

DECISION
of the Court of Appeal of the Unified Patent Court
concerning an application for withdrawal (R. 265 RoP) regarding an application for
rehearing (R. 245 RoP)
issued on 23 December 2025

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

1. Sumi Agro Limited

2. Sumi Agro Europe Limited,

both UK registered companies with registered branch offices at Bürgermeister-Neumeyr-Str. 7, 85391 Allershausen, Germany

hereinafter jointly: "**Sumi**"

both represented by Gareth Williams, European patent attorney (Marks & Clerk LLP), and Johannes Heselberger and Dr. Kerstin Galler attorneys-at-law, and Dr. Axel B. Berger, European patent attorney (Bardehle Pagenberg Partnerschaft mbB Patentanwälte Rechtsanwälte)

RESPONDENT (APPLICANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Syngenta Limited, Jealott's Hill International Research Centre, RG42 6EY Bracknell, Berkshire, United Kingdom

hereinafter: "**Syngenta**"

represented by Benjamin Grzimek, Dr Jörn Peters and Aylin Cremers, attorneys-at-law (Fieldfisher Partnerschaft von Rechtsanwälten mbB), Prof. Dr. Aloys Hüttermann, European patent attorney (Michalski, Hüttermann & Partner Patentanwälte mbB), and Dr. Filip Alois J. De Corte and Dr. Christopher Andrews, European patent attorneys (Syngenta Crop Protection AG)

PATENT AT ISSUE

EP 2 152 073

PANEL AND DECIDING JUDGES

Klaus Grabinski, Presiding judge and Judge-Rapporteur

Peter Blok, legally qualified judge

Emanuela Germano, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

English

ORDER UNDER REVIEW

- Order of the Court of Appeal of the Unified Patent Court dated 3 March 2025
- Numbers attributed by the Court of Appeal:
 - UPC_CoA_523/2024
 - APL_51115/2024
 - ORD_68841/2024

FACTS AND REQUESTS OF THE PARTIES

1. On 5 May 2025, Sumi filed at the Court of Appeal of the Unified Patent Court an application for a rehearing of the decision under review pursuant to R. 245 RoP (UPC_CoA_523/2024, APP_20809/2025).
2. Upon joined request of both parties, the Judge-Rapporteur ordered on 29 July 2025 a stay of the proceedings in respect of the application for a rehearing App_20809/2025 UPC_CoA_523/2024 until 30 September 2025 and allowed both parties to ask for an extension of the stay of proceedings by a joint request filed until 30 September 2025 or, in the alternative, allowed Syngenta to ask for the setting of a deadline for their response to Sumi's application for rehearing until 30 September 2025.
3. Upon joined requests of both parties and with regard to ongoing settlement discussions, the Judge-Rapporteur ordered two further extensions of the stay of the proceedings, first until 1 December 2025 and later until 2 February 2026.
4. On 18 December 2025, both parties filed a joint application requesting that
 - a) the withdrawal of the application for a rehearing be allowed;
 - b) it be ordered that the rehearing proceedings are closed;
 - c) it be ordered that a cost decision is not required;
 - d) the court fees paid by the applicants be waived;
 - e) the Registry of the Court be directed to refund the court fee of 2.500 € to the applicants.

GROUND FOR THE DECISION

5. As long as there is no final decision in an action, a claimant may, pursuant to R. 265.1 RoP, apply to withdraw his action. The application to withdraw shall not be permitted if the other party has a legitimate interest in the action being decided by the Court. R. 265.1 RoP also applies *mutatis mutandis* to the withdrawal of an application for rehearing.

6. By jointly applying for a withdrawal, it can be assumed that also the respondent has a no legitimate interest in the application for a rehearing being decided by the Court. It follows that the application to withdraw the application for a rehearing shall be permitted.
7. Although R. 265.2(c) RoP provides that the Court shall issue a cost decision in accordance with Part 1, Chapter 5, no decision on costs is required since both parties expressly indicated that they would not seek a decision from the Court as to costs pursuant to R. 265.3(c) RoP.
8. In case of a withdrawal of an action (R. 265 RoP), the party liable for the Court fees will be reimbursed by 60 % in accordance with R. 370.9 (b) (i) RoP if the action is withdrawn before the closure of the written procedure. In this case, the application to withdraw was made before the written proceedings were concluded. Respectively a reimbursement by 60 % of the total fee of 2.500 €, resulting in 1.500 € is to be ordered in accordance with this provision but the remainder of the applicant's request must be dismissed.
9. The payment of fees cannot be waived pursuant to R. 250 in conjunction with R. 245(2)(a) RoP. Whether there is a fundamental procedural defect can only be decided in the context of a decision on an application for a rehearing, not in the context of a decision on an application for a withdrawal of such application.

DECISION

The Court of Appeal

- I. permits the withdrawal of the application for rehearing UPC_CoA_523/2024, APP_20809/2025, and declares the proceedings closed;
- II. orders that the decision be entered on the register;
- III. declares that there is no need for a cost decision;
- IV. orders that 60% of the Court fees for the application for rehearing UPC_CoA_523/2024, APP_20809/2025 be reimbursed to Sumi;
- V. orders the Registry to reimburse 1,500 € to Sumi;
- VI. dismisses the applications as to the remainder.

This decision was issued on 23 December 2025.

Klaus Grabinski, President of the UPC Court of Appeal and Judge-Rapporteur

Peter Blok, legally qualified judge

Emanuela Germano, legally qualified judge