

Decision
of the Court of Appeal of the Unified Patent Court
issued on 17 July 2026
Withdrawal pursuant to R. 265 RoP
Application for reimbursement of Court fees pursuant to R. 370.9 RoP

APPLICANTS AND APPELLANTS (AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Siemens Healthineers AG**, Forchheim, Germany
2. **Siemens Healthcare GmbH**, Erlangen, Germany
3. **Siemens Healthineers Nederland B.V.**, The Hague, The Netherlands
4. **Siemens Healthcare SAS**, Courbevoie, France

(hereinafter all together referred to as: **“Appellants”**)

represented by: Dr. Matthias Meyer Bird & Bird LLP, Düsseldorf, Germany

RESPONDENT (AND CLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

Hologic, Inc., Marlborough, United States of America

(hereinafter referred to as: **“Respondent”**)

represented by: Dr. Thure Schubert, Vossius & Partner Patentanwälte Rechtsanwälte mbB, Munich, Germany

PATENT IN SUIT

EP 2 352 431

DECIDING PANEL

Panel 3

Ulrike Voß, presiding judge and judge-rapporteur

Bart van den Broek, legally qualified judge

Nathalie Sabotier, legally qualified judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- ☐ Local Division Düsseldorf, UPC-CFI-758/2024, Decision of 10 June 2026 (hereinafter referred to as: **“Impugned Decision”**)

LANGUAGE OF THE PROCEEDINGS

English

SUMMARY OF FACTS

1. Based on the patent in suit, the Respondent lodged an infringement action against Appellants before the Local Division Düsseldorf (UPC-CFI-758/2024). The Appellants lodged a Counterclaim for revocation (UPC-CFI-259/2025).
2. On 10 June 2026, the Local Division Düsseldorf found, in the Impugned Decision, that the patent in suit was infringed and dismissed the Counterclaim for revocation.
3. On 11 June 2026, the Appellants appealed the Impugned Decision (UPC-CoA-93/2026 infringement action; UPC-CoA-94/2026 Counterclaim for revocation).
4. On 19 June 2026, the Appellants lodged an application for suspensive effect in the appeal proceedings UPC-CoA-94/2026, relating to the Counterclaim for revocation. Following communication from the Court, the Appellants also lodged an application for suspensive effect on 22 June 2026 in the appeal proceedings UPC-CoA-93/2026, relating to the infringement action.
5. On the same day, the Appellants filed an application to withdraw the application for suspensive effect in the appeal proceedings UPC-CoA-94/2026 and for reimbursement of court fees.
6. On 3 July 2026, the Respondent lodged comments on the application.

PARTIES' SUBMISSIONS AND REQUESTS

7. The Appellants argue that they filed the application for suspensive effect in appeal proceedings UPC-CoA-94/2026 accidentally. Since the Impugned Decision dismissing the Counterclaim for revocation is not preliminarily enforceable, Appellants have no interest in pursuing an application for suspensive effect in the present appeal proceedings relating to the Counterclaim for revocation. Therefore, Appellants request to permit the withdrawal pursuant to R. 265 RoP.
8. Furthermore, the Appellants request a reimbursement of court fees. In the view of the Appellants, as the application for suspensive effect was filed in the appeal proceedings regarding the Counterclaim for revocation evidently by accident, Appellants request the court fees of EUR 1,300 should be reimbursed in full. In the auxiliary, Appellants request at least a refund of 50% of the court fees pursuant to R. 370.9(b) RoP.
9. The Appellants request
 1. to permit the withdrawal of the application for suspensive effect of the appeal filed in the appeal proceedings UPC_CoA_94/2026 relating to the Counterclaim for revocation;
 2. to reimburse Appellants the court fee of EUR 1,300.

In the auxiliary,

3. to reimburse Appellants 50% of the court fees.

10. The Respondent indicates that it has no objection to the withdrawal of the application for suspensive effect, which is, in any event, devoid of purpose, as the dismissal of the Counterclaim is, by its nature, not subject to enforcement measures. As regards the reimbursement of court fees, the Respondent leaves the matter to the Court's discretion.

REASONS FOR THE ORDER

Withdrawal of the application of suspensive effect

11. In accordance with R. 265.1 RoP, which is applicable to a withdrawal of an application for suspensive effect *mutatis mutandis*, the withdrawal is permitted (see regarding a withdrawal of request for discretionary review: Court of Appeal, UPC-CoA-931/2025, 29 January 2026, *Alpinestars v. Dainese*). No final decision has yet been issued, R 265.1, first sentence, RoP. Furthermore, the Respondent does not appear to have any interest in a decision being made, R. 265.1, second sentence, RoP. The Respondent has stated that it has no objection to the withdrawal of the application for suspensive effect.

12. There is no need to issue a cost decision pursuant to R. 265.1(c) RoP. This rule does not apply *mutatis mutandis* on a withdrawal of an application for suspensive effect pursuant to R. 223 RoP since such a withdrawal does not terminate the underlying proceedings.

Reimbursement of Court fees

13. According to R. 370.9 (b) RoP, the party liable for the court fees will be reimbursed by 50% if the action is withdrawn before the closure of the written procedure. This rule applies *mutatis mutandis* regarding a withdrawal of an application for suspensive effect (see regarding a withdrawal of request for discretionary review: Court of Appeal, UPC-CoA-931/2025, 29 January 2026, *Alpinestars v. Dainese*). Therefore, in accordance with their auxiliary request, the Appellants are entitled to reimbursement of 50% of the court fees.

14. However, the Appellants' main request for a reimbursement of the full court fees cannot be granted, even if one were to accept that the submission of the application for suspensive effect in the proceedings concerning the Counterclaim for revocation was an accident.

15. The reimbursement of court fees is governed by R. 370.9 RoP. In the event of the withdrawal of an action or an application, as already mentioned, R. 370.9(b) RoP applies. This provision grants (only) a refund amounting to half of the court fees in the event of withdrawal, but not a full reimbursement of the court fees.

16. R. 370.9(b) RoP links the reimbursement of court fees – which is, in principle, automatic if a request pursuant to R. 370.11 RoP is lodged – (only) to the withdrawal and to the timing thereof. The reasons for the withdrawal, on the other hand, are irrelevant to the reimbursement of court fees. Any exceptional circumstances are considered only within the framework of R. 370.9(e) RoP. However, this does not result in full reimbursement being granted, but rather in the existing entitlement to reimbursement being reduced or denied. The effect of R. 370.9(e) RoP is therefore

the opposite of what the Appellants are seeking in the present case. An analogous application of this rule is therefore ruled out from the outset. Furthermore, R. 370.9 (e) RoP is an exceptional rule and there are no indications that the Rules of Procedure contain an unintended gap regarding applications filed in error or by accident.

17. As there is no other provision that would appear to allow the Court to go beyond the refund amount specified in R. 370.9 (b) RoP, there is no legal basis for ordering a full reimbursement of the court fees paid.

Decision

1. The withdrawal of the application for suspensive effect in case UPC-CoA-94/2026 is permitted.
2. The proceedings on Appellants' application for suspensive effect in case UPC-CoA-94/2026 are declared to be closed.
3. The decision shall be entered on the register.
4. It is ordered that 50% of the court fees of the request for suspensive effect be reimbursed to the Appellants.

This decision was issued on 17 July 2026.

Ulrike Voß, presiding judge and judge-rapporteur

Bart van den Broek, legally qualified judge

Nathalie Sabotier, legally qualified judge