

**Order**  
**of the Court of Appeal of the Unified Patent Court**  
**issued on 10 June 2026**  
**request for a discretionary review (R. 220.3 RoP)**

HEADNOTES

1. The determination of the value in dispute is a procedural decision to which R 220.2 and R. 220.3 RoP apply, also in case such determination is part of the operative part of a final decision.
2. The absence of a reaction by the Court of First Instance within the 15-day time limit of R. 220.3 RoP following a timely request for leave to appeal within said period, should effectively be regarded as a refusal of leave to appeal, allowing the applicant to file a request for discretionary review within 15 days from the end of said (first) 15-day period.

APPLICANT (DEFENDANT/COUNTERCLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

**Speed Care Mineral GmbH**, Neubrandenburg, Germany

(hereinafter: “**Applicant**”)

represented by Dr. Alexander Reetz, Rechtsanwalt, Wildanger Kehrwald Graf v. Schwerin & Partner mbB Rechtsanwälte, Düsseldorf, Germany

RESPONDENT (CLAIMANT/COUNTERDEFENDANT BEFORE THE COURT OF FIRST INSTANCE)

**Teleflex Life Sciences II LLC**, Wilmington, Delaware, United States of America

(hereinafter: “**Respondent**”)

represented by Dr. Ulrich Blumenröder, Rechtsanwalt, Grünecker Patent- und Rechtsanwälte PartG mbB, Munich, Germany

PATENT AT ISSUE

EP 2 077 811

DECIDING JUDGE

This order has been adopted by Bart van den Broek as standing judge.

## LANGUAGE OF THE PROCEEDINGS

English

## IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Decision, Local Division Hamburg, dated 27 April 2026
- Reference numbers:
  - UPC\_CFI\_685/2024 (Infringement)
  - UPC\_CFI\_157/2025 (Counterclaim for revocation)

## SUMMARY OF FACTS

1. On 11 November 2024, Respondent lodged an infringement action against the Applicant before the Local Division Hamburg (“LD” or “LD Hamburg”) (UPC\_CFI\_685/2024).
2. On 24 February 2025, Applicant filed its Statement of defence and lodged a Counterclaim for revocation (UPC\_CFI\_157/2025).
3. In its decision of 27 April 2026 (“**Impugned Decision**”), the LD Hamburg revoked claims 1, 2, 3, 7 and 9 of the patent in suit, dismissed Respondent’s application to amend the patent in suit, dismissed Applicant’s request to extend the Counterclaim for revocation to claim 15, dismissed Respondent’s infringement action and ordered that the costs of the infringement action and the Counterclaim for revocation be borne by the Respondent. In item 6 of the operative part of the Impugned Decision, the LD Hamburg set the value in dispute of both the infringement action and the Counterclaim for revocation at EUR 1,000,000.
4. On 10 May 2026, the Applicant filed an application at the LD Hamburg to adjust the value in dispute of the Counterclaim for revocation, and, in the alternative, to grant leave to appeal the order in item 6 of the Impugned Decision pursuant to R. 220.2 RoP.
5. On 18 May 2026, following the LD’s invitation to react, Respondent filed its response to the application, requesting the LD Hamburg to reject the request to adjust the value in dispute of the Counterclaim for revocation and not to grant leave to appeal the order in item 6 of the Impugned Decision.
6. In the absence of a decision by the LD on the application for leave to appeal, on 27 May 2026 the Applicant lodged a request for a discretionary review of the order in item 6 of the Impugned Decision pursuant to R. 220.3 RoP.
7. On 1 June 2026, the LD Hamburg dismissed Applicant’s request to adjust the value in dispute of the Counterclaim for revocation and refused to grant leave to appeal

## APPLICANT’S REQUESTS

8. The Applicant requests the Court of Appeal to:
  - I. grant leave to appeal the order to set the value in dispute of the Counterclaim for revocation at EUR 1,000,000 as issued in the Impugned Decision

- II. amend the order in item 6 of the Impugned Decision determining the value in dispute for the Counterclaim for revocation and
  1. set the value in dispute of the Counterclaim for revocation at EUR 1,500,000;
  2. in the alternative: increase the value in dispute of the Counterclaim for revocation appropriately, the extent of the increase being left to the discretion of the Court of Appeal.

