



Reference no.:

UPC-CoA-121/2026

Order
of the Court of Appeal of the Unified Patent Court
concerning an application for leave to appeal against cost decisions (R. 221 RoP) and an application
for suspensive effect (R. 223 RoP)
issued on 4 August 2026

APPLICANT (DEFENDANT IN THE REVOCATION PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Academy of Military Medical Sciences, no. 27 Taiping Road, Haidian District, Beijing 100850, China

(hereinafter "**AMMS**")

represented by Mr. Camille PECNARD, attorney-at-law, and other representatives of the firm LAVOIX, Paris

RESPONDENT (CLAIMANT IN THE REVOCATION PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Gilead Sciences, Inc., 333 Lakeside Drive, Foster City, CA 94404, USA

(hereinafter "**Gilead**")

represented by Dr Christine KANZ, attorney-at-law, HOYNG ROKH MONEGIER, Düsseldorf

PATENT AT ISSUE

EP 3 854 403

DECIDING JUDGE

Emmanuel Gougé, Legally qualified judge and Standing judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- ☐ Order of the Court of First Instance of the Unified Patent Court, Central Division Milan, dated 10 July 2026
- ☐ Reference number: UPC-CFI-1968/2026 (proceedings for cost decision)
 UPC_CFI_552/2025 (revocation action)

FACTS, REQUESTS AND SUBMISSIONS OF THE PARTIES

1. On 18 June 2025, Gilead filed a revocation action (UPC_CFI_552/2025) before the Central Division Milan (hereinafter “CD Milan”) against the patent at issue.
2. The CD Milan revoked the patent in its entirety and, following agreement reached by the parties whereby the costs of the first-instance proceedings (and not the value) are mutually set at 800,000 €, ordered AMMS to bear the full amount of the recoverable fees (Decision of 4 May 2026, hereinafter “the revocation decision”).
3. On 3 June 2026, Gilead filed an application for a cost decision (UPC-CFI-1968/2026), requesting that the recoverable fees decided in the decision of 4 May 2026 be paid by AMMS within four weeks.
4. AMMS, referring to Art.74(2) UPCA, R. 295(c) and (m) RoP, and R.156.3 RoP, requested the Court to stay the proceedings for costs until the Court of Appeal has issued its decision in the appeal proceedings against the revocation decision or, in the alternative, to order that payment of the legal costs be effected in instalments of EUR 40,000 every two weeks.
5. The CD Milan ordered AMMS to pay Gilead recoverable costs of 800,000 € within 4 weeks of service of the order and dismissed the remainder of the parties’ requests (Order of 10 July 2026, hereinafter “the impugned order”). It held inter alia that Art. 74(2) UPCA concerns appeals against decisions on actions or counterclaims for revocation and on actions based on Art. 32(1)(d), e) and i) UPCA, that the automatic suspensive effect provided for under Art. 74(2) UPCA cannot be extended to the subsequent and separate determination of costs, and that a different conclusion can also not be reached by relying on R. 295 RoP.
6. On 23 July 2026, AMMS filed an application for leave to appeal against a cost decision pursuant to R. 157 and R. 221 RoP, requesting the Court of Appeal, pursuant to Art. 73(1), 73(2), and 74(2) UPCA, and R.157, R.221 RoP, to grant leave to appeal against the impugned order. Together with said application, AMMS filed a statement of appeal and statement of grounds of appeal, requesting the Court of Appeal, if leave is granted, to set aside the impugned order, to stay the proceedings for costs until the judge-rapporteur of the CFI is notified that the UPC Court of Appeal has issued a judgment on the merits in the appeal proceedings or until the same dispute is otherwise terminated or, in the alternative, to order payment of the recoverable costs in three instalments, at the latest by 31 December 2026. It also requested, if leave to appeal is granted, that the Court of Appeal order suspensive effect pursuant to R. 223 RoP in the event the standing judge does not rule on the appeal of the impugned order before 10 August 2026.
7. AMMS submits in summary that Art. 74(2) UPCA is not limited to the (counter)claim for revocation and should instead cover the entire decision ruling on the revocation claim, including the dependent provisions regarding costs. Leave for appeal against the impugned order should thus be granted in light of the need to settle the debate about the scope of Art. 74(2) UPCA.

8. AMMS further submits that, if leave to appeal is granted, the stay of the costs proceedings should have been ordered on the basis of R.295(c) and (m) RoP as a consequence of the automatic suspensive effect of the revocation decision pursuant to Art. 74(2) UPCA.
9. On 27 July 2026, the standing judge provided Gilead with an opportunity to be heard about the Application for leave to appeal and the application for suspensive effect. Gilead submitted its comment on 30 July 2026.
10. Gilead requests that application for leave to appeal is rejected and, in the event leave to appeal is granted, to reject AMMS requests.
11. It submits inter alia that a stay of the cost proceeding may not be warranted by the suspensive effect of the appeal filed against the revocation decision pursuant to Art. 74 (2) UPC, as said provision applies only to the decision relating the validity of the patent, which entails potentially irreversible consequences, however not to costs decisions which can be easily reversed without creating a situation of legal uncertainty.

GROUND FOR THE ORDER

Leave to appeal

12. An appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties (Art. 74(1) UPCA, first sentence). According to Art. 74(2), notwithstanding paragraph 1, an appeal against a decision on actions or counterclaims for revocation and on actions based on Article 32(1)(i) shall always have suspensive effect.
13. The question raised by AMMS as to whether the suspensive effect provided for under Art. 74(2) UPCA should extend to costs decisions relating to a decision on actions or counterclaims for revocation and on actions based on Article 32(1)(i) UPCA has not already been resolved by the Court of Appeal.
14. It follows that leave to appeal will be granted.

Application for suspensive effect

15. AMMS application for suspensive effect must be dismissed for the following reasons.
16. An appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties (Article 74.1 UPCA). According to R. 223.2 RoP, the application for suspensive effect shall set out (a) the reasons why the lodging of the appeal shall have suspensive effect and (b) the facts, evidence and arguments relied on.

17. The Court of Appeal can grant the application only if the circumstances of the case justify an exception to the principle that the appeal has no suspensive effect (UPC_CoA_388/2024, APL_39884/2024, 19 August 2024, Sibio v Abbott; UPC UPC_CoA_12/2025 APL_366/2025 App_1182/2025, 16 January 2025, Bhagat v Oerlikon). It must be examined whether, on the basis of these circumstances, the appellant's interest in maintaining the status quo until the decision on its appeal exceptionally outweighs the respondent's interest. An exception to the principle that an appeal has no suspensive effect may apply, for instance, if the appealed order or decision is manifestly erroneous, or if the appeal becomes devoid of purpose in the absence of suspensive effect (Court of Appeal 24 November 2025, UPC_CoA_911/2025, Suinno v Microsoft; Court of Appeal 20 May 2025, UPC_CoA_430/2025 APL_23093/2025 App_23094/2025, Chint v. Jingao).
18. The requirement of exceptional circumstances has to be established by the applicant. In its application, AMMS has not evidenced the existence of exceptional circumstances which would justify why the lodging of the appeal shall have suspensive effect but has merely referred to the reasons for hearing the appeal (part 3 of the application) and to the reasons for setting aside the impugned order (part 4 of the application).
19. Whether the impugned order is based on incorrect conclusions and contradictory reasoning is a matter for the Court of Appeal to decide in its order in the appeal proceedings (Court of Appeal 20 May 2025, UPC_CoA_430/2025 APL_23093/2025 App_23094/2025, Chint v. Jingao).
20. Furthermore, AMMS has failed to demonstrate that his interest in not paying the costs until the appeal on the impugned order is ruled upon exceptionally outweighs Gilead's interest.

ORDER

- (i) Leave to appeal is granted;
- (ii) the application for suspensive effect is rejected.

This order was issued on 4 August 2026.

Emmanuel Gougé, Legally qualified judge and Standing judge