

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 31 August 2026

APPLICANT (RESPONDENT BEFORE THE COURT OF APPEAL AND CLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

Fujifilm Corporation, 26-30, Nishiazabu 2-chome, Minato-ku, Tokyo 106-8620, Japan

represented by Christof Augenstein, Kather Augenstein Rechtsanwälte PartGmbB

RESPONDENTS (APPELLANTS BEFORE THE COURT OF APPEAL AND DEFENDANTS BEFORE THE COURT OF FIRST INSTANCE)

1) Kodak GmbH, Kesselstraße 19, 70327 Stuttgart, Germany

2) Kodak Graphic Communications GmbH, Kesselstraße 19, 70327 Stuttgart, Germany

3) Kodak Holding GmbH, Kesselstraße 19, 70327 Stuttgart, Germany

all represented by Kilian Seidel, Freshfields PartG mbB

PATENT AT ISSUE

EP 3 511 174

DECIDING PANEL

Panel 1b

Klaus Grabinski, presiding judge and president of the Court of Appeal

Paolo Catallozzi, legally qualified judge and judge-rapporteur

Peter Blok, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

English

DECISION UNDER REVIEW

- Decision of the Court of Appeal of Appeal of the Unified Patent Court dated 2 June 2026.
Number attributed by the Court of Appeal: UPC_CoA_312/2025.

SUMMARY OF FACTS

1. By decision of 2 June 2026, the Court of Appeal set aside the order of the Mannheim Local Division in so far as it had rejected the defence of private prior use and dismissed the infringement action.
2. On 31 July 2026 the applicant filed an application for rehearing pursuant to Art. 81 UPCA and R. 245 et seq. RoP requesting that: (a) the application be allowed and the decision of 2 June 2026 be set aside or, alternatively, suspended insofar as it concerns the right of private prior use, and that the proceedings be reopened for a new hearing and decision; (b) the application be granted suspensive effect; and (c) the President of the Court of Appeal order that judges other than those who participated in the decision of 2 June 2026 sit on the panel deciding the application for rehearing and, in the event of a reopening of the proceedings, also thereafter. In support of the application, the applicant submits that the decision is affected by fundamental procedural defects, in particular alleged infringements of the principle of a fair trial and of its right to be heard.
3. The Respondents request that the Applicant's request for suspensive effect be dismissed. They submit that, pursuant to R. 252 RoP, an application for rehearing does not, as a matter of principle, have suspensive effect and that the Applicant has not provided any reasons or identified any interest capable of justifying an exception to that principle.

GROUND FOR THE ORDER

4. Pursuant to Art. 81(2) UPCA and R. 252 RoP, an application for rehearing does not have suspensive effect unless the Court of Appeal decides otherwise. It follows that the filing of an application for rehearing against a final decision of the Court does not, as a general rule, affect the enforceability and effectiveness of that decision. Suspensive effect therefore constitutes an exception to the general rule.
5. This is consistent with the nature of the remedy provided for in Art. 81 UPCA. A rehearing constitutes an extraordinary remedy against a final decision of the Court. The legislature has expressly chosen that final decisions may be reopened only in the limited circumstances set out in Art. 81 UPCA. Any request to suspend the enforceability of such a decision must therefore be specifically justified.
6. Although Art. 81(2) UPCA does not specify the conditions under which suspensive effect may be granted, the Court considers that it may only be ordered where the circumstances of the case justify a departure from the principle that final decisions remain enforceable and effective pending determination of the application for rehearing. In assessing whether such

circumstances exist, the Court takes into account all relevant circumstances of the case, including the interests of the parties concerned.

7. The Applicant failed to provide any reasons specifically substantiating its request for suspensive effect. The Court of Appeal understands the Applicant in this context wishes to rely on the same reasons that it submitted for its Application for rehearing, including the alleged existence of fundamental procedural defects affecting the decision under review. However, the mere assertion that the decision is affected by fundamental procedural defects is not sufficient, in itself, to justify the suspension of the effects of that decision. Whether such defects exist is the very issue that must be examined in the rehearing proceedings.
8. The Applicant has not identified any specific prejudice that would result from maintaining the effects of the decision pending determination of the Application for rehearing, nor has it explained why such prejudice could not adequately be addressed should the Application ultimately be allowed. The Application likewise contains no specific submissions demonstrating that the interests of justice require immediate suspension of the effects of the decision.
9. In these circumstances, the Court sees no basis for departing from the general rule laid down in Art. 81(2) UPCA.

ORDER

The Applicant's request that the application for rehearing be granted suspensive effect is dismissed.

Issued on 31 August 2026.

Klaus Grabinski, presiding judge and President of the Court of Appeal

Paolo Catallozzi, legally qualified judge and judge-rapporteur

Peter Blok, legally qualified judge