

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 14 April 2026
concerning an application for suspensive effect (R. 223 RoP)

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

La Siddhi Consultancy Limited., Hempstead, United Kingdom
(hereinafter referred to as “Applicant”)

represented by Christian Meyer, Attorney-at-law, Maiwald GmbH, Düsseldorf, Germany

RESPONDENTS (AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Athena Pharmaceutiques SAS**, Louveciennes, France
2. **Substipharm**, Paris, France

(hereinafter jointly referred to as “Respondents”)

All represented by Jegannath KORUKOTTU, European, UK Chartered Patent Attorney, Grünecker Patent- und Rechtsanwälte PartG mbB, München, Germany

PATENT AT ISSUE

EP 3 592 333 with unitary effect

LANGUAGE OF THE PROCEEDINGS

English

PANEL AND DECIDING JUDGES

Panel 3

Ulrike Voß, presiding judge

Nathalie Sabotier, legally qualified judge and judge-rapporteur

Bart van den Broek, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Order of the Central Division Milan issued on 13 March 2026 in the revocation proceedings
UPC_CFI_927/2025

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. On 25 September 2025, the Applicant filed a revocation action against the patent at issue before the Central Division, section Milan (Central Division Milan).
2. On 16 December 2025, with their Defence to revocation, the Respondents lodged an application for security for their legal costs in accordance with R. 158 RoP.
3. By an order dated 13 March 2026 (the impugned order), the Central Division Milan ordered the Applicant to provide security for legal costs and other expenses in the amount of € 75,000 by way of a deposit or a bank guarantee provided by a bank licensed in the European Union, within six weeks from the date of service of the order. Leave to appeal was granted.
4. On 27 March 2026, the Applicant lodged an appeal against the impugned order together with an application for suspensive effect (request 3 of the Statement of appeal, p. 3).
5. On 7 April 2026, the Respondents requested the Court of Appeal to:
 - reject the application for suspensive effect;
 - order the Applicant to bear the costs of this request.

SUMMARY OF THE PARTIES' SUBMISSIONS

6. The Applicant argues that the Court of First Instance applied an incorrect legal standard under Art. 69(4) UPCA and R.158 RoP, in particular by accepting unsubstantiated assertions, shifting the burden of proof to the Applicant, contrary to the established case law, and not providing an opportunity to supplement its file with further financial material. The Applicant adds that the Respondents have not demonstrated any concrete risk that a potential costs order would not be enforceable, whereas the Applicant faces the immediate risk of being prevented from continuing the proceedings. Moreover, the Applicant submits that denying suspensive effect would run counter to the principle of effective judicial protection under Article 47 of the Charter of Fundamental Rights, as it would render its right to pursue its claim before the Court excessively difficult, if not illusory.
7. The Respondents submit that the Applicant has not demonstrated that the decision is manifestly wrong, but merely that it disagrees with the assessment made by the Court of First instance. The Respondents add that Applicant's allegation, regarding the risk of being prevented from continuing the proceedings if security is not suspended, is not substantiated with any concrete evidence that would show that the security granted by the Court of First instance is objectively untenable. The Respondents argue that the declaration filed with the Statement of Appeal (exhibit MW21) hints otherwise. The Respondents further argue that the reliance on SME status could not in itself preclude security for costs from being granted, all the more in a context where the Applicant voluntarily initiated the revocation proceedings as a strawman and must accept the procedural consequences attached thereto.

REASONS FOR THE ORDER

SUSPENSIVE EFFECT: LEGAL FRAMEWORK

ADMISSIBILITY

8. Art. 74 UPCA stipulates that an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. Although R. 223.5 RoP provides that there shall be no suspensive effect for an order pursuant to (amongst other) R. 220.2 RoP, the Court of Appeal considers that this does not preclude that an application for suspensive effect is lodged – and if justified, granted – for such orders.
9. Art. 74 UPCA generally allows the Court of Appeal to decide, at a motivated request, that an order shall be given suspensive effect. Orders as meant in R. 220.2 RoP are not excepted from this. In case of a conflict between the UPCA and the RoP, the provisions of the UPCA prevail (R. 1.1 RoP). The Court of Appeal therefore considers that granting suspensive effect to an order pursuant to R. 220.2 RoP is possible pursuant to Art. 74(1) UPCA, notwithstanding R. 223.5 RoP. (UPC_CoA_301/2024, Order of 19 June 2024, ICPillar v. ARM, para. 5; UPC_CoA_758/2025, Order of 25 August 2025, Sun Patent Trust v. Vivo Mobile, para. 14).

