

**ORDER**  
**of the Court of Appeal of the Unified Patent Court**  
**issued on 17 February 2026**  
**regarding an application to stay proceedings (R. 295(a) RoP)**  
**and a request for extension of a time period (R. 9.3(a) RoP)**

HEADNOTES

1. Given the strict deadline regime set out in the Rules of Procedure, which serves to ensure that proceedings are conducted as expeditiously as possible, the option of extending time periods under R. 9.3(a) RoP should be used with restraint and exclusively in exceptional circumstances.
2. An extension of the deadline for filing the Statement of grounds of appeal in the revocation appeal proceedings (by Appellants in the revocation appeal) to the same (later) date for filing the Statement of grounds of appeal in the infringement appeal proceedings (by Respondent in the revocation appeal) is not justified, where other, more efficient means can be used to align the revocation and infringement proceedings, such as hearing the appeals together pursuant to R. 220.5 RoP.

KEYWORDS

Stay of revocation proceedings (R. 295(a) RoP), parallel opposition proceedings, extension of time limit for Statement of grounds of appeal (R. 9.3(a) RoP)

In the appeal proceedings between:

APPELLANT (AND CLAIMANT IN THE REVOCATION ACTION BEFORE THE COURT OF FIRST INSTANCE)

1. **bioMérieux UK Limited**, Basingstoke, GB

APPELLANTS (AND CLAIMANTS IN THE COUNTERCLAIM FOR REVOCATION BEFORE THE COURT OF FIRST INSTANCE)

2. **bioMérieux Benelux BV**, Amersfoort, Netherlands
3. **bioMérieux SA**, Marcy-l'Étoile, France
4. **bioMérieux Deutschland GmbH**, Nürtingen, Germany
5. **bioMérieux Portugal, Lda.**, Linda-a-Velha, Portugal
6. **bioMérieux Italia S.p.A.**, Florence, Italy
7. **bioMérieux Austria GmbH**, Vienna, Austria

(hereinafter together: “the bioMérieux companies”)

all represented by: Benjamin Husband, Carpmiels & Ransford, London, United Kingdom

RESPONDENT (AND DEFENDANT IN THE REVOCATION ACTION AND THE COUNTERCLAIM FOR REVOCATION BEFORE THE COURT OF FIRST INSTANCE)

**Labrador Diagnostics LLC**, Carson City, Nevada, USA

(hereinafter: “Labrador”)

represented by: Christof Höhne, EIP Europe LLP, Düsseldorf, Germany

PATENT IN SUIT:

EP 3 756 767

DECIDING JUDGE

Bart van den Broek, legally qualified judge and judge-rapporteur

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- ☐ Decision of 23 October 2025 issued by the Central Division Milan
- ☐ Reference numbers:  
UPC\_CFI\_497/2024 (Revocation)  
UPC\_CFI\_571/2024 (Counterclaim for Revocation)

LANGUAGE OF THE PROCEEDINGS

English

SUMMARY OF FACTS

1. On 12 June 2024, the Respondent filed an infringement action based on the patent in suit against Appellants 2-7 at the Local Division Düsseldorf.
2. On 30 August 2024, Appellant 1 lodged a revocation action with respect to the patent at issue at the Central Division Milan.
3. With their Statement of defence in the infringement proceedings dated 30 September 2024, Appellants 2-7 lodged a Counterclaim for revocation of the patent at issue.
4. In its order of 23 April 2025, the Local Division Düsseldorf referred the Counterclaim for revocation to the Central Division Milan. The Local Division Düsseldorf proceeded with the infringement action.
5. In the impugned decision of 23 October 2025, the Central Division Milan rejected the (Counterclaim for) revocation filed by the Appellants, in the sense that the patent at issue was maintained in amended form.
6. The Appellants appealed the decision on 23 December 2025.
7. On 28 January 2026, the Local Division Düsseldorf dismissed the infringement action. No appeal against this decision has yet been lodged.

