

Order
of the Court of Appeal of the Unified Patent Court
issued on 21 August 2026
concerning an application for suspensive effect

HEADNOTES

- 1) The existence of a manifest error gives rise, pursuant to Article 74(1) of the UPC Agreement in conjunction with Rule 223 of the RoP, to an order granting suspensive effect to the appeal. The suspensive effect need not necessarily be granted in respect of the entire contested first-instance decision or order. Suspensive effect may be limited to that part of the first-instance decision or order which is affected by the manifest error or which is based on the manifest error. A prerequisite for this is that the part in question is distinct.
- 2) A definable part of a court decision exists where that part can be assessed or challenged separately from the remaining parts of the decision without affecting its meaning or that of the remaining parts.
- 3) A waiver of enforcement is valid if it clearly indicates the title under which and the extent to which enforcement is no longer to take place (specificity) and is, furthermore, unambiguous, irrevocable and unconditional.
- 4) A valid waiver of enforcement may obviate the need for legal protection in relation to an application under Rule 223 of the RoP.

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KEYWORDS

Suspensive effect of the appeal, manifest error, scope, waiver of enforcement, need for legal protection.

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

1. **Nuna International B.V.**, Amsterdam, Netherlands
2. **Allison GmbH**, Frankenthal, Germany

(hereinafter: 'the appellants')

represented by: Dr Jan Phillip Rektorschek, Attorney-at-law, PENTARC PartG mbB,
Munich, Germany

RESPONDENT ON APPEAL (APPLICANT AT THE COURT OF FIRST INSTANCE)

Cybex GmbH, Bayreuth, Germany

(hereinafter: 'the respondent')

represented by: Patent Attorney Tilman Pfrang, Meissner Bolte
Patent Attorneys-at-law and Solicitors Partnership
mbB, Munich, Germany

LANGUAGE OF THE PROCEEDINGS

German

PANEL / DECIDING JUDGE

Panel 3

Ulrike Voß, presiding judge and judge-rapporteur;

Bart van den Broek, legally qualified judge;

Nathalie Sabotier, legally qualified judge

CONTESTED ORDER OF THE COURT OF FIRST INSTANCE

Order of the Hamburg local division of 10 August 2026, UPC_CFI 1321/2026 (application for provisional measures, Rule 206.1 of the RoP)

PATENT AT ISSUE

EP 4242 056

SUBJECT MATTER OF THE ORDER

Application for suspensive effect pursuant to Article 74 of the UPC Agreement in conjunction with Rule 223 of the RoP

FACTS

1. The respondent is bringing proceedings against the appellants by way of interim relief for infringement of European Patent EP 4 242 056 (hereinafter: the patent at issue).
2. The patent at issue relates to a child seat system comprising at least a first seat element, a second seat element and a base.
3. The respondent considers that the offering and sale of the child seat system comprising the 'base curve' base, the 'todl next' child seat (first seat element) and the 'cari next' carrycot or the 'pipa lite', 'pipa next', 'arra flex' and 'arra next' child seats (each constituting a second seat element) as a direct infringement of the patent at issue. In the respondent's view, the offering and/or supply of the individual components constitutes an indirect infringement of the patent at issue.
4. With regard to the alleged direct infringement of the patent at issue, the respondent has filed applications for an injunction, disclosure and a penalty payment (Applications I.1, I.3, I.4, I.5) before the local division in Hamburg (hereinafter: the local division).
5. With regard to the alleged indirect infringement of the patent at issue, the respondent filed an application, claiming I.2(a), for:

‘... to refrain from

a) a first seat element; or a second seat element; or a base mountable on a vehicle seat; or a combination of the first and second seat elements; or a combination of the first seat element and the base; or a combination of the second seat element and the base

to customers within the territory of [...]

to customers within the territory of [...],

if these are suitable for use in [...]

without, in the event of an offer to customers, expressly and prominently stating in the offer and upon delivery that the first seat element, the second seat element and the base mountable on a vehicle seat may not, collectively, be used in the child seat system with the aforementioned features without the consent of the applicant as the proprietor of EP 4 242 056 B1.”

6. The respondent has also submitted applications for information and a penalty payment (applications I.3, I.4, I.5) in respect of the indirect infringement.
7. By order of 10 August 2026 (hereinafter: the contested order), the local division found that it is more likely than not that the offering and distribution of the child seat system (excluding the ‘arra next’ child seat) constitutes direct infringement of the patent at issue. In this respect, it upheld applications I.1, I.3, I.4 and I.5 of the respondent.
8. The local division further found that it is more likely than not that there is an indirect infringement of the patent at issue, and upheld the respondent’s application I.2 as well as the related applications I.3, I.4 and I.5. At the end of the operative part of application I.2 of the contested order, the local division added the following to the aforementioned application I.2:

‘in particular, without

- expressly and conspicuously indicating, in the offer and upon delivery of the ‘base curve’ base system, that the base system must not be used in conjunction with any of the ‘todl next’, ‘pipa lite’, ‘pipa next’, ‘arra flex’ or the ‘cari next’ carrycot without the consent of the applicant as the holder of EP 4 242 056 B1.

- in the offer and upon delivery of any of the seat elements 'todl next', 'pipa lite', 'pipa next', 'arra flex' or 'cari next', it must be expressly and prominently stated that the seat element in question must not be used in conjunction with the 'base curv' child seat base system without the consent of the applicant, as the proprietor of EP 4 242 056 B1."
9. The appellants lodged an appeal against the contested order on 10 August 2026. Furthermore, on the same day, they filed an application for suspensive effect pursuant to Article 74 of the UPC Agreement in conjunction with Rule 223 of the RoP.
 10. After the respondent had initially informed the appellants on 13 August 2026 that it intended to enforce the contested order, it subsequently stated – following service of the application for suspensive effect – that it did not intend to, and would not, enforce the 'in particular without' clause in paragraph I.2 of the contested order.
 11. The appellants supplemented their application for suspensive effect by a document dated 14 August 2026.
 12. The respondent was given the opportunity to submit comments by orders dated 13 and 14 August 2026. The respondent replied to the application and the supplementary document of the appellants by a document dated 18 August 2026.

APPLICATIONS

13. The appellants request (insofar as still relevant),
 1. that the suspensive effect of the appeal lodged on 10 August 2026 against the order of the Hamburg local division of 10 August 2026 (UPC_CFI_1321/2026) be ordered without delay,

in the alternative, to order the suspensive effect in any event for the (entire) operative part relating to the indirect patent infringement as a whole (paragraph I.2. and the related parts of paragraphs I.3., I.4. and I.5. of the LKU),

in the further alternative, to order suspensive effect in respect of the disclaimer section of paragraph I.2,
 3. to order the respondent to bear the costs of the proceedings for the order of suspensive effect.

14. The respondent to the appeal requests that

that the application for suspensive effect of the appeal be dismissed.

In the event that a separate order on costs is required,

- I. that the proportionate costs relating to the settled part be disallowed and
- II. to order the appellants to bear the remaining costs.

SUMMARY OF THE PARTIES' SUBMISSIONS

15. The appellants base their application for suspensive effect on a breach of the principle of disposition under Article 76 of the UPC Agreement, as the operative part of the contested order grants more than was sought by the respondent. In the context of the indirect infringement, a operative part was set out in paragraph I.2 which (a) goes beyond the respondent's application (i.e. prohibits 'more' than was sought) and (b) is thereby in direct contradiction to the local division's own findings. The operative part of the contested order is therefore manifestly and obviously flawed. It will certainly not be upheld on appeal.
16. The appellants take the view that the manifest incorrectness of the contested order must lead to the granting of suspensive effect for the entire first-instance decision. This follows from the wording, as well as the spirit and purpose, of Rule 223 of the RoP and the UPC's established case-law on the granting of suspensive effect. Furthermore, the right to effective legal protection under Article 47 of the Charter of Fundamental Rights of the European Union requires that a manifestly erroneous decision must not be enforced before it can be rectified in the appeal proceedings. The full order for suspensive effect is also necessary and proportionate from the perspective of proportionality.
17. In the appellants' view, the suspensive effect sought in the alternative grants partial protection against the manifest error. This would also be acceptable to the respondent in the appeal from the perspective of proportionality.
18. From the appellants' perspective, there is a need for legal protection in respect of the application made as a last resort. This would remain the case even if one were to regard the out-of-court statements as a definitive waiver of enforcement (in this respect), since the UPC had published the first-instance decision and a corresponding correction by means of a relevant order from the Court of Appeal would appear necessary, if only for the sake of the appellants' public rehabilitation.

19. In its defence of 18 August 2026, the respondent, referring to the appellants' application for suspensive effect dated 10 August 2026 and the document of 14 August 2026, declared an irrevocable waiver of those rights which are conferred upon the respondent exclusively by the reproduced "in particular without" part of paragraph I.2 of the contested order. This waiver also extends to paragraphs I.3 (threat of a penalty payment), I.4 (disclosure of information) and I.5 (threat of a penalty payment), in so far as these refer back to the 'in particular without' part.
20. The respondent considers that, in view of the 'in particular without' addition, the application for suspensive effect was rendered moot at the latest upon the declaration of waiver. As a result of the waiver, there is no risk of enforcement of this part.
21. The respondent emphasises that the local division had granted its application I.2. With the additional 'in particular without' clause, the local division had attempted to specify the requirements for the notice to be affixed regarding indirect patent infringement by naming the article designations of the base and seat elements concerned. This attempt had been well-intentioned but had failed because, as a result, the first 'and' in the application had been replaced by 'or'. This clarification constitutes an addition which is distinct in every respect (in terms of content, language and scope) from all other parts of the order. Omitting the addition would neither render the other parts incomprehensible nor alter their wording or meaning.
22. The respondent submits that neither paragraph 223 of the RoP nor the case-law of the UPC provides grounds for a suspensive effect extending beyond the delimited addition. Rather, the decisions cited by the appellants confirm that an order limiting the suspensive effect to delimitable parts is not only possible but indeed required.
23. The respondent further argues that, if the order is not specified in detail, it is left to the appellants to determine how they will comply with the requirements of paragraph I.2. This does not place a burden on them. Nor was any such issue ever raised by the appellants at first instance.
24. In the respondent's view, the breach of the principle of party disposition does not affect the remainder of the order. It is sufficient to suspend the excessive part. The appellants have not identified any obvious inaccuracies regarding other parts of the contested order. Moreover, granting suspensive effect beyond the excessive part would contravene the principle of effective legal protection, which naturally applies to the respondent as well.

REASONS

25. The application for suspensive effect is admissible. However, it is unsuccessful on the merits.

General rule – exception – general rule

26. Pursuant to Article 74(1) of the UPC Agreement, an appeal has no suspensive effect unless the Court of Appeal decides otherwise upon a reasoned application by a party in accordance with Rule 223 of the RoP. The Court of Appeal may therefore only grant the application if the circumstances of the case justify an exception to the principle that an appeal has no suspensive effect. In this regard, it must be assessed whether the appellant's interest in maintaining the status quo until a decision is made on their appeal exceptionally outweighs the respondent's interest (see, for example, Court of Appeal, UPC-CoA-388/2024, Order of 19 August 2024, Sibio v. Abbott; UPC-CoA-365/2025, Order of 21 May 2025, Knaus Taubert v. Yellow Sphere; UPC-CoA-894/2025, Order of 2 December 2025, Windhager v. Belissa; UPC-CoA-44/2026, Order of 24 March 2026, Alpina v Cup&CINO; UPC-CoA-93/2026, Order of 15 July 2026, Siemens v Hologic).
27. An order granting suspensive effect may be considered, in particular, where the order against which the appeal is brought is manifestly erroneous (see, for example, Court of Appeal, UPC-CoA-388/2024, order of 19 August 2024, Sibio v Abbott; UPC-CoA-365/2025, order of 21 May 2025, Knaus Taubert v Yellow Sphere; UPC-CoA-894/2025, order of 2 December 2025, Windhager v Belissa; UPC-CoA-44/2026, Order of 24 March 2026, Alpina v Cup&CINO; UPC-CoA-93/2026, Order of 15 July 2026, Siemens v Hologic).

