

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 27 February 2026
Request for further exchanges of written pleadings (R.36 RoP)

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

Sibio Technology Limited, Kowloon, Hong Kong

represented by David Por, attorney at law, Clifford Chance Europe LLP, Paris, France

(hereinafter 'Sibio')

RESPONDENT (AND DEFENDANT BEFORE THE COURT OF FIRST INSTANCE)

Abbott Diabetes Care Inc., Alameda, United States of America

represented by Dr. Wim Maas, attorney at law, Taylor Wessing N.V., Amsterdam, The Netherlands

(hereinafter 'Abbott')

PATENT AT ISSUE

EP 3 831 283

PANEL AND DECIDING JUDGE

Panel 2

This order has been issued by Rian Kalden, legally qualified judge and judge-rapporteur

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

Decision of 21 July 2025, issued by the Central Division of Paris in the revocation action ACT_27463/2024
UPC_CFI_231/2024

LANGUAGE OF THE CASE

English

SUMMARY OF FACTS AND THE REQUEST

1. In the impugned decision, the Paris Central Division dismissed the revocation action filed by Sibio against Abbott concerning the European patent EP 3 831 283 B1, maintained the patent as granted, and ordered that the costs be borne by Sibio.
2. On 22 September 2025, Sibio lodged an appeal pursuant to R. 220.1 (a) RoP before the Court of Appeal.
3. Sibio filed its Statement of appeal and grounds of appeal on 21 November 2025 and Abbott filed its Statement of response on 24 February 2026.
4. On 25 February 2026, the judge-rapporteur communicated the intention to close the written proceedings by 26 February 2026.
5. The same day Sibio requested further exchanges of written pleadings pursuant to R. 36 RoP, stating that this was justified by the fact that in its Statement of response Abbott argued that, in the alternative to the confirmation of the appealed judgment, the patent in suit should be upheld according to one of six auxiliary requests (hereinafter referred to the Auxiliary Requests).

REASONS

6. The judge-rapporteur rejects the application for the following reasons.
7. Abbott already submitted the Auxiliary Requests during the first instance proceedings. The Auxiliary Requests were expressly admitted into the proceedings by the Court of First Instance (para. 32 of the impugned decision).
8. It follows from 222.1 and 222.2 RoP that requests, facts and evidence submitted by the parties during the proceedings at first instance shall be the basis for the proceedings before the Court of Appeal, because insofar as not already submitted at that stage, these may be disregarded at the discretion of the Court of Appeal.
9. The Auxiliary Requests must therefore be considered to be part of the appeal proceedings, until and unless indicated by Abbott otherwise (e.g. by a withdrawal). There is no need to 'refile' auxiliary requests on appeal, as Sibio suggests, nor was Sibio "required to try to guess in advance what Abbott's procedural choices and position in this respect would be".
10. Neither is maintaining the Auxiliary Requests by Abbott and maintaining its conditional (i.e. if the claim as granted would be held invalid) request to uphold the patent in suit according to one of the Auxiliary Requests to be considered as a (conditional) cross appeal. Abbott does not disagree in any way with the decision of the Court of First Instance and does not request another outcome. Abbott only maintains what it already requested at first instance.

11. Contrary to what Sibio argues, R. 226 RoP does not mean that in a situation where the Court of First Instance did not need to decide on the Auxiliary Requests, Sibio did not have to address it, if it wanted to add anything to what was already submitted at first instance (within the limits of R. 222.2 RoP).
12. Moreover, there is no need to take a position on the Auxiliary Requests in view of arguments brought forward by Abbott in its Statement of response. Abbott has not requested to amend its Auxiliary Requests.
13. The mere fact that further pleadings would not alter the timeline set by the Court for the remainder of the case cannot in and of itself be a sufficient ground for allowing further pleadings.
14. Not allowing further pleadings is not contrary to the principles of due process, in particular the principles of fairness, equity and the right to be heard, given that Sibio had the opportunity to comment on the Auxiliary Requests during the first instance proceedings and in its Statement of grounds of appeal. Furthermore, Sibio has the opportunity to respond to Abbott's Statement of response at the oral hearing, in which Abbott has referred to and summarised its arguments raised at first instance in relation to the Auxiliary requests.

ORDER

- I. The request pursuant to R. 36 RoP is rejected;
- II The judge-rapporteur proceeds to close the written proceedings and open the oral phase, as announced pursuant to R. 35(a) RoP.

Case management orders by the judge-rapporteur shall be reviewed by the panel, on a reasoned Application by a party (R. 333.1 RoP).

Issued on 27 February 2026

Rian Kalden, legally qualified judge and judge-rapporteur