## REQUESTS AND SUBMISSIONS OF THE PARTIES

8. On 5 February 2026, the Appellants filed an application to stay the proceedings until further order on resumption pursuant to Art. 33(10) of the Agreement on a Unified Patent Court (UPCA) and R. 295(a) of the Rules of Procedure (RoP). The Appellants refer in this context to pending opposition proceedings against the patent at issue before the Opposition Division (OD) of the European Patent Office (EPO). In these opposition proceedings, oral proceedings are to be held on 14-15 April 2026 and the OD issued a preliminary opinion on 2 December 2025 indicating that revocation of the patent should be expected.
9. The Appellants argue that as the oral proceedings before the EPO will take place about a month before the deadline for the Statement of response in these proceedings, a decision relating to the patent is expected to be given rapidly. The Appellants further argue that the Court of Appeal should exercise its discretion to stay the proceedings, because the OD will decide on the validity of the patent well before the expected hearing date in the appeal, and it is “very likely” that the OD will revoke the patent in view of the preliminary opinion.
10. In any event, the Appellants request an extension of the deadline for filing their Statement of grounds of appeal, from 23 February 2026 (the current deadline) to the later of 28 May 2026 or one month after an order lifting any stay. The Appellants argue that the Respondent is likely to file an appeal against the decision of the Local Division Düsseldorf dated 28 January 2026 to dismiss the infringement action. By extending the deadline for the Statement of grounds of appeal, the appeals against the decisions regarding revocation and infringement of the patent at issue can be aligned.
11. On 13 February 2026, in its reaction to the requests by the Appellants, the Respondent requests the Court of Appeal to refuse the application for a stay of the proceedings. The Respondent considers that the requirement of a “rapid decision” according to Art. 33(10) UPCA and R. 295(a) RoP is not met, as the OD’s hearing is still months away, and any written decision will be issued weeks or even months thereafter. The Respondent further argues that it is doubtful that a stay would offer any legal benefit, as the decision of the OD would be non-final and, in all likelihood, subject to an appeal. Furthermore, according to the Respondent, there is no risk of divergent outcomes between the UPC revocation proceedings and the EPO opposition proceedings that would justify a stay. Any potential divergence can be addressed through established judicial mechanisms rather than a stay. On the other hand, according to the Respondent, granting a stay would unjustifiably delay the appeal proceedings and prejudice its interests.
12. The Respondent also requests the Court of Appeal to refuse the extension of the deadline for filing the Statement of grounds of appeal. The Respondent argues that if a stay is not warranted, an extension – which would likewise delay the appeal proceedings – cannot be justified either. Furthermore, the Respondent argues that knowledge of the decision in the EPO proceedings would be unnecessary for the present appeal, as the decision is non-binding for the UPC, and, in any event, provides only limited informative value given its susceptibility to appeal.

## GROUNDS

### *Stay of proceedings*

13. As a general principle, the Court will not stay proceedings (UPC\_CoA\_22/2024, 28 May 2024, Carrier v BITZER, paragraph 23). Otherwise, the Court cannot ensure that the final oral hearing will take place within a reasonable time.

14. The mere fact that the revocation proceedings before the UPC relate to a patent which is also the subject of opposition proceedings before the EPO is not sufficient to allow an exception to the principle that the Court will not stay proceedings. The Convention on the Grant of European Patents and the UPCA allow third parties to challenge the validity of a patent in both opposition and revocation proceedings and allow them to initiate revocation proceedings while opposition proceedings relating to the same patent are pending.
15. The principle of avoiding irreconcilable decisions does not require that the UPC always stay revocation proceedings pending opposition proceedings. Firstly, decisions in which the UPC and EPO issue different rulings on the revocation of a European patent are not irreconcilable. Where one body upholds the patent and the other revokes it, the latter decision will prevail. Secondly, the interests of harmonising decisions on the validity of a European patent can be promoted by ensuring that the body that decides last can take the decision of the body that decides first into account in its decision. That means that the interests of harmonisation in general do not require a stay by the UPC where it can be expected that the UPC will issue its decision first (UPC\_CoA\_22/2024, 28 May 2024, *Carrier v BITZER*, paragraph 25).
16. Pursuant to Article 33(10) UPCA and R. 295(a) RoP, an exception to the principle that the Court will not stay revocation proceedings pending opposition proceedings applies when a rapid decision may be expected from the EPO. The terms “rapid decision” and “rapidly” in these provisions must be interpreted, *inter alia*, in the light of the relevant circumstances of the case, such as the stage of the opposition proceedings and the stage of the revocation proceedings (UPC\_CoA\_5/2025, 30 April 2025, *Juul v NJOY*, paragraph 5). These provisions do not require that a *final* decision of the EPO may be expected rapidly. The Court may stay proceedings under Art. 33(10) UPCA and R. 295(a) RoP where it can be expected that the OD of the EPO will give its decision rapidly, even if it is likely that such a decision will be appealed (UPC\_CoA\_511/2024, 21 November 2024, *Meril v Edwards*, paragraphs 19-21).
17. The term “may” in Article 33(10) UPCA and Rule 295(a) RoP means that the Court has a discretionary power to stay the proceedings when a rapid decision may be expected from the EPO. Whether or not a stay is granted depends on the balance of interests of the parties and the specific circumstances of the case. In this context, the fact that the expected EPO decision is not a final decision and is likely to be appealed is one of several factors that may be taken into account (UPC\_CoA\_511/2024, 21 November 2024, *Meril v Edwards*, paragraph 22).
18. When applying these principles to the present case, the Court of Appeal refuses the requested stay of the proceedings.
19. In this case, a decision by the OD of the EPO in relation to the patent at issue is expected to be given rapidly within the meaning of Art. 33(10) UPCA and R. 295(a) RoP. The decision is likely to be issued orally at the end of the oral hearing on 14-15 April 2026, which is only a few months away and about a month before the Respondent has to file its Statement of response in these proceedings.
20. This, however, does not justify a stay of these appeal proceedings. The stay is requested by the Appellants in view of the upcoming decision by the OD, which will be issued in writing at most a few months after the oral hearing in April 2026. At that time, the appeal proceedings will still be ongoing. Even without a stay, there will therefore be ample opportunity for the parties to comment on the decision in the present proceedings. Halting these proceedings now to await the (oral and/or written) decision in first instance by the EPO serves no reasonable purpose and would result in an unjustified delay of these proceedings.
21. In the present appeal proceedings, the Court of Appeal will draw its own, independent