Manifest error

28. A manifest error exists, inter alia, where the Court of First Instance, in breach of the principle of party disposition under Article 76(1) of the UPC Agreement, has awarded a party more than was claimed (Court of Appeal, UPC-CoA-388/2024, order of 19 August 2024, Sibio v Abbott).
29. The contested order is vitiated by a manifest error. There is (undisputedly) a breach of Article 76(1) of the UPC Agreement.
30. As can be seen from the reproduction of the applications in paragraph 10 of the contested order and as submitted by the parties, the respondent did not request the addition of 'in particular without' contained in point I.2 of the operative part of the contested order. The local division has therefore (undisputedly) gone beyond the application I.2 submitted by the respondent. It has formulated the (requested) duty of the appellants to provide information in respect of the offer and/or supply

of individual components at issue by means of an additional (unrequested) specification of the duty to provide information.

31. Application I.2 of the respondent was directed at a warning that the first seat element, the second seat element *and* the base mountable on a vehicle seat must not, collectively, be used in the claimed child seat system without the respondent's consent. This reflected the fact that the child seat system of the patent at issue comprises three components. Point I.2 of the operative part of the contested order initially contains a duty to provide information corresponding to this application. This is followed by the addition 'in particular without', as reproduced above. This imposes a duty on the appellants to provide a warning to the effect that the base must not be used in conjunction with any of the aforementioned child seats *or* the carrycot, and that the aforementioned child seats *or* the carrycot must not be used in conjunction with the base without the consent of the respondent on appeal. The additional duty to provide information (which was not requested) set out in the operative part therefore already applies in relation to the offer and/or supply of (only) two components of the child seat system. As a result of the addition 'in particular without' in paragraph I.2 of the operative part of the contested order, the local division has therefore granted more than was requested.
32. Whether the local division's breach of Article 76(1) of the UPC Agreement, as the respondent emphasises, 'was not committed intentionally, but rather in a well-intentioned attempt to specify the requirements for the notice', is irrelevant to the finding of a manifest error.

Scope of suspensive effect

33. In view of the manifest error, the appeal must be accorded suspensive effect, in this case to the extent that the contested order is affected by or based on the manifest error. Contrary to the appellants' view, the existence of a manifest error does not necessarily lead to the granting of suspensive effect in respect of the entire first-instance decision. Nor is suspensive effect to be ordered in the present case in respect of the entire finding of indirect patent infringement.

Rule 223 of the RoP

34. Rule 223.1(a) of the RoP states that the application for suspensive effect must contain 'the grounds on which the lodging of the appeal is to be accorded suspensive effect'. The rule therefore does not deal with the court's order for suspensive effect, but (only) with the party's application. And even if one were to assume a parallelism in this respect, no restriction regarding the scope of the suspensive effect can be inferred from the wording of the cited passage. In particular, no such restriction can be inferred from the fact that the (mentioned) appeal

may be directed against an order or decision in its entirety.

35. Under Article 74(1) of the UPC Agreement, an appeal does not, in principle, have suspensive effect. Consequently, the lodging of an appeal does not, in principle, prevent or delay the (immediate) enforcement of the first-instance order or decision. The statutory priority given to the enforcement of the first-instance order or decision serves the purpose of granting the successful party effective and swift legal protection and enabling them to enforce their rights. Where special circumstances exist, however, it is justified to make an exception to this principle in order to protect the unsuccessful party and to suspend the enforcement of an order or decision at first instance. This exception, too, stems from the principle of effective legal protection. It also complies with the principle of proportionality and the principle of a fair trial. The protection afforded to the unsuccessful party under Rule 223 of the RoP, or rather the spirit and purpose of Rule 223 of the RoP, do not require the suspensive effect of the appeal to extend further than is necessary.
36. If the contested order or decision comprises several distinct parts, it is, rather, in keeping with the aforementioned rule-exception principle and the principle of effective legal protection for both parties that the prevailing party may enforce the first-instance order or decision in so far as it is not affected by the manifest error or based on it, and the unsuccessful party is protected from the enforcement of the order or decision in so far as it is affected by or based on the manifest error. There can be no question of an 'artificial division' into a 'manifestly incorrect' part and a 'presumably correct part' in this situation. Nor, as the appellants argue, is the unsuccessful party in this case 'continues to be subject to an injunction based on a decision that is manifestly incorrect on a material point'. Insofar as the order or decision is manifestly flawed, it is precisely the suspensive effect that is ordered.

