

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 15 July 2026

HEADNOTES:

The principle of the right to be heard according to Art. 76(2) UPCA obliges the court to take note of and give due consideration to the submissions of the parties to the proceedings. Among other things, this principle requires the court to deal with the essential substance of a party's submissions and, insofar as they relate to a central issue in the proceedings in question, to address them in its reasoning.

An infringement of this duty must be presumed if the grounds for the court's decision allow only the conclusion that the court has completely disregarded the party's submissions, or if the grounds are based on an interpretation that captures, at most, the literal wording but not the meaning of the party's submissions.

The right to be heard does not require the court to expressly and exhaustively address each and every argument in detail in its decision. At least the parties' core arguments must be reflected in it.

KEYWORDS:

Suspensive effect, manifest error, infringement of fundamental procedural rights, right to be heard, reasoned decision.

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 (hereinafter referred to as: “Local Division”) (UPC-CFI-758/2024). The Appellants lodged a Counterclaim for revocation (UPC-CFI-259/2025).
2. The patent in suit protects a “method and system for controlling x-ray focal spot characteristics for tomosynthesis and mammography imaging”. Claim 1 reads as follows:

“A breast tomosynthesis system (100), comprising an x-ray tube (110) a detector (160) and compression paddles (130, 135), wherein the x-ray tube (110) is arranged to move during an exposure period comprising: a cathode (112) for providing an electron stream; an anode (114) comprising a target for receiving the electron stream and generating a photon stream in response thereto; a focusing cup which focuses the electron stream on the anode during the exposure period; a port (120) for passing the photon stream out of the x-ray tube, wherein the cathode, anode and port together define a static focal spot (127) of the x-ray tube; and a controller coupled to at least one of the anode, the cathode and focusing cup wherein, in a first operational mode,

the x-ray tube moves in a first direction during an exposure period, wherein the controller is arranged, in a first operational mode, to move the static focal spot (127) within the x-ray tube in a second direction, opposite from the first direction and generally synchronized with the directional movement of the x-ray tube, so that a resulting effective focal spot appears to be fixed in space, relative to one of the breast and/or the detector, in one position during the entire duration of the exposure.”

3. On 10 June 2026, the Local Division found, in the Impugned Decision, that the patent in suit was infringed and dismissed the Counterclaim for revocation.
4. Regarding feature 4.1 of claim 1 (“the resulting effective focal spot appears [is] to be fixed in space, relative to one of the breast and/or the detector, in one position during the entire duration of the exposure”), the Local Division came to the conclusion that it does not require the effective focal spot to exactly (“mathematically”) maintain in a fixed position (Impugned Decision, para. 121). Rather, in the view of the Local Division “any compensation is sufficient that reduces undesirable image artifacts that result from x-ray source movement during tomosynthesis scan. To meet this technical requirement, it is not necessary to fully fix the position of the effective focal spot during the entire exposure period. The permissible deviation thus clearly exceeds mere measurement tolerances. Therefore, claim feature 4.1 can broadly be seen as a consequence of the generally synchronized movement recited in feature 4.” (Impugned Decision, para. 125)
5. On 11 June 2026, the Appellants appealed the Impugned Decision (UPC-CoA-93/2026 infringement action; UPC-CoA-94/2026 Counterclaim for revocation).
6. 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.
7. On 3 July 2026, the Respondent lodged comments on the Application.

PARTIES’ REQUESTS

8. The Appellants request
 1. to order suspensive effect of the appeal against the decision on the merits of the Local Division Düsseldorf of June 10, 2026 (UPC_CFI_758/2024),
in the auxiliary,
 2. to order suspensive effect of the appeal against the decision on the merits of the Local Division Düsseldorf of June 10, 2026 (UPC_CFI_758/2024) insofar as it relates to the infringing acts of making, placing on the market, using or importing or storing for those purposes.
9. The Respondent requests to
dismiss Appellants’ application for suspensive effect in its entirety.

