



Action number: UPC-
COA-0000894/2025

Procedural order
of the Appeal Court of the Unified Patent Court
concerning an application for suspensive effect (R. 223 RoP)
issued on 2 December 2025

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

Windhager Handelsgesellschaft m.b.H., Industriestraße 2, 5303, Thalgau, Austria

(hereinafter "Windhager")

represented by Matthias Geitz, lawyer, LS-MP von Puttkammer Berngruber Loth Spuhler
Partnerschaft von Patent- und Rechtsanwälten mbB

RESPONDENT AND RESPONDENT ON APPEAL (CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

bellissa HAAS GmbH, Birkenstraße 22, 88285, Bodnegg-Rotheiden, Germany

(hereinafter referred to as "**Belissa**"),

represented by solicitor Thomas Adrian and patent attorney Thomas Daub, Daub PartG mbB law firm

PATENT AT ISSUE

EP 2 223 589

DECIDING JUDGE

Emmanuel Gougé, legally qualified judge and judge-rapporteur

LANGUAGE OF THE PROCEEDINGS

German

CONTESTED DECISION OF THE COURT OF FIRST INSTANCE

- Decision of the local division of the Court of First Instance of the Unified Patent Court, local division Mannheim, of 12 September 2025
- Action number of the Court of First Instance: UPC_CFI_338/2024

STATEMENT OF THE FACTS AND THE PARTIES' APPLICATIONS

1. Belissa brought an action against Windhager before the local division Mannheim ("local division") for infringement of European patent EP 2 223 589 (patent at issue), seeking an injunction, recall/final removal from distribution channels, destruction, information and publication of the judgment.
2. Windhager filed a counterclaim for annulment of the patent at issue (CC_65106/2024, UPC_CFI_778/2024).
3. The local division largely upheld the contested decision on the infringement action, while the counterclaim for annulment was unsuccessful on the merits.
4. On 24 October 2025, Windhager lodged an appeal against the contested decision both with regard to the infringement action and the counterclaim for annulment.
5. In addition, on 28 October 2025, Windhager filed an application with the Court of Appeal requesting that its appeal against the contested decision concerning the patent at issue be granted suspensive effect. After reviewing the formal requirements of the appeal and the request to remedy deficiencies in accordance with R. 229 RoP, the application for suspensive effect was corrected on 28 November, i.e. within 14 days of delivery of the notification.
6. Windhager argues that its application for the suspensive effect of the appeal is admissible. The application should be granted because, in summary, the contested decision contains obvious errors, in particular in the assessment of the direct patent infringement and the dismissal of the counterclaim for annulment.
7. Windhager also argues that on 11 September 2025, a new action for annulment against the patent at issue was filed before the Central Chamber of Milan by LS 9 GmbH, and therefore requests a stay of the appeal proceedings until a decision has been made on this new action for annulment.

REASONS FOR THE ORDER

8. Pursuant to R.223.2 RoP, the application for suspensive effect must contain (a) the reasons why the filing of the appeal should have suspensive effect and (b) the facts, evidence and legal arguments put forward. This means that such an application must, on its own, enable the Court of Appeal to decide on the application, if necessary without further information.
9. Pursuant to Art. 74(1) UPC Agreement, the appeal shall not have suspensive effect unless the Board of Appeal decides otherwise on a reasoned application by a party. The Board 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.

In doing so, it must be examined whether the appellant's interest in maintaining the *status quo* until a decision is made on its appeal exceptionally outweighs the interest of the respondent (UPC Agreement Court of Appeal, order of 18 January 2024, UPC_CoA_4/2024, App_100/2024, Meril/Edwards, p. 5; Order of 19 June 2024, UPC_CoA_301/2024, App_35055/2024, ICPillar LLC v ARM, para. 7; Order of 19 August 2024, UPC_CoA_388/2024, APL_39884/2024, Sibio et al v Abbott, para. 6).

10. The order of suspensive effect may be considered in particular if the order against which the appeal is directed is manifestly erroneous (UPC Agreement Court of Appeal, order of 18 January 2024, UPC_CoA_4/2024, App_100/2024, Meril v Edwards, p. 5; Order of 19 August 2024, UPC_CoA_388/2024, APL_39884/2024, Sibio et al v Abbott, para. 7) or the enforcement of the contested decision would render the appeal largely moot (UPC Court of Appeal, order of 6 November 2023, UPC_CoA_407/2023, App_584588/2023 Ocado/third party; order of 2 May 2024, UPC_CoA_177/2024, APL_20002/2024, Progress Maschinen & Automation, para. 10).
11. Windhager asserts that the contested decision contains obvious legal errors. He refers to the grounds for his appeal to substantiate this complaint. The Court of Appeal must decide whether these appeal grounds are valid in its decision in the main appeal proceedings. In any case, Windhager has not proven that the findings and considerations of the local division constitute obvious errors, i.e. findings of fact or legal considerations that are obviously untenable even on summary assessment. Nor is there any other obvious inaccuracy in the contested decision.
12. Furthermore, Windhager asserts that enforcement of the contested decision through omission, recall, removal from distribution channels and destruction of the products would damage its reputation as a reputable manufacturer. However, Windhager was unable to prove that its interest in preventing these measures outweighs Belissa's interest in preventing patent infringement, as determined by the local division.
13. Since the outcome of the new nullity action is not yet known at this stage, the fact that these proceedings are pending before the Central Chamber of Milan is not relevant in the present case.

ORDER

The application for the suspensive effect of the appeal is rejected.

This order was issued on 2 December 2025.

Emmanuel Gougé, legally qualified judge and judge-rapporteur