



**COURT OF FIRST INSTANCE  
MILAN LOCAL DIVISION**

**UPC CFI no. 1738/2025  
ORDER  
delivered on 10.2.2026**

APPLICANTS

1) AWM s.r.l. - SS. 13 Pontebbana, Km. 146 33010 Magnano in Riviera (UD), Italy  
2) Schnell s.p.a. - via Sandro Rupoli, 2, zona Ind. San Liberio 61036 Colli al Metauro (PU), Italy  
both represented by Cristina Schiavone and Federico Manzella, Manzella & Associati, via dell'Indipendenza 13, 40121, Bologna, Italy, and by Paolo Creta, Elisa Viotto and Francesco Ricotta, Studio Legale Costa-Creta, piazza di Porta Ravegnana 1, Bologna, Italy

RESPONDENT

Progress Maschinen & Automation AG - Julius-Durst-Strasse 100, 39042, Brixen, Italy  
represented by Markus Gangl and Florian Robl, Patentanwälte Torggler & Hofmann GmbH & Co KG, Wilhelm-Greil-Straße 16, 6020 Innsbruck, Austria

DECIDING JUDGE

This decision has been issued by presiding judge and judge rapporteur Pierluigi Perrotti

LANGUAGE OF PROCEEDINGS

English

SUBJECT-MATTER OF THE PROCEEDINGS

Application for a cost decision

SUMMARY OF FACTS AND PARTIES' REQUESTS

On 28.11.2025 AWM s.r.l. and Schnell s.p.a. filed an *application for cost decision pursuant to R. 150 RoP* regarding the infringement action and the counterclaim for revocation UPC CFI no. 178/2024 and no. 432/2024.

They requested that the Court ordered Progress to pay to the applicants all the legal and technical costs by them incurred in the first instance proceedings, including also costs for representation in the present proceedings.

On 11.12.2025, Progress filed a *response to cost request*, pointing out that on the same date, 11.12.2025, it had lodged an appeal against the decision of the Court of First Instance. Article 74(2) UPCA provided that an appeal against a decision on a counterclaim for revocation always had suspensive effect. Consequently, the application under R. 150 RoP had been filed by AWM and Schnell in an untimely manner. The respondent therefore requested the Court to dismiss the application for a cost decision or, alternatively, to stay the present proceedings until the appeal between the same parties had been decided.

The applicants opposed the request to stay. They pointed out that R. 150 RoP did not require that the first instance decision was final. A previous decision by the Court of First Instance had also already clarified that there was complete independence between the proceedings for determining costs and the appeal proceedings initiated against the first instance decision on the merits (see UPC CFI no. 831/2025, CD Paris, 29 April 2025).

Furthermore, Art. 74(2) UPCA only applied to the part of the decision that concerns the revocation action or the counterclaim for revocation actions and did not involve the part of the decision in which legal costs have been settled.

GROUND FOR THE ORDER

Regarding the effects of an appeal, Article 74(2) UPCA introduces the general rule that “*an appeal against a decision on actions or counterclaims for revocation and on actions based on Article 32(1)(i) shall always have suspensive effect*”

The applicants propose a restrictive interpretation of this provision.

According to their interpretation, the automatic suspensive effect provided by law would be limited solely to the provisions of the decision relating strictly to the validity of the patent. This interpretation would exclude any suspensive effect relating to other points of the decision, including those relating to legal costs.

However, this interpretation cannot be accepted, as it introduces an arbitrary limitation not contemplated by the provision's wording.

Art. 74(2) UPCA clearly references appeals against decisions on actions or counterclaims for revocation, without further limitations. Therefore, the filing of an appeal has an automatic suspensive effect that applies to the decision in its entirety, including the parts relating to legal costs.

In this case, Progress documented that, on December 11, 2025, it filed an appeal against the Court of First Instance decision to uphold applicants' counterclaim for revocation. The Court of First Instance ordered the revocation of the European patent EP 2726230 B1 in all Contracting Member States where the patent was in effect.

Progress' appeal is registered as UPC CoA no. 921/2025 and is still pending.

Filing this appeal triggered the suspensive effect provided in Article 74(2) UPCA, which is mandatory and automatic for decisions on counterclaims for revocation. This effect extends to the entire decision, including the point at which the Court of First Instance ruled that Progress, as the unsuccessful party, should pay the legal costs.

Currently, the legal basis put forth by AWM and Schnell to support their claim for legal costs is ineffective.

These circumstances do not render the request inadmissible due to untimely submission.

It is undisputed that Progress had not yet lodged an appeal on the date the application for a cost decision was submitted. Furthermore, R. 150 RoP provides a one-month term for filing an application for a cost decision, which is clearly shorter than the two-month term set for appealing a decision of first instance.

Therefore, the simultaneous pendency of the two proceedings is normal, even in the specific case under consideration, which is characterized by the aforementioned automatic suspensive effect provided for in Art. 74(2) UPCA.

Nevertheless, it is possible to reasonably and efficiently coordinate the two proceedings through suspension in this particular situation.

In accordance with the general principles of flexibility, fairness, proportionality, and equity, and in application of the provisions of R. 295(c) and (m) RoP, the present proceedings are stayed until the Court of Appeal issues its final decision in proceedings UPC CoA no. 921/2025, or until the appeal proceedings conclude by any means other than a decision on the merits.

For the sake of completeness, the Court acknowledges the previous case law cited by the applicants (UPC CFI No. 831/2025, CD Paris, 29.4.2025), from which the Court respectfully deviates. It should be noted that the aforementioned decision did not consider the applicability of Article 74(2) UPCA at all.

Other case law not referred to by the parties is also relevant (see UPC CFI No. 131/2025, LD Brussels, 2.5.2025). In this order, after a thorough review of the current regulations, the Court determined that it was permissible to stay the proceedings for cost determination, even in cases

where the automatic and mandatory suspensive effect stipulated in Article 74(2) UPCA does not apply.

**ORDER**

The Court stays these proceedings until the judge-rapporteur is notified that the UPC Court of Appeal has issued a judgment on the merits in the appeal proceedings no. 921/2025 or until the same dispute is otherwise terminated.

The interested party is ordered to inform the judge-rapporteur of the Court of Appeal's decision on the merits or of the termination of the dispute by any means other than a decision on the merits issued by the UPC Court of Appeal.

Milan, 10 February 2026.

Pierluigi Perrotti judge-rapporteur	
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