



Reference no.:
UPC-CoA-67/2026

Order
of the Court of Appeal of the Unified Patent Court
concerning a request for a discretionary review (R. 220.3 RoP) and
an application for suspensive effect (R. 223 RoP)
issued on 19 May 2026

HEADNOTE

An application for suspensive effect shall be decided by the Court of Appeal (R. 223 RoP). Under this rule, pending a request for discretionary review, the standing judge may decide an application for suspensive effect, since, at that stage of the appeal proceedings, the case is assigned to the standing judge (R. 220.4 RoP).

KEYWORDS

Discretionary review; suspensive effect

APPLICANT (CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Advanced Standard Communication LLC, Garland, TX, USA

(hereinafter "**ASC**")

represented by Dr. Michael Schneider, attorney-at-law, and other representatives of the firm Eisenführ Speiser

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

1. **XIAOMI Inc.**, Beijing, China
2. **XIAOMI Communications Co., Ltd.**, Beijing, China
3. **XIAOMI Technology Netherlands B.V.**, The Hague, Netherlands
4. **XIAOMI Technology Germany GmbH**, Düsseldorf, Germany

(hereinafter, collectively, "**Xiaomi**"),

represented by Oliver Bäcker, attorney-at-law, and other representatives of the firm Hogan Lovells

PATENT AT ISSUE

EP 3 016 464

DECIDING JUDGE

Peter Blok, Standing 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, Munich Local Division, dated 23 April 2026
- Reference number: UPC_CFI_617/2024

FACTS AND REQUESTS OF THE PARTIES

1. ASC filed an infringement action with the Munich Local Division, alleging that the patent at issue is infringed by Xiaomi.
2. Xiaomi filed a Statement of defence, in which they argue, *inter alia*, that ASC is required under antitrust law to grant Xiaomi a licence on Fair Reasonable and Non-Discriminatory (FRAND) terms. Xiaomi also filed a counterclaim for revocation of the patent at issue.
3. In addition, Xiaomi filed a request for security for costs.
4. By order of the judge-rapporteur dated 24 March 2026 and served on the parties on 27 March 2026 (the Judge-rapporteur Order), the Munich Local Division – in summary – ordered ASC to provide security for costs within eight weeks of the date of service of the order.
5. On 13 April 2026, ASC filed an application for review of the Judge-rapporteur Order by the panel. The panel of the Munich Local Division rejected the application, without granting leave to appeal, by order of 23 April 2026 (the Impugned Order).
6. On 8 May 2026, ASC filed a request for a discretionary review under R. 220.3 RoP, requesting that the Court of Appeal set aside the Impugned Order and dismiss Xiaomi's request for security for costs, or, in the alternative, order security for costs unless ASC provides proof of having secured litigation insurance. In the same statement, ASC filed an application for suspensive effect under R. 223 RoP. ASC corrected deficiencies in the statement on 15 May 2026. Subsequently, it was served on Xiaomi.
7. Xiaomi was given the opportunity to respond to the request for discretionary review and the application for suspensive effect by 20 May 2026. Xiaomi filed a request for extension of the time limit until 25 May 2026, or 22 May 2026.

GROUNDINGS FOR THE ORDER

No further comments by Xiaomi

8. The Court of Appeal will decide upon the request for discretionary review and the application for suspensive effect without waiting for further comments from Xiaomi. As the time limit for compliance with the Judge-rapporteur Order expires on 22 May 2026, the application for suspensive effect must be decided upon before that date. Therefore, Xiaomi's request to extend the time limit to 25 May 2026 or 22 May 2026 must be dismissed. Xiaomi will not be disadvantaged by not being heard, since the request for discretionary review and the application for suspensive effect will be rejected.

Discretionary review

9. The request for discretionary review is admissible but must be rejected.
10. When deciding whether to allow a discretionary review, the Court of Appeal must consider whether the impugned order of the Court of First Instance is manifestly erroneous and whether the impugned order raises a fundamental question of law and its review is necessary to ensure a consistent application and interpretation of the Rules of Procedure or any other objective of the discretionary review (CoA, UPC_CoA_489/2024, order of 6 September 2024, *Motorola v. Ericsson*, para. 4; UPC_CoA_805/2025, order of 1 September 2025, *Centripetal v. Keysight*, paras. 8 and 11).
11. ASC merely presented a number of reasons why, in its view, the impugned order is incorrect. However, ASC failed to argue, let alone demonstrate that the alleged errors are manifest. The impugned order is not manifestly erroneous for the following reasons.
12. Firstly, ASC failed to demonstrate that the Munich Local Division erred in finding that Xiaomi had met the burden of presenting facts and evidence to support their assertion of a risk of cost recovery. ASC has not indicated any information that Xiaomi could reasonably have obtained and submitted to further support the risk of cost recovery.
13. Secondly, the fact that Xiaomi has submitted a licence offer to ASC and has provided a bank guarantee for payments under the offered licence does not imply that the Munich Local Division's findings on the risk of cost recovery are manifestly erroneous. As the Munich Local Division noted, ASC did not accept the licence offer and the conditions under which the bank would render payment were not met. In these circumstances, which ASC has not challenged in its request, the conclusion that there is a risk of cost recovery cannot be considered manifestly erroneous.
14. Thirdly, the Munich Local Division did not err in rejecting ASC's alternative request for security to be ordered unless ASC provides proof that it has secured litigation insurance. The Local Division observed, without any manifest error, that, if ASC had wanted to address Xiaomi's concerns about cost recovery by purchasing such insurance, it could and should have done so prior to the impugned order. The opportunity for ASC to do so did not arise as a result of the Court of Appeal's order of 18 February 2026 (UPC_CoA_890/2025, *Syntorr v Arthrex*).

Suspensive effect

15. An application for suspensive effect shall be decided by the Court of Appeal (R. 223 RoP). Under this rule, pending a request for discretionary review, the standing judge may decide an application for suspensive effect, since, at that stage of the appeal proceedings, the case is assigned to the standing judge (R. 220.4 RoP). In addition, ASC's reference to the expiry of the time limit for providing security expiring on 22 May 2026 should be interpreted as an application to the standing judge under R. 223.4 RoP. ASC's application for suspensive effect will therefore be decided by the standing judge.
16. The application for suspensive effect must be rejected as it has become devoid of purpose. Since the request for discretionary review will be rejected, there will be no appeal that could suspend the impugned order.

ORDER

The request for discretionary review and the application for suspensive effect are rejected.

This order was issued on 19 May 2026.

Peter Blok
Standing judge