#### SUMMARY OF THE APPLICANT'S SUBMISSIONS

##### *The admissibility of the request for discretionary review*

9. The Applicant argues that item 6 of the Impugned Decision setting the value in dispute of the Counterclaim for revocation should be considered as an order that may be appealed under R. 220.2 RoP, irrespective of a possible appeal against the Impugned Decision under R. 220.1 RoP. In substantiation thereof, Applicant argues that pursuant to R. 22.1 RoP, the judge-rapporteur must set the value in dispute by way of order during the interim procedure. This order could then be reviewed by the panel pursuant to R. 333 RoP. According to R. 333.5 RoP, an appeal against the decision of the panel is governed by R. 220.2 RoP. The same would apply, according to Applicant, when the judge-rapporteur leaves this issue for the panel to decide pursuant to R. 102.1 RoP. In the case at hand, the judge-rapporteur did not determine the value in dispute by order during the interim procedure in accordance with R. 22.1 RoP but left it to the panel to set the value in dispute. According to the Applicant, this part of the Impugned Decision should therefore be considered as an order that is appealable under R. 220.2 RoP. Otherwise, the parties would be deprived of a separate appellate route.
10. Applicant acknowledges that in the absence of leave to appeal under R. 220.2 RoP, a request for discretionary review is, in principle, only admissible under R. 220.3 RoP in case the LD refused leave to appeal. In the present case, Applicant has requested leave to appeal within the period of 15 days of the Impugned Decision. According to the Applicant, the LD's failure to respond to this request within the time limit set for requests for discretionary review, must be qualified as a refusal to grant leave to appeal, allowing the Applicant to file a request for discretionary review within the time limit of R. 220.3 RoP. Otherwise, the LD could circumvent a possible appeal by remaining inactive, which would be incompatible with the right to an effective remedy (Article 47 of the Charter of Fundamental Rights of the European Union), and the principles of a fair and balanced procedure expressed in paragraphs 2 and 5 of the Preamble of the Rules of Procedure.

##### *The merits of the request*

11. Applicant is of the opinion that item 6 of the Impugned Decision is manifestly erroneous as the LD has failed to exercise its discretion when setting the value in dispute of the Counterclaim for revocation at only EUR 1,000,000, a value merely transposed from the infringement action without any independent assessment. Applicant argues that this decision departs from Section 2.b)(2)(ii) of the Administrative Committee's Guidelines for the Determination of Court Fees and the Ceiling of Recoverable Costs ("**Guidelines**"), which provides that in the absence of any other relevant information, the value of a Counterclaim for revocation may be assumed to be equal to the value of the infringement action plus up to 50%. Moreover, the order of the LD in item 6 of the Impugned Decision would depart from established practice of the Local Divisions, including the LD Hamburg.
12. On the merits, Applicant argues that the order in item 6 of the Impugned Decision is incorrect as

the LD should have considered the *erga omnes* effect of the revocation of the patent in suit, which should result in a higher value in dispute than the value of the infringement action which only has *inter partes* effect. According to the Applicant, the fact that the patent in suit will expire at the latest on 20 July 2027, does not justify ignoring this difference in effect.

#### GROUNDS FOR THE ORDER

13. The request for discretionary review is admissible but must be denied.

#### Admissibility of the request for discretionary review

*Is the determination of the value in dispute (item 6 Impugned Decision) governed by R. 220.2 RoP?*

14. Applicant's request for discretionary review relates to the determination by the LD of the value in dispute of the Counterclaim for revocation. Although this determination is included in the operative part of the LD's final decision (item 6), the Court of Appeal agrees with Applicant that it is in fact a procedural decision that is governed by the appellate regime of R. 220.2 and R. 220.3 RoP.

15. The Court of Appeal disagrees with Applicant that this would follow from R. 22.1 RoP and the statement therein that the value in dispute is determined "*by way of an order during the interim procedure*". This provision is not applicable to setting the value in dispute of a Counterclaim for revocation but only deals with determining the value in dispute of *infringement actions*. According to R. 22.1 RoP, this determination is done for the purpose of establishing the *value based* court fee that is payable in such actions. With respect to a Counterclaim for revocation, only a *fixed* fee is due, and not a value based fee (R. 26 in conjunction with R. 370.4 RoP and Section 2.a) of the Guidelines). That explains why R. 22.1 RoP is not applicable to Counterclaims for revocation and why the Rules of Procedure neither contain a similar provision to R. 22.1 RoP for Counterclaims for revocation (unlike, for example, for Counterclaims for infringement (R. 53 and R. 60.1 RoP) and Declarations of non-infringement (R. 70 and R. 74.1 RoP)).

