no suspensive effect. It must be examined whether the appellant's interest in maintaining the status quo until the decision on its appeal outweighs the Respondent's interest by way of exception (UPC Court of Appeal, Order of 18 January 2024, UPC_CoA_4/2024, App_100/2024, *Meril vs Edwards* para. 5; Order of 19 June 2024, UPC_CoA_301/2024, App_35055/2024, *ICPillar*, para. 7; Order of 19 August 2024, UPC_CoA_388/2024, APL_39884/2024, *Sibio et al vs Abbott*, para. 6).
13. In particular, the suspensive effect may be ordered if the Order against which the appeal is directed is manifestly erroneous (UPC CoA, Order of 18 January 2024, UPC_CoA_4/2024, App_100/2024, *Meril vs Edwards*, p. 5; Order of 19 August 2024, UPC_CoA_388/2024, APL_39884/2024, *Sibio et al vs Abbott*, para. 7) or the enforcement of the impugned decision would render the appeal largely irrelevant or devoid of purpose (UPC CoA, Order of 6 November 2023, UPC_CoA_407/2023, App_584588/2023, *Ocado vs Third Party*; Order of 2 May 2024, UPC_CoA_177/2024, APL_20002/2024, *Progress Maschinen & Automation*, para. 10).
14. Furthermore, the infringement of fundamental procedural rights, such as the principle of the right to be heard, can also justify the ordering of suspensive effect if it cannot be ruled out from the outset that the court would have reached a different conclusion without the infringement (UPC CoA, Order of 29 October 2024, UPC_CoA_549/2024, App_53031/2024, *Belkin vs Philips*, para 61).
15. Guardant has failed to demonstrate an infringement of fundamental procedural rights on which the decision is based. Guardant's assertion that the interim award of costs was granted without a

corresponding request from Sophia contradicts with the impugned order. The CFI established in the impugned order that both parties requested reimbursement of the costs amounting to EUR 600,000 (para. 154). Guardant does not explain why this finding is incorrect. Pursuant to R. 223.2 RoP, the Application for suspensive effect shall set out (a) the reasons why the lodging of the appeal shall have suspensive effect and (b) the facts, evidence and arguments relied on. This means that such an application must in itself enable the Court of Appeal to decide on this application, if necessary, without further information. References to text passages in pleadings and documents in the first-instance files are admissible, provided they are sufficiently specific. Guardant should therefore have demonstrated with reference to the case file or the oral hearing that this finding is not correct.

16. Guardant has failed to demonstrate manifest errors in the impugned order with regard to the interim award of costs. Even taking into account the Statement of grounds of appeal, it cannot be assumed that the findings or legal considerations on which the first instance decision is based will be deemed untenable in the summary examination to be carried out (see *Philips/Belkin*, para 60). The question, how it can be ensured that the interim award of costs is not higher than the actual costs incurred by the defendant has to be decided by the Court of Appeal in its decision in the main appeal proceedings.
17. It is true that an explicit order for costs is missing. But this does not influence the order granting the interim award of costs.
18. Guardant does not expressly allege that the amount of the granted interim award of costs is based on a manifest error. Furthermore, based on Guardant's submission, no such manifest error can be identified in this respect. To what extent the successful party is entitled to a reimbursement of representation costs is to be determined in the proceedings for a cost decision pursuant to Chapter 5 of Part 1 RoP. In general, the Court may assume that the successful party will be entitled to 50% of the applicable ceiling and may order reimbursement of the amount by means of an interim award, unless there are clear indications that the successful party in fact incurred fewer representation costs, or that 50% of the applicable ceiling is more than what would be reasonable or proportionate in the particular circumstances of the case. At the same time, as a general rule, the Court cannot assume that the successful party is entitled to more than 50% of the applicable ceiling before the conclusion of the cost proceedings according to Chapter 5 of Part 1 RoP. An exception may apply if parties have submitted and discussed cost specifications during the proceedings or have agreed on the costs to be reimbursed (CoA, 25 November 2025, UPC_CoA_464/2024, *Meril vs Edwards*, para. 203). Both of the parties requested an interim award of costs in the amount of EUR 600,000. This was obviously decisive for the CFI (see para. 154). It cannot be ruled out that the CFI assumed that both parties agreed on the costs to be reimbursed. Guardant does not claim that Guardant challenged Sophia's interim award of costs request.

Sophia's request for setting a deadline

19. There is no legal basis for Sophia's request to supplement the first-instance decision in the proceedings for an order suspending the effect of the appeal, by setting a deadline for Guardant to pay the interim award of costs. This request must therefore be dismissed as inadmissible.

Costs

20. The Court of Appeal will not decide on the costs in this order, since this order is not a final order or decision concluding an action (CoA, 2 May 2024, UPC_CoA_177/2024, *Progress Maschinen vs AWM* para. 13).

ORDER

- I. The Application for suspensive effect is rejected.
- II. Sophia's request for setting a deadline for payment and costs is dismissed as inadmissible.

Issued on 18 February 2026

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, judge-rapporteur and legally qualified judge

Ingeborg Simonsson, legally qualified judge