Case law of the Court of Appeal

37. Nothing to the contrary can be inferred from the Court of Appeal's case law to date. On the contrary, in the orders cited by the appellants themselves in the cases of 'Abbott v. Sibio' (UPC-CoA-388/2024, 19 August 2024), 'Magna v. Valeo' (UPC-CoA-719/2024, 11 December 2024) and 'Xingi v. Avient' (UPC-CoA-76/2026, 26 May 2026), the suspensive effect was in each case ordered only in respect of a definable part (a specific territory, a particular contested embodiment). The same applies to the order in the case of 'Belkin v. Philips' (UPC-CoA-549/2024, 29 October 2024, individual defendant).
38. In so far as the appellants argue that none of the orders they cite deals with assessing the operative part differently in terms of its (patent) law assessment and evaluation and effectively separating it, and

and they contend that the present case differs from the cases already decided, as the excessive disclaimer requirement ordered by the local division is not a quantitatively separable element of the operative part, but rather a legally constitutive condition which defines the nature of the prohibition as a relative prohibition, this argument does not succeed. It is correct that, by ordering suspensive effect, the contested order or decision is not amended (in substance) and/or the operative part is not 'provisionally restructured'. Rather, the enforcement of the contested order or decision is suspended. However, it is not apparent why the criteria put forward by the appellants should be relevant to the question of the scope of the suspensive effect. In any event, these criteria do not follow from the orders cited. In particular, it cannot be inferred from the orders that only 'purely subtractive measures' are permissible.

Procedure in accordance with the rule of law – effective legal protection

39. The order for a suspensive effect in relation to a definable part that is affected by, or based on, the manifest error does not, as the appellants contend, affect the rule of law in the proceedings in an unacceptable manner. Nor can it be assumed that this entails the risk of causing lasting damage to the confidence of those subject to the law in the UPC system. This is because, to the extent that a manifest error exists, the contested order or decision will not be enforced. Effective legal protection is thus ensured in this respect (see para. 35 et seq.).

Proportionality

40. Nor do the (further) considerations of proportionality put forward by the appellants support their view.
41. The waiver declared by the respondent does not suggest that the entire first-instance decision, in its reasoning and operative part, is at the very least subject to review. This waiver relates exclusively to the addition 'in particular without'. Apart from that, the fact that a decision is 'subject to review' is not sufficient to order a suspensive effect.
42. The fact that the respondent to the appeal allegedly suffers no irreparable harm as a result of a temporary suspension of enforceability is irrelevant at this stage. Insofar as the contested order is based on, or affected by, a manifest error, suspensive effect is ordered, irrespective of whether the respondent to the appeal suffers (irreparable) harm or not. Insofar as the contested order is not affected by the manifest error or does not rest on it, the statutory priority of the enforceability of first-instance decisions applies. This priority applies regardless of whether the successful party suffers (irreparable) damage or not.

43. In so far as the appellants argue that they would suffer serious and foreseeably irreparable damage as a result of the enforcement of a manifestly erroneous operative part of the judgment – in particular due to confusion in the market and amongst their customers – reference must be made to what has already been stated. In so far as the contested order is based on, or affected by, a manifest error, the appeal must be accorded suspensive effect. Consequently, the alleged damages cannot arise from this (distinguishable) part.

