



Reference no.:
UPC-COA-0000931/2025

Order
of the Court of Appeal of the Unified Patent Court
concerning a request for a discretionary review (R. 220.3 RoP)
issued on 29 January 2026

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

1. **Alpinestars S.p.A.**, Via Enrico Fermi No. 5, 31011, Asolo, Treviso, Italy
2. **Alpinestars Research S.p.A.**, Via Alcide De Gasperi No. 54, 31010, Maser, Treviso, Italy
3. **Motocard Bike S.l.**, Calle Valencia, 511-515, 08013 Barcelona, Spain

(hereinafter together "**Alpinestars**")

represented by Massimiliano Tiberio, attorney at law, DLA Piper Italy

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

Dainese S.p.A., Via Louvigny 35, 36064, Colceresa, Italy

(hereinafter "**Dainese**"),

represented by Federico Caruso, attorney at law, SIB LEX

PATENTS IN SUIT

EP4072364 ("EP '364")

EP3498117 ("EP '117")

DECIDING JUDGE

Klaus Grabinski, standing judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- ☐ Order of the Court of First Instance of the Unified Patent Court, Milan Local Division,

dated 18 November 2025

□ Reference numbers:

ACT_45469/2024
UPC_CFI_472/2024
UPC_CFI_792/2024
UPC_CFI_182/2025
UPC_CFI_831/2024

FACTS AND REQUESTS OF THE PARTIES

1. On 8 August 2024, Dainese filed before the Local Division Milan ("LD") an action for infringement of the patents-in-suit.
2. Alpinestars filed a counterclaim for revocation against both patents in suit.
3. By preliminary order of 24 October 2025, the LD communicated to the parties the intention to separate the proceedings concerning the counterclaim for revocation of EP '117 from the action for infringement and the counterclaims for revocation of EP '364.
4. By order of 18 November 2025 ("impugned order"), and after consulting the parties, the LD decided as follows:
 1. *the action for infringement (CFI 472/2024) and of the counterclaim for revocation actions (CFI 792/2024, CFI 182/2025 and CFI 831/2024) regarding EP'364 are separated from the counterclaims for revocation actions brought by the defendants against patent EP'117 (CFI 792/2024, CFI 182/2025 and CFI 831/2024);*
 2. *the action for infringement (CFI 472/2024) and of the counterclaim for revocation actions (CFI 792/2024, CFI 182/2025 and CFI 831/2024) regarding EP'364 continue before the Milan Local Division;*
 3. *the defendants are invited to file separate proceedings relating to EP'117 as new revocation actions - possibly also as a single unified action - before the competent UPC Central Division, paying the court fees in accordance with the general rules;*
 4. *Milan Local Division will decide on the Court fees reimbursement paid by the Defendants 1) and 6) together to the final decision.*
5. On 4 December 2025, Alpinestars filed an application for leave to appeal pursuant to Rule 220.2 RoP, as well as an application for a revision of the impugned order pursuant to Rule 333 RoP, requesting the LD to:
 1. *grant the leave to appeal the Order of 18 November 2025; or, in alternative;*
 2. *withdraw margin no. 3 of the Order of 18 November 2025, thus making unnecessary an appeal of the Order of 18 November 2025 or a request for discretionary review in case of the Court's refusal to grant the leave to appeal, and possibly postpone a decision pursuant to R 25 RoP*

and/or Art. 33(b) UPCA once the stay of the proceedings have been lifted; in any case

3. *confirm that the decision on costs arising from Claimant's withdrawal of the action concerning the alleged infringement of EP '117 will be dealt with in the proceedings concerning infringement that will continue before this Local Division (CFI_472/2024).*
6. On 5 December 2025, the LD invited Dainese to submit by 12 December 2025 comments on Alpinestars' application of 4 December 2025 and informed the parties that it reserves the decision whether to amend its order of 18 November 2025 or to grant the leave to appeal it after the 13 December 2025.
7. On 19 December 2025, Alpinestars filed a request for a discretionary review pursuant to R. 220.3 RoP asking the Court of Appeal to grant leave to appeal the impugned order, arguing that, as of that day, the LD had not ruled on the application for leave to appeal, nor had it amended the impugned order.
8. On 6 January 2026, the Standing judge of the Court of Appeal gave Dainese the opportunity to comment on Alpinestars' request for a discretionary review by 14 January 2026.
9. By the order issued on 13 January 2026, the LD ordered, among others, the replacement of the point no. 3 of the impugned order by the following sentence: *"The Court postpones a decision pursuant to R 265 RoP and/or Art. 33(3)(b) UPCA once the stay of proceedings regarding EP 117 have been filed"* and granted leave to appeal the impugned order.
10. After having been given an opportunity to comment, Alpinestars, by a submission of 27 January 2026, argues that the request for discretionary review that became necessary due to the absence of an order of the Milan LD to grant leave within the time limits set out in Rule 220(3) RoP has been made obsolete by the order of the Milan LD of 13 January 2026.
11. Alpinestars respectively confirms that the order of 13 January 2026 renders unnecessary an appeal against no. 3 of the order of 18 November 2025,
 - withdraws the request for discretionary review and
 - requests the Court, where and to the extent Rule 370(9) RoP is considered applicable, to order the reimbursement of the Court fees paid by the applicants.

REASONS

12. In accordance with Rule 265.1 RoP, which is applicable on a withdrawal of a request for discretionary review *mutatis mutandis*, the withdrawal is permitted after a decision on Alpinestars' request for a discretionary review became obsolete since the Milan LD, by order of 13 January 2026, amended margin no. 3 of its order of 18 November 2025 and granted leave to appeal.
13. There is no need to issue a cost decision pursuant to R. 265.1(c) RoP. This rule does not apply *mutatis mutandis* on a withdrawal of a request for discretionary review pursuant to R. 220.3 RoP since such a withdrawal does not terminate the underlying proceedings in the first instance.
14. As the request for discretionary review has been withdrawn by Alpinestars within the written procedure, Rule 370.9(b) RoP (as applicable until 31 December 2025) applies *mutatis mutandis* and

Alpinestars is entitled to a reimbursement of 60% of the court fees.

ORDER

1. The proceedings on Alpinestars' request for discretionary review are declared to be closed.
2. The decision shall be entered on the register.
3. There is no need for a cost decision.
4. It is ordered that 60% of the fees of the request for discretionary review be reimbursed to Alpinestars.

This order was issued on 29 January 2026.

Klaus Grabinski
President of the Court of Appeal and standing judge