

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 6 November 2025
concerning an application for suspensive effect (R. 223 RoP)

APPLICANT (AND DEFENDANT IN THE PROCEEDINGS BEFORE THE CFI)

Black Sheep Retail Products B.V., Wageningen, The Netherlands

hereinafter: “BSRP”

represented by attorney-at-law Tjibbe Douma, and other representatives from Bird & Bird, Amsterdam,
The Netherlands

RESPONDENT (AND CLAIMANT IN THE PROCEEDINGS BEFORE THE CFI)

HL Display AB, Nacka Strand, Sweden

hereinafter “HL Display”

represented by attorney-at-law Gertjan Kuipers, and other representatives from Hogan Lovells International
LLP, Amsterdam, The Netherlands

PATENT AT ISSUE

EP 2 432 351

LANGUAGE OF THE PROCEEDINGS

English

PANEL AND DECIDING JUDGES

Panel 2

Rian Kalden, presiding judge and legally qualified judge

Nathalie Sabotier, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

Decision of 10 October 2025, of The Hague Local Division issued in the infringement action UPC_CFI_386/2024 and in the counterclaim for revocation UPC_CFI_610/2024

FACTS AND PARTYS' REQUESTS

1. HL Display brought an infringement action against BSRP before the Court of First Instance, The Hague Local Division. BSRP brought a counterclaim for revocation.
2. In the impugned decision on the merits of 10 October 2025, the Hague Local Division found that the patent at issue was valid and infringed and ordered (insofar as relevant here) BSRP to communicate information to HL Display (IV. of the operative part of the decision):

IV. orders BSRP, within three weeks after service of the judgment, to inform HL Display of:

- a) the origin and distribution channels of the infringing products;
 - b) the quantities produced, manufactured, delivered, received or ordered, as well as the prices paid for the infringing products; and
 - c) the identity of any third person involved in the production or distribution of the infringing products;
 - d) the number and dates of the products offered;
 - e) the advertising carried out, broken down by advertising medium, its distribution, the distribution period and the distribution area, including evidence of these advertising activities;
 - f) the costs, broken down by individual cost factors and the profits realised;
- all substantiated by means of all relevant supporting documents, including but not limited to legible orders, order confirmations, invoices and copies

3. HL Display lodged a R. 118.8 RoP application on 16 October 2025 seeking the enforcement of (among other items) the part of the decision referred to in para 2 above.
4. BSRP has appealed the impugned order and is requesting (i) suspensive effect against measure IV of the decision (communication of information); alternatively (ii) suspensive effect against measure IV.a and IV.c of the decision; (iii) suspensive effect against measure IV of the decision, insofar as measure IV pertains to the period between 27 June 2018 and 19 June 2024; more alternatively (iv) suspensive effect against measure IV.d to IV.f of the decision.

SUBMISSIONS OF BSRP

5. BSRP has advanced the following arguments in support of its application for suspensive effect:
 - HL Display has never made a reasoned request in the sense of R. 191 RoP, and the information is not reasonably necessary for the purpose of advancing HL Display's case. The sole objective indicated by HL Display, was that the requested communication of information "serves to calculate damages".
 - It is inconceivable how (a) the origin and distribution channels and (c) the identity of any third person involved in the production or distribution can contribute to a calculation of damages.
 - Categories d - f do not have any basis in Art. 67 UPCA and thus cannot be awarded based on this legal provision.
 - An appeal against the order to communicate information would become devoid of purpose without suspensive effect. This is because information that was communicated by BSRP in compliance with the

order cannot be “uncommunicated”. BSRP also cannot be properly (financially) compensated in case it turns out that the information was communicated without grounds.

- Compliance with the order would also cause BSRP serious and irreparable harm. Information such as the origin and distribution channels of products and the identity of any third person involved in the production or distribution of products is highly confidential business information.
- The further alternative request is based on the assertion that damages should be counted from the warning letter dated 19 June 2024, and not from the date of grant of the patent.

REASONS

7. BSRP’s application for suspensive effect is admissible but must be dismissed as unfounded for the following reasons.
8. Pursuant to Art. 74(1) of the Agreement on a Unified Patent Court (the UPCA), an appeal has no suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. The Court of Appeal can therefore 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_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 wrong, or if the appeal without suspensive effect becomes devoid of purpose (UPC_CoA_301/2024, APL_33746/2024, App_35055/2024 - ICPillar vs. ARM, 19 June 2024).
9. An information order is intended to enable the patent proprietor to calculate its damages (UPC_CoA_845/2024, 30 May 2025, Belkin vs. Philips, para 48). In addition, information with respect to the origin and distribution channels and the identity of any third party involved will allow the patent proprietor to take appropriate action to prevent any further infringements (UPC_CoA_382/2024, 14 February 2025, Abbott vs. Sibio et al, para 163).
10. Communication of information belongs to measures that, when so ordered, are necessary to ensure a high level of protection. It is thus only under exceptional circumstances that the enforcement of such measures may be suspended under R. 223 RoP (UPC_CoA_435/2023, 3 July 2025, NUC vs HUROM, para 21). Such circumstances have not been established.
11. If the defendant can reasonably foresee that the orders and evidence requested by the claimant may require it to disclose confidential information, this should be raised by the defendant during the proceedings on the merits, so that where necessary in the order or decision appropriate measures can be taken to protect such confidential information. Although it would still be possible to file a confidentiality request thereafter, confidentiality issues generally do not stay the time period set for compliance with a penalty reinforced order (UPC_CoA_699/2025, 14 October 2025, Kodak vs. Fujifilm, para 45). BSRP has not demonstrated that it requested confidentiality for information that would be encompassed by an information order before the CFI. A mere procedural reservation that such a request may be made does not suffice.
12. Whether the Local Division’s information order is correct in substance will have to be decided by the Court

of Appeal in its decision on the appeal. In any event, BSRP has failed to demonstrate that there is a manifest error; i.e. an outcome or assessment which proves to be untenable already on the basis of a summary assessment (CoA 29 October 2024, UPC_CoA_549/2024, APL_51838/2024 App_53031/2024 - Belkin vs. Philips). The risks put forward by BSRP are not such as to make the appeal devoid of purpose absent suspensive effect.

ORDER

The application is rejected.

Issued on 6 November 2025

Rian Kalden, presiding judge and legally qualified judge

Nathalie Sabotier, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge