

Decision
of the Court of Appeal of the Unified Patent Court
issued on 6 March 2026
Withdrawal pursuant to R. 265 RoP and
Application for reimbursement of Court fees (R. 370.9 RoP)

APPELLANT AND DEFENDANT IN THE MAIN INFRINGEMENT ACTION BEFORE THE COURT OF FIRST INSTANCE

Black Sheep Retail Products B.V, Betsy van Goorstraat 22, 6702 DC Wageningen, The Netherlands

hereinafter: "**Black Sheep**"

represented by Tjibbe Douma, attorney-at-law, Bird & Bird (Netherlands) LLP

RESPONDENT AND CLAIMANT IN THE MAIN INFRINGEMENT ACTION BEFORE THE COURT OF FIRST INSTANCE

HL Display AB, Box 1118, 131 26 Nacka Strand, Stockholm, Sweden

hereinafter: "**HL Display**"

represented by Gertjan Kuipers, attorney-at-law, Hogan Lovells International LLP

PATENT AT ISSUE

EP 2 432 351

DECIDING JUDGE

Panel 3

Ulrike Voß, presiding judge and legally qualified judge

Nathalie Sabotier, legally qualified judge and judge-rapporteur

Bart van den Broek, legally qualified judge

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Decision of the Local Division the Hague dated 10 October 2025
- Reference numbers:
UPC_CFI_386/2024
UPC_CFI_610/2024

FACTS AND REQUESTS OF THE PARTIES

1. HL Display brought an infringement action of the patent at issue against Black Sheep before the Local Division the Hague (UPC_CFI_386/2024).
2. In response to the action for infringement, Black Sheep filed a declaration of non-infringement and formulated a counterclaim for revocation (UPC_CFI_610/2024).
3. On 10 October 2025, the Local Division the Hague declared, in the impugned decision, that Black Sheep had infringed the patent at issue, and pronounced an injunction as well as corrective measures. Moreover, the Local Division dismissed the counterclaim for revocation and declared the counterclaim for a declaration of non-infringement inadmissible.
4. On 29 October 2025, Black Sheep lodged an appeal against the impugned decision.
5. However, due to pending settlement discussions, the parties jointly requested to stay the proceedings until Black Sheep would withdraw the appeal proceedings or one of the parties would notify the Court that the timeline for the appeal proceedings would have to be resumed.
6. By way of an order issued on 14 January 2026, a stay of the present proceedings before the UPC was ordered for a period of three months.
7. On 25 February 2026, Black Sheep filed a withdrawal of the appeal proceedings pursuant to Rule 265(1) RoP, indicating that no decision on costs is requested and that HL Display has consented to the withdrawal of the appeal.
8. On the same day, Black Sheep filed a subsequent application for reimbursement of 60 % of Court fees pursuant to R. 370(9)(b)(i) RoP.
9. On 2 March 2026, HL Display filed comments on Black Sheep's application for withdrawal, indicating it agrees with Black Sheep's request to withdraw the appeal proceeding. HL Display did not request a decision on costs.

GROUND

Conditions for permitting withdrawal

10. Pursuant to R.265.1 RoP, 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 Court shall decide upon the application after hearing the other party. The application to withdraw shall not be permitted if the other party has a legitimate interest in the action being decided by the Court.

11. This provision equally applies to withdrawals of appeals (CoA, 5 July 2024, CoA_234/2024, *10x Genomics vs Curio Bioscience*, para 9 and CoA, 23 December 2025, CoA_691/2025, *Lindal Dispenser v Rocep*, para 5).
12. In view of Black Sheep's request, the Court of appeal permits the withdrawal of the appeal, given the consent from HL Display.

Costs

13. R. 265.2 (c) RoP provides that the Court shall issue a cost decision in accordance with Part 1, Chapter 5 (R.150 to 152 RoP).
14. In this case, the Court of First instance ordered Black Sheep to pay HL Display the reasonable and proportionate legal costs and other expenses exposed at this stage of the proceedings in the amount of EUR 56,000. Before the Court of Appeal, none of the parties requests such a decision. Therefore, there is no need for a cost decision.

Reimbursement of Court fees

15. According to R. 370.9(b)(i) RoP as it read until 31 December 2025, in the event of the withdrawal of the action (R.265 RoP), the party obliged to pay the Court fees shall receive a refund of 60 % if the action is withdrawn before the closure of the written procedure.
16. This provision has been modified following the amendments to R. 370.9 RoP, which entered into force on 1 January 2026. The amendments apply to actions and applications filed after 31 December 2025 (see page 4 of the AdminComm Amendment of the table of court fees and other related changes to the Rules of Procedure and Guidelines).
17. In case the application for reimbursement is filed after 1 January 2026, reimbursement shall therefore be ordered in accordance with the new provision (see CoA, 9 January 2026, CoA_257/2025, *VMR Products LLC v. NJOY Netherlands BV*).
18. Following the amendments to R. 370.9 RoP, in case of the withdrawal of an action (R. 265 RoP), the party liable for the Court fees will be reimbursed by 50 % in accordance with R. 370.9(b) RoP if the action is withdrawn before the closure of the written procedure.
19. In the present case, the application to withdraw the appeal was made before the lodging of the Statement of response. Therefore, the withdrawal was made before the closure of the written procedure. Reimbursement by 50 % is to be ordered in accordance with this provision.

ORDER

The Court of Appeal:

- permits the withdrawal of the appeal and declares the proceedings closed;
- orders that this decision shall be entered on the Register;
- orders that 50 % of the appeal Court fees be reimbursed to Black Sheep.

This order was issued on 6 March 2026.

Ulrike Voß, presiding judge and legally qualified judge

Nathalie Sabotier, legally qualified judge and judge-rapporteur

Bart van den Broek, legally qualified judge