Delimitable part

44. A delimitable part of a court decision exists where that part can be assessed or challenged separately from the remaining parts of the decision without affecting its meaning or that of the remaining parts.
45. The finding of direct patent infringement in the contested order constitutes a part that can be distinguished from the finding of indirect patent infringement. The parts can be assessed and challenged separately. The meaning of one part is independent of that of the other part.
46. In the present case, the manifest error does not relate to the finding of direct patent infringement. Even the appellants do not argue that the breach of the principle of disposition has any consequences for the finding of direct infringement of the patent at issue. Furthermore, the appellants do not allege any further manifest errors in relation to the direct patent infringement.
47. The ruling on indirect patent infringement under point I.2 of the contested order, for its part, contains distinct parts relating to the warning notice. One part is the duty to provide a notice, as set out in the operative part of the order following the indirect patent infringement, in accordance with the respondent's application I.2. The other part is the duty to provide a warning as set out in the operative part in the form of the (unclaimed) 'in particular without' addition. These two parts can be distinguished from one another. The duty to provide a warning in accordance with the respondent's application has its own meaning, which can be distinguished from the meaning of the duty to provide a warning in accordance with the 'in particular without' addition. The meaning of the duty to provide information as set out in the respondent's application remains unchanged and is not affected if the duty to provide information as set out in the 'in particular without' addition is omitted. The two duties to provide information that have been imposed may be assessed and challenged separately from one another. They are independent and each is comprehensible in its own right.
48. The manifest error at issue here relates solely to the duty to provide information imposed pursuant to the 'in particular without' clause. It is only in this respect that there has been a breach of the principle of party disposition. In all other respects, the local division has complied with the respondent's application. Nor have the appellants raised any further manifest errors with regard to the indirect patent infringement.

49. In view of this, the suspensive effect of the appeal is not to be granted in the present case, neither in respect of the contested order as a whole nor in respect of the entire operative part concerning the indirect patent infringement. The appellants' principal and alternative claims are therefore unsuccessful on the merits.

Waiver of enforcement

50. Nor is the appellants' most subsidiary application successful. Although it relates to the part of the contested order marred by the manifest error, the respondent has declared a waiver of enforcement.
51. In a document dated 18 August 2026, the respondent to the appeal declared in court, with regard to the contested order, that it would not enforce the addition 'in particular without' contained in paragraph I.2 of the contested order, together with the applications relating thereto. The waiver declared is valid. It clearly indicates on what grounds and to what extent enforcement is no longer to take place. The waiver is therefore specific. Furthermore, it is unambiguous, irrevocable and unconditional.
52. There are no indications whatsoever that this waiver is not genuine. In particular, no doubts to that effect arise from the appellants' submissions regarding the out-of-court waiver previously declared by the respondent. Although it was not expressly stated in that waiver that it was irrevocable, the appellants did not criticise it or raise any objections. They merely pointed out that, despite the declared waiver, they still had an interest in legal protection.
53. However, the appellants' interest in legal protection in respect of the application made in the most subsidiary alternative has lapsed in view of the respondent's waiver of enforcement. The appellants no longer require legal protection in this regard. The court's decision can no longer improve their legal position; the objective sought as a most subsidiary claim has already been fully achieved by the waiver of enforcement. The respondent is prevented from enforcing the addition 'in particular without' by virtue of the waiver it has declared.
54. In so far as the appellants argue that their public rehabilitation is required due to the publication of the contested order, this does not establish a legal interest in the application made as a most subsidiary claim. It has not even been demonstrated that the publication of the contested order – and in particular the part of that order affected by the manifest error – has resulted in any kind of public impairment or disparagement of the appellants which continues to have effect without a decision by the court on the application made as a last resort and which must be remedied

. Furthermore, the present order of the court will also be published.

Order on costs

55. There is no need to rule on costs. The order is not a final order or decision (Court of Appeal, UPC-CoA-177/2024, order of 2 May 2024, PMA v AWM).

ORDER

The appellants' application for the appeal to have suspensive effect is dismissed.

Ulrike
Voß

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by Ulrike Voß
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2026
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Ulrike Voß, Presiding Judge and Judge-Rapporteur

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Acting on behalf of: Bart van den Broek, legally qualified judge

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