ON THE MERITS

10. Given the clear principle underlying Art. 74(1) UPCA and R. 223.5 RoP, that proceedings before the Court of First Instance must as much as possible continue unhindered by any (procedural) appeals, the Court of Appeal shall only give suspensive effect to appealed orders under exceptional circumstances, especially if such order concerns an order as meant in R. 220.2 RoP.
11. An example of such exceptional circumstances would be where the appeal is devoid of purpose or would render the appeal largely ineffective if the impugned order were not given suspensive effect, because the consequences of enforcement of the impugned order cannot be effectively reversed if this order would be later set aside (UPC_CoA_407/2023, Order of 6 November 2023, Ocado v. Autostore, para. 6; UPC_CoA_177/2024, Order of 2 May 2024, Progress Maschinen v. AWM, para. 10; UPC_CoA_301/2024, Order of 19 June 2024, ICPillar v. ARM, para. 7).
12. Another example of exceptional circumstances that could justify suspensive effect would be where the impugned order is manifestly wrong (UPC_CoA_4/2024, Order of 18 January 2024, Meril v. Edwards; UPC_CoA_894/2025, Order of 2 December 2025, Windhager v. Belissa, para. 10; UPC_CoA_44/2026, Order of 24 March 2026, ALPINA v. CUP&CINO, para. 11) i.e. based on factual findings or legal considerations that are clearly untenable even on the basis of a summary assessment (UPC_CoA_549/2024, Order of 29 October 2024, Belkin v. Philips, para. 60; UPC_CoA_430/2025, Order of 20 May 2025, Chint v. Jingao, para. 12).
13. In addition, 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_549/2024, Order of 29 October 2024, Belkin v. Philips, para. 61; UPC_CoA_19/2026, Order of 18 February 2026, Guardant Health v. Sophia Genetics, para. 14).

APPLICATION TO THE PRESENT CASE

14. The application is admissible but shall be declared unfounded for the following reasons.
15. As the Respondents rightly argue, the Applicant failed to demonstrate manifest errors or a violation of procedural fundamental rights in the impugned order. A summary assessment of the impugned order does not show a manifest shift in the burden of proof, nor a manifest misapplication of the rules of proceedings governing means of evidence. Whether the impugned order is based on an incorrect reasoning, as argued by the Applicant, is a matter for the Court of Appeal to decide in its order in the appeal proceedings.
16. Furthermore, the Applicant has not evidenced that it is not able to comply with the order or that it would in fact lead to extreme detriment if it complies with it. The Court of Appeal agrees with the Respondents that the Applicant has failed to demonstrate that it is not able to comply with the order to provide security for costs in the amount of € 75,000 by way of a deposit or a bank guarantee.
17. In addition, even if the Court of Appeal would consider the Applicant's alleged status as an SME to be relevant for the assessment of the amount of the security for costs, the mere reference to this status is not, in itself, sufficient to demonstrate that a manifest error has occurred or that the security granted in the present case exceeds the Applicant's financial ability. Such inability to comply with the order must be substantiated with concrete arguments and evidence.
18. Finally, the Applicant has failed to demonstrate that the appeal would become devoid of purpose absent suspensive effect, as a deposit can be reimbursed or a guarantee lifted in case the impugned order would be overturned in the appeal proceedings (see UPC_CoA_301/2024, Order of 19 June 2024, ICPillar v. ARM, para. 11; UPC_CoA_430/2025, Order of 20 May 2025, Chint v. Jingao, para. 11). The Applicant also failed to establish the infringement of its fundamental right to an effective remedy and fair trial in violation of Article 47 of the Charter of Fundamental Rights.

Costs

19. The Court of Appeal will not decide on the costs in this order, since this order is not a final decision or a decision concluding an action (See UPC_CoA_177/2024, Order of 2 May 2024, Progress Maschinen v. AWM, para. 13; UPC_CoA_19/2026, Order of 18 February 2026, Guardant Health v. Sophia Genetics, para. 20).

ORDER

The Application for suspensive effect is rejected.

Issued on 14 April 2026

Bart van den Broek on behalf of Ulrike Voß, presiding judge

Nathalie Sabotier, legally qualified judge and judge-rapporteur

Bart van den Broek, legally qualified judge