SUMMARY OF THE PARTIES' SUBMISSIONS

10. The Appellants argue that the Impugned Decision is manifestly erroneous regarding feature 4.1. They submit that the Local Division failed to give priority to the claim wording and incorrectly relied on the description when interpreting the feature 4.1 of claim 1, in particular by omitting the phrase "in one position." The Appellants further argue that the Local Division misapplied the Court of Appeal's case law on numerical values in patent claims. They contend that, if the correct interpretation had been applied, the outcome would have been different.
11. Furthermore, the Appellants state that the Local Division did not address Appellant's arguments concerning the term "in one position" and the significance of the numerical value in the claim wording in the Impugned Decision. They argue that the Local Division's lack of discussion amounts to a violation of Appellants' right to be heard under Art. 76 (2) UPCA and Art. 6 ECHR as well as the requirement of a reasoned decision pursuant to Art. 77 (1) UPCA and R. 350.4 RoP.
12. In the auxiliary, the Appellants contend that the injunction against Appellant 3 and 4 to refrain from making the attacked embodiment in Germany, France and the Netherlands is manifestly incorrect. They argue that it remained undisputed that Appellants 3 and 4 did not manufacture the attacked embodiments at all. Against this background, in the view of the Appellants, there was no factual basis for ordering an injunction against Appellants 3 and 4 which included the act of making. Furthermore, the Appellants are of the opinion that the claim should in any event be limited to offering, as the Local Division only based its decision on marketing materials.
13. The Respondent argues that the Appellants have failed to demonstrate that the Impugned Decision falls within the exceptional circumstances required to justify suspensive effect. In the view of the Respondent, the Local Division's assessment is correct and follows Respondent's arguments in its Statement of Claim and Reply. The Local Division explained features 4 and 4.1 functionally, whereby according to the Respondent, the Decision elaborates excessively on the functionality by interpreting these features in accordance with the patent's description. In conclusion, according to the Respondents, the Impugned Decision demonstrates that the Local Division carefully engaged with the parties' competing submissions on the construction of feature 4.1 before arriving at its conclusion. In Respondent's opinion, Appellants' application does not identify an obvious oversight, misstatement or failure to consider a decisive argument. Rather, it merely reiterates the same claim-construction arguments that were fully presented before.
14. Regarding the auxiliary request, the Respondent submits that the Local Division did not rely solely on marketing materials but also considered the actual products and the evidence submitted, concluding that infringement was established based on its interpretation of feature 4.1 of claim 1.

REASONS

15. The Application for suspensive effect is admissible, but not well-founded.

I. Legal Framework

16. Pursuant to Art. 74 (1) UPCA, an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. The Court of Appeal can therefore only grant the application if the circumstances of the case justify an exception to the principle that the appeal has no suspensive effect. It must be examined whether the appellant's interest in maintaining the status quo until the decision on its appeal outweighs the Respondent's interest by way of exception (e.g. Court of Appeal, UPC-CoA-549/2024, 29 October 2024, Belkin v. Philips; UPC-CoA-365/2025, 21 May 2025, Knaus Taubert v. Yellow Sphere; UPC-CoA-70/2025, 26 May 2025, Swarco v. Strabag; UPC-CoA-894/2025, 2 December 2025, Windhager v. Belissa; UPC-CoA-935/2025, 16 January 2026, AMYCELL; UPC-CoA-44/2026, 24 March 2026, Alpina v. CUP&CINO; UPC-CoA-48/2026, 14 April 2026, La Siddhi v. Athena; UPC-CoA-57/2026, 24 April 2026, Polytechnik v. Dall).
17. An exception to the principle that an appeal has no suspensive effect may apply, for instance, where the decision or order against which the appeal is directed is manifestly erroneous, i.e., based on factual findings or legal considerations that are clearly untenable, even on the basis of a summary assessment, or if the appeal becomes devoid of purpose in the absence of suspensive effect (e.g. Court of Appeal, UPC-CoA-4/2024, 18 January 2024, Meril vs Edwards; UPC-CoA-177/2024, 2 May 2024, Progress Maschinen & Automation; UPC-CoA-549/2024, 29 October 2024, Belkin v. Philips; UPC-CoA-430/2025, 20 May 2025, Chint v. Jingao; UPC-CoA-365/2025, 21 May 2025, Knaus Taubert v. Yellow Sphere; UPC-CoA-70/2025, 26 May 2025, Swarco v. Strabag; UPC-CoA-894/2025, 2 December 2025, Windhager v. Belissa; UPC-CoA-935/2025, 16 January 2026, AMYCELL; UPC-CoA-44/2026, 24 March 2026, Alpina v. CUP&CINO; UPC-CoA-48/2026, 14 April 2026, La Siddhi v. Athena; UPC-CoA-57/2026, 24 April 2026, Polytechnik v. Dall).
18. Furthermore, 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 (Court of Appeal, UPC-CoA-549/2024, 29 October 2024, Philips v. Belkin; UPC-CoA- 737/2025, 15 August 2025, RiVOLUTION v. Cilag).
19. The requirement of exceptional circumstances has to be established by the applicant.

II. Case at hand - main request

Manifestly erroneous

20. The Appellants have failed to demonstrate manifest errors in the Impugned Decision.
21. No manifest error in the interpretation of feature 4.1 can be identified based on the summary examination carried out in proceedings concerning the suspensive effect. As demonstrated in paragraphs 79 and 80 of the Impugned Decision, the Local Division referred to the correct legal principles governing the interpretation of a patent claim. Furthermore, paragraphs 116 – 128 of the Impugned Decision set out how the Local Division interprets feature 4.1 and the reasons for this interpretation. In particular, the Local Division explained why it concluded that “it is

not necessary to fully fix the position of the effective focal spot during the entire exposure period”.

