



PATENT AT ISSUE

EP 1 993 350

DECIDING PANEL

Panel 1a

Klaus Grabinski, presiding judge and president of the Court of Appeal

Emmanuel Gougé, legally qualified judge and judge-rapporteur

Peter Blok, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Decision by default of the Court of First Instance of the Unified Patent Court, The Hague Local Division, dated 21 October 2025
- Numbers attributed by the Court of First Instance:
  - UPC\_CFI\_499/2024
  - ACT\_48877/2024

FACTS, REQUESTS AND PARTIES' SUBMISSIONS

1. Amycel filed an application for provisional measures against the Applicant before The Hague Local Division of the Court of First Instance of the Unified Patent Court (hereafter "The Hague LD") for infringement of the patent at issue.
2. In *inter-partes* proceedings, The Hague LD ordered provisional measures against the Applicant, including a preliminary injunction to refrain from infringing the patent at issue (order of 31 July 2024).
3. On 30 August 2024, Amycel brought an infringement action against the Applicant before The Hague LD for infringement of the patent at issue.
4. The Hague LD, by reference to the steps taken by the Registry and by Amycel to bring the Statement of claim to the Applicant's attention, considered the actions taken to be an alternative method of service of the Statement of claim and, pursuant to R. 275.3(b) RoP set the date on which the Statement of claim was deemed to have been served (order of the judge-rapporteur of 19 December 2024).
5. By Order of 1 April 2025, The Hague LD found that, in the context of the specific circumstances of the proceedings, the representative of the Applicant had not taken all due care to avoid the late filing of the Statement of defence and ordered a decision by default be taken in the infringement action under R. 355 RoP.
6. In its decision by default of 21 October 2025 (the impugned decision), The Hague LD held the Applicant liable for infringement of the patent at issue. It ordered *inter alia* the Applicant to send a registered letter to the parties to whom it offered for sale, sold, delivered or otherwise traded in the infringing product - namely the mushroom strain Cayene - informing them of the impugned decision and requesting them to return any current stock of the infringing products (operative part, para III), to publish a message on the website of the Applicant informing about the impugned decision (operative part, para IV) and to pay Amycel EUR 50,000 as an interim award of damages (operative part, para VIII).

7. On 22 December 2025, the Applicant filed an appeal against the impugned decision and, insofar as part III, IV and VIII of said decision are concerned, an application for suspensive effect pursuant to R. 223 RoP (hereafter the "First Application").
8. In its First Application, the Applicant mainly argued that part III and IV of the impugned decision would be impossible to revert should the impugned decision be set aside, emphasizing that "any information published on the internet will stay there forever and thus the Court should be very careful with such orders with irreversible consequences" and that "there is no urgency in the publication requests". Concerning part VIII of the impugned decision, the Applicant was of the opinion that "it is not clear if when the decision is set aside, would [the] funds be returned to [the Applicant]" and emphasized that the payment of the interim award of damages would have serious consequences on this business.
9. The First Application for suspensive effect was rejected by the Order of the Court of Appeal issued on 16 January 2026.
10. On 20 February 2026, the Applicant lodged the Statement of grounds of appeal together with a second request for suspensive effect pursuant to R. 223 RoP (hereafter the "Second Application"), requesting the Court to suspend the enforceability of part III, IV and VIII of the operative part of the impugned decision until the appeal has been finally decided. The proof of payment of the court fee was submitted in the CMS on 4 March 2026.
11. In its Second Application, the Applicant raises arguments identical or at least very similar to the ones already brought by the Applicant in its First Application "which shall be now more clear in view of the full grounds of appeal presented so far" (Grounds of appeal, p. 43, first paragraph). The Applicant also argues that the impugned decision suffers from serious procedural defects, claiming in addition - without any specific reference - that "the Appellant is also separately pursuing a defence in Polish national proceedings, indicating that the issues are genuinely contested", so that it should favour a stay of the appeal proceedings.
12. In its comments on the Second Application, Amycel argues that it should be deemed inadmissible and rejected by the Court of Appeal. Amycel considers that the Applicant based its Second Application on the same reasons as the First Application and further argues that as far as the Applicant added any arguments to the ones included in the First Application, those arguments should be ignored as the Applicant could and should have filed them with the First Application. Amycel claims that none of the Applicant's arguments provide valid grounds for a suspensive effect.

#### GROUNDS FOR THE ORDER

13. The application for suspensive effect is inadmissible for the following reasons.
14. An appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties (Article 74.1 UPCA). According 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.
15. The principle that parties shall set out their full case as early as possible in the proceedings (RoP, Preamble, paragraph 7, last sentence) also applies to applications for suspensive effect. This means that an application for suspensive effect must set out all the reasons, facts, evidence and arguments on which the applicant wishes to rely. Any subsequent application for suspensive effect will be inadmissible, unless the applicant can demonstrate that the new application is based on submissions that could not reasonably have been made in the previous application.
16. Applying this principle, the Applicant's Second Application must be declared inadmissible. The Applicant failed to demonstrate that this application is based on submissions that could not reasonably have been

included in the First Application. It is apparent that it is based on submissions that the Applicant could reasonably have included in the First Application, or that were actually included therein.

ORDER

The application for suspensive effect lodged by the Applicant on 20 February 2026 is inadmissible.

This order was issued on 24 March 2026.

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Emmanuel Gougé, legally qualified judge and judge-rapporteur

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