

Order
of the Court of Appeal of the Unified Patent Court
concerning an appeal against a cost decision (R. 221.4 RoP)
issued on 18 September 2026

HEADNOTES

- (i) Under Art. 74(2) UPCA, an appeal against a decision on actions or counterclaims for revocation has automatic suspensive effect, without the need for a decision by the Court of Appeal. It reflects the specific nature and effects of validity decisions, which apply *erga omnes* and are not confined to the legal relationship between the parties to the proceedings, and preserves the legal status of the patent while the decision on its validity remains subject to an appeal proceeding. By contrast, under Art. 74(1) UPCA, suspensive effect may be granted by the Court of Appeal, upon a motivated request, where the circumstances of the case justify a departure from the general rule.
- (ii) As an exception to a general rule, Art. 74(2) UPCA shall be given an application limited to its purpose and may not extend beyond its scope, from which it follows that, in case of an appeal against a decision on actions or counterclaims for revocation, the suspensive effect shall be limited to said decision.
- (iii) A decision on actions or counterclaims for revocation pursuant to Art. 74(2) UPCA refers to the substantive ruling by the Court on the issue of validity and its decision to revoke, or not, a patent. Although such a decision of the CFI may be part of a broader decision deciding other matters in the same case, the automatic suspensive effect of an appeal pursuant to Art. 74(2) UPCA remains limited to the part of the decision deciding on the validity of the patent and, if so ordered, its revocation.
- (iv) A decision on costs pursuant to Art. 69 UPCA and R. 150 ff RoP may not benefit from the automatic suspensive effect provided for under Art. 74(2) UPCA, even where the cost decision relates to proceedings in a claim for revocation of a patent.
- (v) When exercising its discretionary power to stay proceedings pursuant to R. 295 RoP, the Court shall consider the balance of interests of the parties and the specific circumstances of the case. When doing so in the context of a (counter)claim for revocation, the Court may, subject to the circumstances of the case, take into account the suspensive effect in the revocation proceedings.

KEYWORDS

Effects of an appeal; suspensive effect of an appeal against a decision on actions or counterclaims for revocation and on actions based on Art. 32(1)(i) UPCA; appeal against the cost decision; stay of proceedings.

APPLICANT (DEFENDANT IN THE REVOCATION ACTION BEFORE THE COURT OF FIRST INSTANCE)

Academy of Military Medical Sciences, no. 27 Taiping Road, Haidian District, Beijing 100850, China

(hereinafter "**AMMS**")

represented by Mr. Camille PECNARD, attorney-at-law, and other representatives of the firm LAVOIX, Paris

RESPONDENT (CLAIMANT IN THE REVOCATION PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Gilead Sciences, Inc., 333 Lakeside Drive, Foster City, CA 94404, USA

(hereinafter "**Gilead**")

represented by Dr Christine KANZ, attorney-at-law, HOYNG ROKH MONEGIER, Düsseldorf

PATENT AT ISSUE

EP 3 854 403

DECIDING JUDGE

Emmanuel Gougé, legally qualified judge and 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, Central Division Milan, dated 10 July 2026
- ☐ Reference number: UPC-CFI-1968/2026 (proceedings for cost decision)
 UPC-CFI-552/2025 (revocation action)

FACTS AND REQUESTS

1. On 18 June 2025, Gilead filed a revocation action (UPC-CFI-552/2025) before the Milan section of the Central Division of the Unified Patent Court (hereinafter "CD Milan") against the patent at issue.
2. The CD Milan revoked the patent in its entirety and, following an agreement reached by the parties whereby the costs of the first-instance proceedings are mutually set at € 800,000, decided as follows regarding the costs: "AMMS has to bear the legal costs incurred by Gilead pursuant to Art. 69.1 UPCA. These costs have been set by agreement of the parties at € 800,000" (Decision of 4 May 2026,

hereinafter the “CD Milan decision”). AMMS lodged an appeal against the CD Milan decision (Statement of appeal of 26 June 2026, UPC-CoA-103/2026).

