



Milan - Central Division

UPC_CFI_1968/2026
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on 10/07/2026

APPLICANT/S

	Gilead Sciences, Inc., 333 Lakeside Drive, Foster City, CA 94404, USA <i>Hereinafter Gilead</i>	Represented by Christine Kanz - Hoyng Rokh Monegier Steinstraße 20 Düsseldorf D
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RESPONDENT/S

	Academy of Military Medical Sciences, No. 27 Taiping Road, Haidian District, Beijing 100850, China <i>Hereinafter AMMS</i>	Represented by Camille Pecnard - Pierre Emmanuel Meynard, Charlotte Cluny – Lavoix N. 2 Place d’Estienne d’Orves 75009 Paris F
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PATENT AT ISSUE

<i>Patent no.</i>	<i>Proprietor/s</i>
EP3854403	Academy of Military medical Sciences

DECIDING JUDGE: judge rapporteur

LANGUAGE OF PROCEEDINGS: English

SUBJECT MATTER OF THE CASE: Cost Decision

1. By application dated 3 June 2026, Gilead, as the successful party in the revocation proceedings UPC_CFI_552/25, requested this Court to order AMMS to pay the amount of EUR 800,000 within four weeks as recoverable legal costs incurred in the proceedings (R. 150 RoP). The Parties have already settled in the OH about the amount of legal recoverable costs.
2. By written submissions dated 26 June 2026, AMMS did not dispute, at point 4 of its submissions, the amount of the costs claimed by Gilead. AMMS nevertheless requested that the payment of costs be stayed pending the outcome of the appeal, relying on Article 74(2) UPCA, or alternatively on R. 295 RoP, and referring, in support of its position, to decisions of the Milan Local Division (UPC_CFI 1738/25) and of the Paris Central Division (UPC_CFI_11/25). In the alternative, AMMS requested that any payment be made by instalments. Gilead opposed both requests.
3. Both arguments cannot be accepted.
4. Article 74 UPCA, entitled “Effects of an appeal”, provides as follows: “(1) An appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. The Rules of Procedure shall guarantee that such a decision is taken without delay. (2) Notwithstanding paragraph 1, an appeal against a decision on actions or counterclaims for revocation and on actions based on Article 32(1)(i) shall always have suspensive effect.”
5. Article 74 UPCA must be read as a whole. Paragraph 1 lays down the general rule that an appeal shall not have suspensive effect, unless the Court of Appeal decides otherwise. This principle has been confirmed by the Court of Appeal in Koninklijke Philips N.V. v Belkin, Order of 29 October 2024, UPC_CoA_549/2024, where the Court held that suspensive effect may be ordered where the impugned decision is manifestly erroneous, and that the application must itself be fully substantiated. The Court of Appeal reiterated the exceptional nature of suspensive effect in ALPINA Coffee Systems GmbH v CUP&CINO Kaffesystem-Vertrieb GmbH & Co. KG, Order of 24 March 2026, UPC_CoA_44/2026, holding that the applicant must show exceptional circumstances and that vague or speculative harm is insufficient.
6. Accordingly, where a party seeks to prevent the effects of the decision under appeal, the appropriate procedural route is an application to the Court of Appeal for suspensive effect under Article 74(1) UPCA and R. 223 RoP. Paragraph 2 of Article 74 UPCA does not reverse that general rule for all consequences of any decision in which issues of validity may have arisen. Rather, it concerns appeals against decisions on actions or counterclaims for revocation and on actions based on Article 32(1)(d), (e) and (i)) UPCA. Its rationale is linked to the specific nature of patent validity: the revocation of a patent affects the existence and enforceability of the right itself and cannot produce its definitive legal effects until the decision on revocation has become final following appeal. Conversely, a party that successfully defends its patent against a revocation counterclaim but fails on infringement, beyond the plausible assumption that the expenses might be offset, would be required to pay the costs of the infringement claim, while its own claim for the costs of the revocation proceedings would remain suspended.
7. That reading is also supported by the structure of the UPC procedural system. The decision on the merits and the decision on costs are conceptually distinct procedural steps. Cost proceedings are

independent from the appeal proceedings against the first instance decision on the merits. Under R. 150 et seq. RoP, the recoverable costs are determined, where necessary, in separate cost proceedings following the decision on the merits. The rationale of Art. 74(2) UPCA is not an argument that can lead to an allocation of costs that deviates from the general rule set out in Art. 69 UPCA whereas ‘*Reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party*’ (And Art. 69 UPCA reflects Article 14 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights and must be interpreted as a system-shaping principle¹). It follows that the automatic suspensive effect provided for in Article 74(2) UPCA, which concerns appeals against decisions on actions or counterclaims for revocation and on actions based on Article 32(1)(d) e) and i) UPCA, as *lex specialis*, cannot be extended to the subsequent and separate determination of costs.

