



UPC Court of Appeal
UPC_CoA_34/2026

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 26 February
concerning a request for discretionary review (R. 220.3 RoP)

APPELLANT (AND DEFENDANT BEFORE THE COURT OF FIRST INSTANCE)

EOFLOW Co., Ltd., Hwangsaeul-ro, Bundang-gu, Seongnam-si, Gyeonggi-do, Republic of Korea
(hereinafter: "EOFlow")

represented by attorney at law Mirko Weinert, Hoyng ROKH Monegier, Düsseldorf, Germany

RESPONDENT (AND APPLICANT BEFORE THE COURT OF FIRST INSTANCE)

Insulet Corporation, Acton, United States of America
(hereinafter: "Insulet")

represented by attorney at law Marc Grunwald, Peterreins Schley, Munich, Germany

PATENT AT ISSUE

EP 4 201 327

PANEL AND DECIDING JUDGES

Panel 2

This order has been issued by
Patricia Rombach, legally qualified judge and standing judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Milan Central Division, 4 December 2025, in an application for determination of penalty payments,
UPC_CFI_1167/2025

LANGUAGE OF THE PROCEEDINGS

English

FACTS

1. EOFlow is a manufacturer based in South Korea. It manufactures an insulin pump named “EOPatch” and “GlucoMen Day Pump” hereinafter “attacked embodiments”. EOFlow shipped the attacked embodiments to the exclusive European distributor A. Menarini Diagnostics s.r.l in Italy (hereinafter Menarini).
2. Between Insulet and Menarini a settlement (hereinafter “the settlement”) was reached regarding the attacked embodiments.
3. On 30 April 2025 (UPC_CoA_768/2024 APL_64374/2024 ORD_69078/2024, “the order on provisional measures”) the Court of Appeal found that the attacked embodiments infringe Insulet’s patent and ordered EOFlow by way of a preliminary injunction to refrain from making, offering, placing on the market, using or possessing for the purposes mentioned, or importing or storing the attacked embodiments inter alia in the territories of the Italian Republic and/or the Kingdom of Sweden.
4. The Court of Appeal ordered furthermore, that if EOFlow fails to comply with this prohibition periodic penalty payments are payable to the Court of up to EUR 250,000 for each individual violation.
5. Insulet filed an application seeking the imposition of penalty payments.
6. EOFlow filed two applications under R. 262.2 RoP regarding information related to business agreements with Menarini.
7. With the impugned order, the Milan Central Division ordered penalty payments in the amount of EUR 150,000 for non-compliance with the order on provisional measures and dismissed the R. 262.2 and 262A RoP requests of the parties. EOFlow was ordered to bear the costs of the proceedings in the amount of EUR 10,000.00, payable to Insulet.
8. The impugned order contains the following: “Note: The imposition of a penalty is subject to appeal under R. 354.4. Leave to appeal the order on confidentiality issues is granted (...)”.
9. EOFlow appealed the order with regard to the penalty payments as well as with regard to the dismissal of its R. 262.2 RoP request.
10. On 21 January 2026 the judge-rapporteur invited both parties to comment on the non-compliance with R. 220.2 RoP with regard to the penalty order and the consequences thereof, in particular the consequences for the admissibility of the appeal with regard to the imposed penalty payments and with regard to the cost decision.

11. On 4 February 2026 the Court of Appeal dismissed the appeal against the penalty order and the cost order (UPC_CoA_930/2025). The appeal against the dismissal of the R. 262.2 RoP requests is still pending.
12. EOFlow filed a request for leave to appeal the impugned order on 5 February 2026 with the CFI. The CFI has allowed Insulet to respond and a further round of written pleadings is foreseen. The judge-rapporteur has referred the case to the panel.