22. A summary examination does not reveal that the Local Division arrived at this understanding obviously by disregarding or misapplying the legal principles it cited. This cannot be inferred from the Appellants’ submissions. The fact that the Local Division’s interpretation differs from the Appellants’ interpretation does not render the interpretation of feature 4.1 manifestly incorrect. Besides that, there is in particular no indication that the Local Division arrived at its interpretation of feature 4.1 because it “removed” a part of the wording of the patent claim (“in one position”). Rather, it is clear from the reasoning set out in the Impugned Decision that the Local Division interpreted feature 4.1 functionally, taking the description into account. Whether this interpretation of claim 1 is correct will have to be reviewed and decided in the appeal proceedings.
23. Since, even with regard to any numerical values, no manifest error of the Local Division can be identified on summary examination, the Appeal also reserves the right to assess whether the case law of the Court of Appeal cited by the Appellants (UPC CoA, Decision of 2 June 2026, UPC-CoA-882/2025, Kodak vs. Fujifilm), is applicable to the present case, and if so if it leads to the conclusion that the findings of the Local Division are incorrect.

Infringement of fundamental procedural rights

24. The Appellants have failed to demonstrate an infringement of fundamental procedural rights on which the decision is based.
25. The Appellants themselves state that the interpretation of the term “in one position” was a crucial argument for the interpretation of feature 4.1 advanced by the Appellants both in writing and during the oral hearing. Consequently, the Appellants were able to set out their point of view and their interpretation of the feature 4.1 in detail, both in writing and orally.
26. The Local Division also took note of the Appellants’ arguments regarding feature 4.1 and the requirement “in one position” and considered these arguments. This is confirmed by paragraphs 24, 36, 37, 123 - 128 of the Impugned Decision. Even though the reproduction of the Appellants’ submission may in places have been brief and summarized and in words other than those used by the Appellants, the Impugned Decision does not reveal any breach of the right to be heard according to Art. 76 (2) UPCA, Art. 6 ECHR.
27. The principle of the right to be heard obliges the court to take note of and give due consideration to the submissions of the parties to the proceedings. Among other things, this principle requires the court to deal with the essential substance of a party’s submissions and, insofar as they relate to a central issue in the proceedings in question, to address them in its reasoning. An infringement of this duty must be presumed if the grounds for the court’s decision allow only the conclusion that the court has completely disregarded the party’s submissions, or if the grounds are based on an interpretation that captures, at most, the literal wording but not the meaning of the party’s submissions.
28. As the Appellants correctly argue, referring to the case-law of the European Court of Human Rights (ECHR, judgment of 24 May 2005, 61302/00, Buzescu vs. Romania), the right to be heard does not require for the court to expressly and exhaustively address each and every argument in detail in its decision. At least the parties’ core arguments must be reflected in it.

29. In view of the cited paragraphs of the Impugned Decision, it must be noted that the Local Division has satisfied its obligations under Art. 76 (2) UPCA, Art. 6 ECHR. It reflected the Appellants' core arguments regarding feature 4.1. At the same time, it has fulfilled its obligation to state reasons in accordance with Art. 77 (1) UPCA and R. 350.4 RoP.

III. Case at hand – auxiliary request

30. The Appellants have failed to demonstrate a manifest error in the Impugned Decision regarding the injunction against Appellant 3 and 4. It was not manifestly incorrect to order that Appellants 3 and 4 are refrained from (also) making the attacked embodiment in Germany, France and the Netherlands.

31. In this context, reference is made to Decision of 6 March 2026 of the Court of Appeal in case UPC-CoA-789/2025, UPC-CoA_813/2025, Dyson v. Dreame. It states that as a general rule, the fact that a party has infringed the patent is sufficient to establish a risk of further infringement through other acts of use, including infringing acts which it had not previously committed.

32. In view of this, the assertion of the Appellants that the Local Division only based its reasoning on marketing material does not demonstrate a manifest error either. Even if this assertion were true, the fact that the Impugned Decision also orders an injunction in respect of acts of use other than offering could not be regarded as a manifest error. Apart from that, it should be noted that the Local Division based its decision not only on the marketing materials but also on the contested embodiment (Impugned Decision, paras. 270, 271).

ORDER

The Application for suspensive effect is rejected.

This order was issued on 15 July 2026.

Ulrike Voß, presiding judge and judge-rapporteur

Bart van den Broek, legally qualified judge

Nathalie Sabotier, legally qualified judge