



UPC Court of Appeal
UPC_CoA_44/2026

Order
of the Court of Appeal of the Unified Patent Court
issued on 24 March 2026
concerning an application for suspensive effect

THE APPLICANT AND APPELLANT (THE DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

ALPINA Coffee Systems GmbH, Kirchbichl, Austria,

hereinafter 'ALPINA'

represented by European Patent Litigators Dr Markus Gangl and Florian Robl, PhD, Torggler & Hofmann Patentanwälte GmbH & Co KG, Innsbruck, Austria

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

CUP&CINO Kaffeesystem-Vertrieb GmbH & Co. KG, Hövelhof, Germany,

hereinafter "CUP&CINO"

represented by Attorneys-at-law Dr Martin Wirtz and Dr Michael Rüberg, LL.M, BOEHMERT & BOEHMERT Anwaltspartnerschaft mbB, Munich, Germany

PATENT AT ISSUE

EP 3 398 487

LANGUAGE OF THE PROCEEDINGS

German

DECIDING JUDGE

Ulrike Voß, Presiding Judge and Judge-Rapporteur

CONTESTED DECISION OF THE COURT OF FIRST INSTANCE

- Decision of the Court of First Instance of the Unified Patent Court, Düsseldorf local division, 18 March 2026

- Action number of the Court of First Instance: UPC_CFI_519/2024 (infringement action) UPC_CFI_64/2025 (counterclaim for revocation)

FACTS OF THE CASE AND THE PARTIES' APPLICATIONS

1. ALPINA is a manufacturer of coffee and espresso machines and markets, among other things, a milk frother with the model designation ALPINA Latte Perfetto Duo (hereinafter: the contested embodiment).
2. CUP&CINO considers the manufacture, offering and sale of the contested embodiment to constitute an infringement of European patent 3 398 487 (the patent at issue). It therefore brought proceedings against ALPINA in 2023 before the Vienna local division seeking interim relief on the grounds of infringement of the patent at issue. The Vienna local division dismissed the application in September 2023 on the grounds that no infringement had taken place.
3. By statement of claim dated 11 September 2024, CUP&CINO brought proceedings against ALPINA before the Düsseldorf local division ('Local Division') for infringement of the patent at issue by the contested embodiment (UPC_CFI_519/2024). In the statement of claim, CUP&CINO also alleged infringement of European Patents 3 281 569 and 3 610 762 by the contested embodiment.
4. ALPINA has filed a counterclaim for revocation against the patent at issue (UPC_CFI_64/2025).
5. By order of 24 October 2024, the local division split the proceedings into three cases (EP 3 281 569 = UPC_CFI_47/2025; EP 3 610 762 = UPC_CFI_52/2025). Having initially scheduled the oral hearings in all three cases for two consecutive days in February 2026, the local division decided shortly before the scheduled dates to reschedule the oral hearings in cases UPC_CFI_47/2025 and UPC_CFI_52/2025. The new hearing dates are in July 2026.
6. By decision of 18 March 2026 (hereinafter: the contested decision), the local division upheld the claim for infringement of the patent at issue in its entirety, whilst the counterclaim for revocation was unsuccessful on the merits.
7. On 19 March 2026, ALPINA lodged an appeal against this decision in respect of both the infringement action and the counterclaim for annulment. It also filed an application for suspensive effect. In this application, it seeks a declaration that the appeal against the infringement action is to have suspensive effect, at least until such time as it is established whether and to what degree

extent the Claimant will also seek enforcement in the parallel cases UPC_CFI_47/2025 and UPC_CFI_52/2025, or, in the alternative, until the date of the pronouncement of the decision in the parallel cases UPC_CFI_47/2025 and UPC_CFI_52/2025. With regard to the scope of the suspensive effect, ALPINA requests that the suspensive effect apply at least to the claims for an injunction, recall and destruction, or, in the alternative, only to the claims for recall and destruction.

8. In support of its application for suspensive effect, ALPINA essentially argues that, due to the rescheduling, it faces the dilemma of having to comply with the Claimant's application for enforcement even before it is clear what the decisions in the parallel proceedings will be. There is a risk that the contested design would have to be modified twice, namely again if a patent infringement were to be found in one of the parallel proceedings. If the application for suspensive effect were granted, ALPINA could carry out any necessary modifications with a single adjustment to the design. This would help ALPINA, as a small business, to reduce the financial costs and the risk of irreparable damage to its reputation. ALPINA further considers that CUP&CINO cannot have any concerns regarding a few further months until enforcement. After all, CUP&CINO waited several months after the decision of the Vienna local division before filing an infringement action before the local division.

REASONS FOR THE ORDER

9. The admissible, and in particular valid, application for an order of suspensive effect (Section 74 of the UPC Agreement in conjunction with Rule 223.1 of the RoP) is unsuccessful on the merits.