16. Nonetheless, the value in dispute is also relevant for a Counterclaim for revocation, namely, to determine the ceiling for recoverable costs (Art. 69.1 UPCA and Section 2.b) of the Guidelines). In view thereof, R. 104(j) RoP determines that during the interim conference the judge-rapporteur may decide the value of the proceeding for the purpose of applying the scale of ceilings for recoverable costs. If the judge-rapporteur uses this discretion, the value of the proceeding must be included in an order setting out the decision taken (R. 105.5 RoP). Therefore, although the determination of the value in dispute of a Counterclaim for revocation is not mandatory during the interim procedure under R. 22.1 RoP, it is clearly part of the case management powers of the judge-rapporteur. If a party disagrees with an order or decision taken by the judge-rapporteur when exercising such powers, it may request the panel to review this decision pursuant to R. 333.1 RoP. As the Applicant correctly notes, a decision by the panel on an application for review is a procedural decision that is governed by R. 220.2 RoP (R. 333.5 RoP).

17. For the same reason, a decision taken by the panel when exercising its case management powers of its own motion (R. 336 RoP) or upon referral by the judge-rapporteur (R. 102.1 or R. 331.2 RoP) should be regarded as a procedural decision. Such a procedural decision is governed by R. 220.2 RoP irrespective of whether it is included in the operative part of a final decision or is rendered separately as a "stand alone" decision prior to or at the same time as rendering the final decision. To determine the appellate regime of an order or decision, the substantive nature of that order or

decision is decisive, not the presence or absence of other orders or decisions in the same decision (cf. UPC\_CoA\_500/2023, 26 April 2024, AIM Sport v Supponor, paras. 8-9; UPC\_CoA\_930/2025, 4 February 2026, EOFlow v Insulet, para. 22).

18. Based on the foregoing, the LD's determination of the value in dispute of the Counterclaim for revocation should be qualified as a procedural decision to which R. 220.2 and R. 220.3 RoP apply. This decision could have been taken by the judge-rapporteur (R. 104(j) and R. 105.5 RoP) or by the panel (R. 331.2, R. 333.5 or 336 RoP) prior to and independent of the final decision, to which then the appellate regime of R. 220.2 and 220.3 RoP would apply. That is not changed by the fact that this procedural decision is now included in the operative part of the Impugned Decision. This does not make it a "final decision" as meant in R. 220.1(a) RoP. As this decision is neither covered by any other provision of R. 220.1 RoP, it is governed by R. 220.2 RoP and can therefore be appealed together with the final decision, or separately, provided that the conditions of R. 220.2 or R. 220.3 RoP are fulfilled.

*Are the admissibility requirements of R. 220.3 RoP fulfilled?*

19. The Court of Appeal is of the opinion that the requirements for admissibility of the request for discretionary review under R. 220.3 RoP are fulfilled in this case.
20. According to R. 220.2 RoP, orders covered by this provision can be appealed together with an appeal against the (final) decision or with leave of the Court of First Instance within 15 days of service of the Court's decision to that effect. Only if the Court of First Instance has denied a request to grant leave to appeal, is it possible to request a discretionary review under R. 220.3 RoP (UPC\_CoA\_930/2026, 4 February 2026, EOFlow v Insulet, para. 24; UPC\_CoA\_34/2026, 26 February 2026, EOFlow v Insulet, para. 16). As this Court has decided on various occasions, this requires a timely request by the applicant for leave to appeal, i.e. within 15 days of the impugned order (e.g. UPC\_CoA\_34/2026, 26 February 2026, EOFlow v Insulet, para. 16). In case leave to appeal is refused within this 15-day period, a request for discretionary review may be filed within 15 days from the end of that (first) 15-day period (R. 220.3 RoP). This also applies in the case where the Court of First Instance fails to decide within the time limit of 15 days of the impugned order despite a timely request for leave to appeal (UPC\_CoA\_363/2025, 22 May 2025, Microsoft v Suinno, para. 18). That is the situation in this case.
21. As the Impugned Decision did not contain leave to appeal the order to set the value in dispute of the Counterclaim for revocation at € 1,000,000 (item 6), Applicant filed an application for leave to appeal at the LD Hamburg within 15 days of the Impugned Decision. This request was therefore made timely. The LD Hamburg did not react to this request within said 15-day period. As this Court previously held, although a refusal to grant leave to appeal is a prerequisite for filing a request for discretionary review under R. 220.3 RoP, the absence of a reaction within the 15-day time limit of R. 220.3 RoP following a timely request for leave to appeal within said period, should effectively be regarded as a refusal of leave to appeal, allowing the applicant to file a request for discretionary review within 15 days from the end of said (first) 15-day period. The Applicant correctly notes that it would otherwise be in the hands of the LD in question to determine whether a request for discretionary request could be filed. That would be at odds with the regime set out in R. 220.3 RoP and would be incompatible with the right to an effective remedy set out, *inter alia*, in Article 47 of the Charter of Fundamental Rights of the European Union.
22. As the request for discretionary review was filed within 15 days from the end of the (first) 15-day

