



Reference no:  
UPC-COA-900/2025

**ORDER**  
**of the Court of Appeal of the Unified Patent Court**  
**issued on 6 May 2026**

APPELLANTS AND APPLICANTS (RESPONDENTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

1. **Lepu Medical (Europe) Cooperatief U.A.**, Heerenveen, The Netherlands
  2. **Lepu Medical Technology (Beijing) Co., Ltd.**, Beijing, China
- represented by Ralph Nack, attorney-at-law, Noerr Partnerschaftsgesellschaft mbB

RESPONDENT (APPLICANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

**Occlutech GmbH**, Jena, Germany  
represented by Peter Koch, attorney-at-law, Penforce

PATENT AT ISSUE

EP 2 387 951

DECIDING PANEL

Panel 1:

Klaus Grabinski, Presiding judge and President of the Court of Appeal  
Paolo Catalozzi, legally qualified judge and judge-rapporteur  
Peter Blok, legally qualified judge  
Elisabetta Papa, technical qualified judge  
Max Tilmann, technical qualified judge

LANGUAGE OF THE PROCEEDINGS

English

## IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- Order of the Court of First Instance of the Unified Patent Court, Hamburg Local Division dated 21 October 2025

Number attributed by the Court of First Instance: UPC\_CFI\_553/2025

## FACTS AND PARTES' REQUESTS

1. On 18 June 2025, Occlutech GmbH filed an application for provisional measures before the Hamburg Local Division, seeking a cease-and-desist injunction against Lepu Medical (Europe) Cooperatief U.A. and Lepu Medical Technology (Beijing) Co., Ltd., accompanied by a request for periodic penalty payment in the event of non-compliance.
2. By Order dated 21 October 2025 the Hamburg Local Division granted the cease-and-desist injunction with regard to claim 1 of the European patent allegedly infringed. The Division further ordered the respondents to pay a penalty for any non-compliance and to bear the costs of the proceedings. The Order was declared immediately effective and enforceable, stipulating that the period pursuant to Rule 213 RoP would commence on the day following the upload of the Order to the Case Management System.
3. Lepu Medical (Europe) Cooperatief U.A. and Lepu Medical Technology (Beijing) Co., Ltd. lodged an appeal seeking to have this Order set aside or, in the alternative, that the provisional measures be enforceable only against provision of a security in the amount of at least EUR 440,500.00. Their subsequent request for suspensive effect was rejected by this Court by Order of 7 November 2025.
4. On 30 April 2026, the Appellants filed an application to withdraw the appeal. On 4 May 2026 the Respondent agreed with the withdrawal, requesting this Court of Appeal to: 1) give a decision declaring the proceedings closed; 2) order the decision to be entered on the register; and 3) issue a cost decision in accordance with Rule 150 et seq. RoP.

## GROUNDINGS FOR THE DECISION

5. According to Rule 265(1) RoP, "As long as there is no final decision in an action, a claimant may apply to withdraw his action. The Court shall decide 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." This rule applies *mutatis mutandis* to withdrawals of appeals (CoA, decision of 9 January 2026, CoA\_237/2025, VMR Products vs NJOY, para. 8; CoA, order of 5 July 2024, CoA\_234/2024, 10x Genomics vs Curio Bioscience, para. 9).
6. In the present case, the application to withdraw the appeal is admissible since no final decision has yet been rendered in the appeal proceedings. Furthermore, the withdrawal must be permitted in view of the Respondent's express consent, which indicates the absence of any legitimate interest in the appeal being decided by the Court.
7. Consequently, pursuant to Rule 265(2)(a) and (b) RoP the proceedings must be declared closed, and the decision be entered on the register.
8. Regarding costs, Article 69 UPCA provides that reasonable and proportionate legal costs and other expenses incurred by the successful party shall be borne by the unsuccessful party, unless equity requires otherwise, up to a ceiling set in accordance with the Rules of Procedure. Where a party succeeds only in part or in exceptional circumstances, the Court may order that costs be apportioned equitably or that the parties bear their own costs.

9. As a general rule, in the event of a withdrawal of an appeal, the appellant shall be considered to be the unsuccessful party and shall bear the costs incurred in relation to the appeal proceedings (CoA, decision of 9 January 2026, CoA\_237/2025, VMR Products vs NJOY, para. 14; CoA, order of 5 July 2024, CoA\_234/2024, 10x Genomics vs Curio Bioscience, para. 13).
10. Therefore, as no exceptional circumstances have emerged or been pleaded that would justify a departure from the general rule of cost allocation, the Respondent's request is granted. The Appellants, as the unsuccessful parties, shall be ordered to jointly bear the costs of the appeal proceedings.

#### ORDER

##### The Court of Appeal

- I. Permits the withdrawal of the appeal lodged by Lepu Medical (Europe) Cooperatief U.A. and Lepu Medical Technology (Beijing) Co., Ltd.
- II. Declares the proceedings UPC\_CoA\_900/2025 closed.
- III. Orders that this order be entered on the register.
- IV. Lepu Medical (Europe) Cooperatief U.A. and Lepu Medical Technology (Beijing) Co., Ltd. are ordered to jointly bear the costs incurred by Occlutech GmbH for the appeal proceedings.

This order was issued on 6 May 2026.

Klaus Grabinski, Presiding judge and President of the Court of Appeal

Paolo Catalozzi, legally qualified judge and judge-rapporteur

Peter Blok, legally qualified judge

Elisabetta Papa, technical qualified judge

Max Tilmann, technical qualified judge