conclusion on the validity of the patent in light of the claims, proposed amendments and arguments relied upon by the parties in these proceedings and the decision by the Central Division Milan in its decision of 23 October 2025. Leaving aside the fact that the decision by the OD will be open to appeal, the OD's decision is non-binding and can be taken into account by bringing it to the attention of the Court of Appeal at a later stage of the proceedings. A stay is not necessary to achieve this.

22. For the same reason, it is not necessary for the Appellants to know the outcome of the opposition proceedings in first instance before filing their Statement of grounds of appeal. Together with its invitation to the oral hearing, the OD issued a detailed preliminary opinion, which provides guidance to the parties as to how the OD currently assesses the validity of the patent at issue. Obviously, the Appellants are free to refer to this preliminary opinion in their Statement of grounds of appeal. Ultimately, however, the appeal is aimed at the decision of the Central Division Milan and the arguments, claims and proposed amendments relied upon by the parties in these proceedings.
23. In view of the above, the balance of interests weighs against a stay at this stage of the appeal proceedings. Granting a stay would unjustifiably delay the appeal proceedings and would offer no decisive procedural advantage. The decision of the EPO and the Court of Appeal with respect to the patent are not irreconcilable, and, as the Respondent correctly notes, any development in the EPO opposition proceedings (to the extent relevant) can be factored in during the course of the present appeal proceeding.

#### *Time extension*

24. Given the strict deadline regime set out in the Rules of Procedure, which serves to ensure that proceedings are conducted as expeditiously as possible, the option of extending time periods under R. 9.3(a) RoP should be used with restraint and exclusively in exceptional circumstances (cf. UPC\_CoA\_887/2025, 24 September 2025, BEGA v Washtower, paragraph 5). These exceptional circumstances are absent in the present case.
25. As noted above, it is not necessary for the Appellants to know the outcome of the opposition proceedings in first instance before filing their Statement of grounds of appeal. The fact that the OD will render its decision after the deadline for filing the Statement of grounds of appeal (23 February 2026) is therefore no valid reason for extending this deadline.
26. The Appellants further argue that an extension of this deadline to the date on which the Respondent would have to file its Statement of grounds of appeal in the infringement proceedings (if an appeal would be lodged) would be justified to align the revocation proceedings and the infringement proceedings. Also this argument does not provide sufficient reason for the requested extension.
27. First of all, the Respondent has not yet filed an appeal against the decision of the LD Düsseldorf dated 28 January 2026. Whether and when this will occur is unknown at this stage. Under these circumstances, it is premature to provide an extension of the deadline for the Statement of grounds of appeal in these revocation proceedings in view of the (possible future) appeal in the infringement proceedings.
28. Secondly, there are other, more efficient means to align the revocation and infringement proceedings (if an appeal in these proceedings would be lodged), in particular by hearing the appeals together pursuant to R. 220.5 RoP. Filing the Statement of grounds of appeal in the revocation proceedings (by Appellants) on the same day (28 May 2026) as the (possible future) Statement of grounds of appeal in the infringement proceedings (by Respondent) is not necessary to establish such a link between validity and infringement.

29. On the other hand, extending the time limit for the Statement of grounds of appeal in the revocation proceedings to 28 May 2026, as requested by the Appellants, will result in a substantial delay of the revocation proceedings, possibly even extending beyond the written submissions in the (possible future) appeal in the infringement proceedings.
30. For the above reasons, the Court of Appeal will refuse the requested extension of the time limit for filing the Statement of grounds of appeal. The deadline for filing this submission will therefore remain at 23 February 2026.

#### ORDER

The requests by the Appellants of 5 February 2026 for a stay of the proceedings and an extension of the deadline for filing the Statement of grounds of appeal are refused.

This order was issued on 17 February 2026.

On behalf of the deciding judge

Bart van den Broek, legally qualified judge and judge-rapporteur