



#### IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Decision by default of the Court of First Instance of the Unified Patent Court, The Hague Local Division, dated 21 October 2025
- Numbers attributed by the Court of First Instance:  
UPC\_CFI\_499/2024  
ACT\_48877/2024

#### FACTS, REQUESTS AND SUBMISSIONS

1. AMYCEL filed an application for provisional measures against ■■■■■ before The Hague Local Division of the Court of First Instance of the Unified Patent Court (hereafter “The Hague LD”) for infringement of the patent at issue.
2. Having heard the parties in *inter-partis* proceedings, the CFI ordered provisional measures against ■■■■■ including a preliminary injunction to refrain from infringing the patent at issue (The Hague LD, order no. 44133/2024 of 31 July 2024).
3. On 30 August 2024 Amycel brought an infringement action against the Applicant before The Hague LD for infringement of the patent at issue.
4. The CFI, considering the steps taken by The Hague LD registry and by Amycel to bring the Statement of Claim to ■■■■■ attention, considered the actions taken to be an alternative method of service of the Statement of Claim and, pursuant to R. 275.3 (b) RoP set the date on which the Statement of Claim was deemed to have been served (The Hague LD, order of the judge-rapporteur of 19 December 2024).
5. By Order of 1<sup>st</sup> April 2025, The Hague LD found that, in the context of the specific circumstances of the proceedings, the representative of ■■■■■ has not taken all due care to avoid the late filing of the Statement of defence and ordered a decision by default be taken in the infringement action under R. 355 RoP.
6. In its decision by default of 21 October 2025 (the impugned decision), The Hague LD held ■■■■■ liable for infringement of the patent at issue. It ordered *inter alia* ■■■■■ to send a registered letter to the parties to whom it offered for sale, sold, delivered or otherwise traded in the infringing product - namely the mushroom strain Cayene - informing them of the impugned decision and requesting them to return any current stock of the infringing products (operative part, para III), to publish a message on the website of ■■■■■ informing about the impugned decision (operative part, para IV) and to pay Amycel EUR 50,000. - as an interim award of damages (operative part, para VIII).
7. The Applicant filed an appeal against the impugned decision and, insofar as part III, IV and VIII of said decisions are concerned, an application for suspensive effect pursuant to R. 223 RoP (Statement of appeal of 22 December 2025 as modified on 13 January 2026 following a request for correction).
8. The Applicant mainly argues that part III and IV of the impugned decision would be impossible to revert should the impugned decision be set aside, emphasizing that “any information published on the internet will stay there forever and thus the Court should be very careful with such orders with irreversible consequences” and that “there is no urgency in the publication requests”. Concerning

part VIII of the impugned decision, the Applicant is of the opinion that “it is not clear if when the decision is set aside, would [the] funds be returned to [the Applicant]” and emphasizes that the payment of the interim award of damages would have serious consequences on this business.

#### GROUND FOR THE ORDER

9. The application for suspensive effect is admissible but must be dismissed for the following reasons.

#### *No valid grounds for suspensive effect*

10. 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.
11. The Court of Appeal therefore grants the application only if the circumstances of the case justify an exception to the principle that an appeal shall have no suspensive effect. 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 (CoA 24 November 2025, UPC\_CoA\_000911/2025, Suinno v Microsoft; CoA 20 May 2025, UPC\_CoA\_430/2025 APL\_23093/2025 App\_23094/2025, Chint v. Jingao).
12. The requirement of exceptional circumstances has to be established by the applicant. The Applicant has not evidenced the existence of exceptional circumstances which would justify why the lodging of the appeal shall have suspensive effect.
13. The Applicant has merely claimed that the sending of registered letters (part III of the impugned decision) would be impossible to revert and that the publication of a message on the website of the Applicant (part IV of the impugned decision) would entail “irreversible consequences”, without establishing that the impugned decision is manifestly erroneous. Even if the Court were to accept that the consequences of these orders are not fully reversible, it does not follow that the appeal becomes devoid of purpose in the absence of suspensive effect and that the Applicant's interest in maintaining the status quo until the decision on appeal outweighs Amycel's legitimate interest informing the Applicant's customers of the decision.
14. The Applicant has failed to demonstrate that his interest in not paying interim damages until the decision on its appeal exceptionally outweighs the respondent's interest. The mere assertion of “serious consequences” on the Applicant's business, without any further substantiation, is not sufficient to outweigh Amycel's interest in the enforcement of the CFI decision.

#### *Amycel not heard*

15. The Court of Appeal decides without having heard Amycel, since the Court of Appeal must decide on an application for suspensive effect without delay (R. 223.3 RoP) and the outcome is in favour of Amycel.

## ORDER

The application for suspensive effect is rejected.

This order was issued on 16 January 2026.

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

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