8. The decisions relied on by AMMS do not compel a different conclusion. In particular, the Central Division Paris decision in Roche Diabetes Care GmbH v Tandem Diabetes Care, Inc. and Tandem Diabetes Care Europe B.V., 29 April 2025, ACT_831/2025, UPC_CFI_11/2025, concerned precisely an application for a cost decision and rejected a stay based solely on the pendency of the appeal on the merits. Nor does the Court of Appeal case law on suspensive effect support AMMS’s position: Philips v Belkin, UPC_CoA_549/2024, ALPINA Coffee v CUP&CINO, UPC_CoA_44/2026, and the Court of Appeal order of 6 June 2025 in NUC Electronics Co., Ltd v Hurom Co., Ltd, UPC_CoA_434/2025, all confirm that suspensive effect is exceptional and requires concrete circumstances showing that the appellant’s interest in maintaining the status quo outweighs the respondent’s interest in enforcement.

9. Nor can a different conclusion be reached by relying on R. 295 RoP. Under that provision, the Court may stay proceedings only where one of the grounds set out therein is established or where the proper administration of justice so requires. The mere pendency of an appeal against the decision on the merits does not, in itself, justify staying the separate proceedings for the determination of costs (see above Central Division Paris, 29 April 2025, ACT_831/2025, UPC_CFI_11/2025).

10. The same approach follows from the case law of the Court of Appeal on R. 295 RoP. In Carrier Corporation v BITZER Electronics A/S, Court of Appeal, 28 May 2024, APL_3507/2024, ORD_25123/2024, the Court of Appeal held that, as a general principle, UPC proceedings will not be stayed, because otherwise the Court could not ensure that the final oral hearing normally takes place within one year; the mere existence of parallel proceedings is not sufficient to justify a stay. In bioMérieux v Labrador Diagnostics LLC, UPC_CoA_937/2025, the Court of Appeal further clarified

¹ In case C-559/20, the CJEU was asked to clarify whether Art. 14 of Directive 2004/48 may also cover attorneys’ fees incurred by an intellectual property rights holder when pursuing a claim against an alleged infringer outside of court, for example by sending a cease-and-desist letter. The CJEU held (§38) that the specific objective pursued by Art. 14 “is fully consistent with the objective generally pursued by Directive 2004/48, namely the approximation of the legislative systems of the Member States in order to ensure a high, equivalent and homogeneous level of protection of intellectual property. In accordance with those objectives, the author of the infringement of the intellectual property rights must generally bear all the financial consequences of his or her conduct (see, to that effect, judgment of 18 October 2011, *Realchemie Nederland*, C-406/09 (§ 49)).

that even where a rapid decision from the EPO may be expected, a stay remains discretionary and depends on the balance of interests and the specific circumstances of the case.

11. In the present case, AMMS has not identified any circumstance capable of justifying a stay of the cost proceedings. The amount claimed by Gilead was not contested. The alleged status of AMMS as a State entity had already been discussed in the proceedings on the merits. Even in the merits AMMS did not provide concrete information on its size, sources of funding, subsidies, budget or financial capacity, merely relying on a short document of a few lines attesting to its public nature. Such evidence is insufficient to establish that immediate continuation of the cost proceedings, or payment of the recoverable costs awarded, would give rise to exceptional circumstances justifying a stay under R. 295 RoP. In fact, apart from what AMMS says, there is no evidence that AMMS is actually unable to cover the costs they agreed to.

12. AMMS's alternative request for payment by instalments must also be rejected. Such a payment modality cannot be imposed in the absence of an agreement between the parties. Moreover, the alleged difficulties of AMMS in paying the sums due were already extensively addressed in the first-instance proceedings and could have been reflected in any agreement between the parties on costs.

13. Gilead's request for interest on top of the amount claimed is, however, inadmissible as late filed.

14. It follows that Gilead's application is well founded. AMMS shall pay to Gilead EUR 800,000 as recoverable legal costs incurred in proceedings UPC_CFI_552/25 within four weeks of service of this decision. The requests for a stay of the cost proceedings and for payment by instalments are rejected. The request for interest is rejected as late.

FOR THESE REASONS

The Court orders Academy of Military Medical Sciences to pay Gilead Sciences Inc. € 800.000 within 4 weeks of service of this decision.

All other claims by the parties are dismissed.

Milan 10 July 2026

The Judge-rapporteur

Andrea Postiglione

INFORMATION ABOUT APPEAL

Appeal against a decision on costs is provided for in R. 157 RoP.