



UPC Court of Appeal
UPC_CoA_646/2025

Decision
of the Court of Appeal of the Unified Patent Court
issued on 24 March 2026
Withdrawal pursuant to R. 265 RoP and
Application for reimbursement of Court fees (R. 370 RoP)

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

1. **Amgen N.V.**, Diegem, Belgium
2. **Amgen S.R.L.**, Milan, Italy
3. **Amgen GmbH**, Munich, Germany
4. **Amgen B.V.**, Breda, The Netherlands
5. **Amgen S.A.S.**, Courbevoie, France
6. **Amgen Inc.**, California, United States of America
7. **Amgen Europe B.V.**, Breda, The Netherlands

(hereinafter jointly referred to as “Amgen”)

all represented by Johannes Heselberger, attorney at law, and other attorneys at law of the law firm Bardehle Pagenberg, Munich, Germany, and of Brinkhof, Amsterdam, The Netherlands

RESPONDENTS (AND CLAIMANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Sanofi Biotechnology SAS, Gentilly, France

(hereinafter referred to as “Sanofi”)

and

Regeneron Pharmaceuticals Inc., Tarrytown, United States of America

(hereinafter referred to as “Regeneron”)

both represented by Niels Hölder, attorney at law, and other attorneys at law of the law firm Carpmaels & Ransford LLP, London, UK

PATENT AT ISSUE

EP 3 536 712

LANGUAGE OF THE PROCEEDINGS

English

DECIDING JUDGES

Panel 2

Rian Kalden, presiding judge and judge-rapporteur

Patricia Rombach, legally qualified judge

Ingeborg Simonsson, legally qualified judge

Rainer Friedrich, technically qualified judge

Cornelis Schüller, technically qualified judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

Decision of the Düsseldorf Local Division issued in the infringement action on 13 May 2025 in UPC_CFI_505/2023.

SUMMARY OF FACTS

1. On 13 May 2025, the Court of First Instance at the Local Division in Düsseldorf issued a decision in the counterclaim for revocation lodged by Amgen.
2. The Court of First Instance dismissed the counterclaim for revocation and ordered that the costs of the counterclaim for revocation be borne by Amgen.
3. On 11 July 2025, Amgen lodged an appeal.
4. With respect to the patent at issue parallel opposition proceedings are pending before the Technical Boards of Appeal of the European Patent Office. In these proceedings an oral hearing has been scheduled to take place on 25 March 2026.
5. On 10 September 2025, the judge-rapporteur, after having consulted the parties, decided that at that point of time, there was no need to stay the proceedings pursuant to R. 295(a) RoP, in view of the pending proceedings before the Technical Boards of Appeal (TBA) of the European Patent Office (EPO).
6. On 15 September 2025, Amgen lodged their Statement of grounds of appeal and Sanofi and Regeneron lodged their Statement of response on 15 December 2025.
7. By order of 30 January 2026, the judge-rapporteur declared the written procedure closed.
8. On 10 March 2026, the parties were summoned to an oral hearing to be held on 5 and 6 October 2026. The parties were informed that the case remained in the interim phase.

9. On 12 March 2026, Amgen filed an application for withdrawal of the appeal proceedings pursuant to R. 265 RoP, including a request for reimbursement of Court fees paid as the Court deems appropriate. Amgen indicated that the parties have reached an out-of-court settlement, that no application for a cost decision will be filed and that the parties will bear their own costs.
10. On 12 March 2026, Sanofi and Regeneron submitted their consent to the withdrawal of the Appeal Proceedings indicating that no application for a cost decision will be filed and that the parties will bear their own costs.

PARTIES' REQUESTS

11. Amgen requests, in accordance with R. 265.1 RoP, that the withdrawal of the counterclaim for revocation CC_24999/2024 be permitted as well as the reimbursement of the court fees paid as the Court deems appropriate.

FOUNDATIONS

Conditions for permitting withdrawal

9. 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 application to withdraw shall not be permitted if the other party has a legitimate interest in the action being decided by the Court. R. 265.1 RoP also applies mutatis mutandis to the withdrawal of an appeal.
10. In view of Sanofi's and Regeneron's consent, Sanofi and Regeneron cannot be considered to have a legitimate interest in the appeal being decided by the Court. The application to withdraw can thus be permitted.

Costs

11. No decision on costs is required here, since both parties have declared that a cost decision is not requested.

Reimbursement of Court fees

12. The party seeking reimbursement under R. 370.9 RoP and R. 370.10 RoP shall, pursuant to R. 370.11 RoP, lodge a reasoned Application for reimbursement to the Court. It follows that a request for reimbursement of court fees is provided for only in the situations listed in R. 370.9 RoP and R. 370.10 RoP.
13. Amendments to R. 370.9 RoP entered into force on 1 January 2026. They apply only to those 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, D-AC/08/02072025 _rev. I_E). In this case, the application to withdraw was filed after this date, which makes the new rule applicable.

14. In the event of withdrawal of the action (R. 265 RoP), pursuant to R. 370.9(b) RoP, the party liable for the Court fees will be reimbursed by 50% if the action is withdrawn before the closure of the written procedure. Just as R. 265 RoP applies by analogy in the event of withdrawal of an appeal (see CoA, 5 July 2024, CoA_234/2024, para 9), R. 370.9(b)(i) RoP likewise applies correspondingly in the event of withdrawal of an appeal.
15. In the present case, the withdrawal in the appeal proceedings was requested during the interim phase and, thus, after the closure of the written procedure.
16. The Rules of Procedure do not provide for the possibility of any further reimbursement in the event of withdrawal of the appeal. Accordingly, the Court has no discretion to grant reimbursement beyond the situations expressly provided for in R. 370.9 RoP and R. 370.10 RoP (see CoA, order of 9 January 2025, CoA_611/2024, *Dish und Sling vs Aylo et al*, para 10).
17. The request for reimbursement of Court fees is therefore dismissed.

DECISION

The Court of Appeal:

- permits the withdrawal of the appeal and declares the proceedings closed;
- declares that there is no need for a cost decision;
- dismisses the request for reimbursement of Court fees;
- orders that this decision shall be entered on the Register.

Issued on 24 March 2026

Rian Kalden, presiding judge and judge-rapporteur

Patricia Rombach, legally qualified judge

Ingeborg Simonsson, legally qualified judge

Rainer Friedrich, technically qualified judge

Cornelis Schüller, technically qualified judge