Conditions for the order of suspensive effect

10. Pursuant to Art. 74(1) of the UPC Agreement, an appeal has no suspensive effect unless the Court of Appeal decides otherwise upon a well-founded application by a party. The Court of Appeal may therefore only grant the application if the circumstances of the case justify an exception to the principle that an appeal has no suspensive effect. In doing so, it must be examined whether the appellant's interest in maintaining the status quo until a decision is made on their appeal exceptionally outweighs the respondent's interest (see, for example, UPC Court of Appeal, UPC_CoA_365/2025, Order of 21 May 2025, Knaus Taubert v. Yellow Sphere; UPC Court of Appeal, UPC_CoA_894/2025, Order of 2 December 2025, Windhager v. Belissa; UPC Court of Appeal, UPC_CoA_935/2025, order of 16 January 2026, AMYCELL).
11. An order granting suspensive effect may be considered in particular where the order against which the appeal is directed is manifestly erroneous (UPC Court of Appeal, UPC_CoA_365/2025, order of 21 May 2025, Knaus Taubert v. Yellow Sphere; UPC Court of Appeal, UPC_CoA_894/2025, Order of 2 December 2025, Windhager v Belissa; UPC Court of Appeal, UPC_CoA_935/2025, Order of 16 January 2026, AMYCELL) or

the enforcement of the contested decision would render the appeal largely moot (UPC Court of Appeal, order of 6 November 2023, UPC_CoA_407/2023, Ocado v third party; UPC Court of Appeal, Order of 2 May 2024, UPC_CoA_177/2024, Progress Maschinen & Automation; UPC Court of Appeal, UPC_CoA_365/2025, Order of 21 May 2025, Knaus v Yellow; UPC Court of Appeal, UPC_CoA_935/2025, Order of 16 January 2026, AMYCELL).

12. Furthermore, a breach of fundamental procedural rights, such as the right to a fair hearing, may also justify the granting of suspensive effect if it cannot be ruled out from the outset that the court would have reached a different conclusion had the breach not occurred (UPC Court of Appeal, UPC_CoA_549/2024, order of 29 October 2024, Philips v. Belkin; UPC Court of Appeal, UPC_CoA_737/2025, Order of 15 August 2025, RiVOLUTION v. Cilag).
13. Pursuant to Rule 223.2 of the RoP, the application for suspensive effect must contain (a) the grounds on which the lodging of the appeal should have suspensive effect and (b) the facts, evidence and legal arguments put forward. This means that such an application must, on its own, enable the Court of Appeal to rule on it, if necessary even without further information (see, for example, UPC Court of Appeal, UPC_CoA_365/2025, Order of 21 May 2025, Knaus Taubert v. Yellow Sphere; UPC Court of Appeal, UPC_CoA_737/2025, Order of 15 August 2025, RiVOLUTION v. Cilag; UPC Court of Appeal, UPC_CoA_894/2025, Order of 2 December 2025, Windhager v. Belissa; UPC Court of Appeal, UPC_CoA_935/2025, order of 16 January 2026, AMYCELL).

Application to the present case

14. On this basis, no suspensive effect is to be ordered.
15. ALPINA has not argued that the contested decision is manifestly flawed, nor that enforcement of the contested decision would render the appeal moot. Nor has ALPINA claimed that the contested decision is based on a breach of a fundamental procedural right. In its application for suspensive effect, ALPINA does not address the contested decision and/or the proceedings before the local division at all. This alone justifies rejecting its application for suspensive effect. The following remarks are therefore made solely for the sake of completeness.
16. ALPINA confines itself to arguing alleged disadvantages that are said to result from the enforcement of the contested decision. However, ALPINA does not even demonstrate that the enforcement of the decision as such would cause it significant disadvantages which would outweigh CUP&CINO's interest in enforcement and which might, exceptionally, justify granting suspensive effect to the appeal. ALPINA does not claim that the modification of the contested design required by the contested decision would entail such a

significant disadvantage. It does not specify which modification is allegedly required as a result of the contested decision. The costs, effort and scope of the modification have not been demonstrated. Nor does ALPINA put forward any other (exceptional) consequences arising from the contested decision itself which might outweigh CUP&CINO's interest in enforcement.

17. ALPINA points out that, due to the parallel proceedings, it may have to carry out a second modification of the contested design. It is not currently possible to assess what the decisions in the parallel proceedings will entail and, in particular, whether they will necessitate a (second) modification of the contested design. However, suspensive effect cannot be ordered on the basis of possible future events.
18. But even if the decisions in the parallel proceedings were to result in the need to modify the contested embodiment, it is not clear why the enforcement of the contested decision should therefore be suspended. Should infringement also be found in the parallel proceedings, this would entail a finding that the contested embodiment unlawfully uses three patents. This (possible) prospect cannot justify a stay of enforcement for that reason alone, as this would amount to a preferential treatment or 'reward' for (possible) multiple patent infringement.
19. Finally, the application for suspensive effect contains no specific details regarding any second conversion. Nor can any conclusions be drawn regarding the costs, effort or scope involved. In view of this, ALPINA's assertion that the financial costs and the risk of irreparable damage to its reputation could be reduced if only a single conversion were required is merely a general claim. A blanket assertion cannot outweigh CUP&CINO's interest in the enforcement of the contested decision.

ORDER

The application for an order granting suspensive effect to the appeal is dismissed.

This order was made on 24 March 2026

Ulrike Voß, Presiding Judge and judge-rapporteur