PARTIES' REQUESTS

13. EOFlow requests that the Court of Appeal allow the request for discretionary review with respect to the penalty and costs orders of the impugned order; in the auxiliary grant leave with respect to these orders.
14. Furthermore, EOFlow requests that the Court of Appeal classify specific information as confidential within the meaning of Art. 58 UPCA, R. 262 RoP; exclude this information from the file inspection by third parties, redact this information prior to publication of any decisions or notices, exclude the public from the interim hearing and/or oral hearing and exclude the public from the reasoning of the judgment as far as the information is discussed directly or indirectly (hereinafter for all: confidentiality requests).

PARTIES' SUBMISSIONS

15. In essence, EOFlow submits the following:
 - It is understood by EOFlow that the first 15 days period mentioned in R. 220.3 RoP is not met. However in accordance with the *ratio* of the decision in *Total vs. Texas Instruments* (CoA, 14 January 2025, CoA_651/2024) there are cases in which R. 220.3 RoP applies regardless of whether the specific requirements of that rule are met.
 - The CFI by granting leave with respect to the order on the confidentiality request and citing R. 354.4 RoP with respect to the penalty order and not citing any appeal rule for the cost decision, generated the impression that leave to appeal the full order, covering all of the aforementioned orders, was granted. Obviously, the CFI was of the opinion that by referring to R. 354.4 RoP leave to appeal against the penalty order was granted. Another interpretation of the "Note" in the impugned order would at least be questionable under the fair trial principles, since there is no reason for differentiating between the one and the other order when deciding on leave to appeal, and it would not be efficient either.
 - Therefore, as in *Total vs. Texas Instruments*, EOFlow cannot be blamed for missing the first 15 days period.
 - After the CoA decision on 4 February 2026, EOFlow without further delay on 5 February 2026 requested leave to appeal by filing an application with the CFI.
 - In the auxiliary, if the Court of Appeal would dismiss the request under R. 220.3 RoP, it is put to the Court of Appeal that Art. 73 (2), (b) UPCA empowers the Court of Appeal to grant leave to appeal itself.

GROUNDS:

Request for discretionary review

Main request

16. As already stated in the order of 4 February 2026 (para. 23-26), to which reference is made to avoid repetition, the application for discretionary review is inadmissible. Only if the CFI denied a request to grant leave to appeal, it is possible to request a discretionary review. No decision is required here as to what applies in cases where the CFI fails to decide within the time limit (15 days) of the impugned order (cf R. 220.3 RoP, CoA 9 October 2024, UPC_CoA-586/2024, *Suinno vs. Microsoft*, para. 15) despite a timely request for leave to appeal, as a timely request within the 15 days period is not met.
17. EOFlow argues without success with reference to the alleged similar situation in *Total vs. Texas Instruments* that EOFlow cannot be blamed for missing the 15-day period. As stated in the order of 4 February 2026 (para. 27), this is not a comparable case. Nothing prevented EOFlow from requesting leave to appeal in this case. In the impugned order, the CFI referred to R. 354.4 RoP, which clearly states that the penalty order may be subject to an appeal pursuant to R. 220.2 RoP. EOFlow, which is represented by an attorney at law, in view of R. 220.2 RoP and Court of Appeal case law on this, should have realised that a request for leave was required.

Auxiliary request

18. The auxiliary request is also inadmissible. Contrary to EOFlows opinion, Art. 73 (2), (b) (ii) UPCA does not empower the Court of Appeal to grant leave to appeal by itself. Art. 73 (2), (b) UPCA empowers the Court to grant leave to appeal “within 15 days of the notification of the Court’s decision to that effect” (emphasis added by the Court). This indicates that the court that issued the order decides on leave to appeal. This is also clear from R. 220.2 RoP which is based on Article 73 (2)(b). The Court of Appeal, on the other hand, decides the question of whether leave to appeal should be granted only within the framework of the request for discretionary review, if the conditions for admissibility under R. 220.3 RoP are met.

Confidentiality requests

19. There is no need to decide on the confidentiality requests at this stage of the proceedings (see CoA, 9 January 2025, UPC_CoA_769/2024).

ORDER

EOFlow’s request for discretionary review and the auxiliary request to grant leave to appeal are dismissed.

Issued on 26 Febuary 2026

Patricia Rombach, legally qualified judge and standing judge