period, the requirements for admissibility of the request for discretionary review are fulfilled in this case, despite the absence of an explicit refusal to grant leave for appeal within the (first) 15-day term set out in R. 220.3 RoP.

#### Merits of the request for discretionary review

23. When deciding whether to allow a discretionary review, it should be considered whether the impugned procedural order of the Court of First Instance is manifestly incorrect and whether the impugned order raises a fundamental question of law, that 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, 6 September 2024, Motorola v. Ericsson, para. 4; UPC\_CoA\_805/2025, 1 September 2025, Centripetal v. Keysight, paras. 8 and 11).

24. In the opinion of the Court of Appeal, the LD's determination of the value in dispute of the Counterclaim for revocation is not manifestly incorrect.

25. The determination of the value in dispute is at the discretion of the judge-rapporteur or the panel taking that decision. R. 370.6 RoP, to which reference is made in R. 104(j) RoP, stipulates in this respect that in deciding on the value in dispute, the Court may take into account the Guidelines of the Administrative Committee. Section 2.b) of the Guidelines applies to Counterclaims for revocation and reads as follows:

*“Determining the value for applying the Rules on recoverable costs:*

*(1) The value of a counterclaim for revocation or of a revocation action should be determined having regard to the value of the patent to be revoked.*

*(2) In the absence of relevant information*

*(i) the value of a revocation action may be assumed to be equal to the value of an appropriate licence fee calculated on the basis of the turnover of the parties for the remaining lifetime of the patent,*

*(ii) the value of the revocation counterclaim may be assumed as being equal to the value of the infringement action (II.1. a), above) plus up to 50%.”*

26. According to the Applicant, the LD's decision to set the same value in dispute for the Counterclaim for revocation and the infringement action is manifestly incorrect in view of the Guidelines and the relevant practice of the LD's, including the LD Hamburg itself, to set the value in dispute of the Counterclaim for revocation at 150% of the value of the infringement action. The Court of Appeal disagrees.

27. When exercising its discretion to determine the value in dispute, the Court “may” take the Guidelines into account (R. 370.6 RoP) but it is not obliged to do so. Moreover, contrary to the Applicant's suggestion, the Guidelines do not require the Court to set the value in dispute of Counterclaims for revocation at 150% of the value in the infringement action in all cases. Section 2.b)(2)(i) of the Guidelines stipulates that the value of a Counterclaim for revocation should be determined “having regard to the value of the patent to be revoked”. Section 2.b)(2)(ii), on which Applicant relies, adds that “in the absence of relevant information”, the value of the revocation counterclaim “may be” assumed as being equal to the value of the infringement action plus “up to” 50%. The Guidelines do not contain any hard and strict requirements for setting the value in

dispute and are merely intended to provide a tool to the Court when exercising its discretion to set the value in dispute.

28. In paragraph 248 of the Impugned Decision, the LD mentioned a number of circumstances that it considered relevant for setting the value in dispute, including the size of Applicant's company. Given these circumstances and in view of the short remaining duration of the patent in suit (cf. paragraph 2 of the Impugned Decision), it was not unreasonable for the LD to set the value of the Counterclaim for revocation at the same level as the infringement action. For the same reason, Applicant's reference to cases in which courts set the value in dispute of the Counterclaim for revocation at 150% of the value in dispute of the infringement action, is not decisive. These cases relate to different patents and different circumstances, and the LD was not required to follow these decisions when determining the value in dispute. As said, it is in the LD's discretion to set a value in dispute for the revocation counterclaim that takes into account the value of the patent to be revoked. To set the same value for the infringement case and the revocation counterclaim is not manifestly incorrect in this case.

29. Applicant has not argued that the determination of the value in dispute by the LD involves any fundamental legal questions. The Court of Appeal agrees. Hence, also on this basis there is no ground for a discretionary review.

#### ORDER

The request for discretionary review is dismissed.

This order was issued on 10 June 2026

Bart van den Broek, standing judge