3. On 3 June 2026, Gilead filed an application for a cost decision (UPC-CFI-1968/2026), requesting that the recoverable costs decided in the CD Milan decision be paid by AMMS within four weeks.
4. In its Reply regarding the application for costs, AMMS, referring to Art. 74(2) UPCA and to R. 295 and R. 156.3 RoP, requested the Court to stay the proceedings for costs until the Court of Appeal has issued its decision in the appeal proceedings against the CD Milan decision or, in the alternative, to order that payment of the legal costs be effected in instalments of € 40,000 every two weeks following AMMS approval procedure by its superior authorities.
5. The CD Milan ordered AMMS to pay Gilead recoverable costs in the amount of € 800,000 within 4 weeks of service of the order and dismissed the remainder of the parties’ requests (Order of 10 July 2026, hereinafter “the impugned order”). It held inter alia that Art. 74(2) UPCA concerns appeals against decisions on actions or counterclaims for revocation and on actions based on Art. 32(1)(d), e) and i) UPCA, that the automatic suspensive effect provided for under Art. 74(2) UPCA cannot be extended to the subsequent and separate determination of costs, and that a different conclusion can also not be reached by relying on R. 295 RoP.
6. On 23 July 2026, AMMS filed an application for leave to appeal against a cost decision pursuant to R. 157 and R. 221 RoP, requesting the Court of Appeal to grant leave to appeal against the impugned order. Together with said application, AMMS filed a Statement of appeal and a Statement of grounds of appeal, requesting the Court of Appeal, if leave is granted, to set aside the impugned order, to stay the proceedings for costs until the judge-rapporteur of the CFI is notified that the Court of Appeal has issued a decision on the merits in the appeal proceedings or until the same dispute is otherwise terminated or, in the alternative, to order payment of the recoverable costs in three instalments, at the latest by 31 December 2026. It also requested, if leave to appeal is granted, that the Court of Appeal order suspensive effect pursuant to R. 223 RoP in the event the standing judge does not rule on the appeal of the impugned order before 10 August 2026.
7. Gilead requested that the application for leave to appeal be rejected and, in the event leave to appeal is granted, that AMMS’ requests to set aside the impugned order and to grant suspensive effect be rejected (Response to the application for leave to appeal of 30 July 2026).
8. The standing judge granted leave to appeal and rejected the application for suspensive effect (order of 4 August 2026). Following a procedural order inviting the parties to comment on the possibility to decide the appeal on the basis of the written submissions without an oral hearing considering that the written procedure is completed and that no interim conference is needed, the parties agreed that the appeal shall be decided pursuant to R. 221.4 RoP without an oral hearing (parties’ communications of 31 August 2026).

SUBMISSIONS OF THE PARTIES

9. AMMS submits in summary that the suspensive effect provided for under Art. 74(2) UPCA is not limited to the decision regarding the (counter)claim for revocation but should instead extend to all aspects of the CFI decision, including the decision on costs, and that the stay of the costs proceedings should have been ordered by the judge-rapporteur on the basis of R. 295(c) and (m) RoP as a consequence of the automatic suspensive effect of the CD Milan decision pursuant to Art. 74(2) UPCA.
10. Gilead submits in summary that a stay of the cost proceedings may not be warranted by the suspensive effect of the appeal filed against the CD Milan decision pursuant to Art. 74(2) UPCA, as said provision applies only to the decision relating to the validity of the patent, which entails potentially irreversible consequences, and not to costs decisions which can be easily reversed without creating a situation of legal uncertainty.

GROUNDINGS FOR THE ORDER

Grounds of Appeal and Statement of Response in appeals against cost decisions

11. Appeals against costs decisions are governed by R. 221 RoP. As already clarified by this Court, R. 221 RoP does not always require a separate Statement of appeal and Statement of grounds of appeal after leave to appeal a cost decision is granted (Hanshow v VusionGroup, UPC_CoA_618/2024, 21 February 2024, para. 11). An application for leave to appeal pursuant to R. 221 RoP must already set out the reasons why the appeal should be heard, and where necessary, the facts, evidence and arguments relied on (R. 221.2 RoP).
12. In the present case, as admitted by AMMS, the application for leave to appeal also constitutes AMMS' Statement of appeal and Statement of grounds of appeal and Gilead's Response to the application for leave to appeal and to the application for suspensive effect constitutes Gilead's Statement of response to the extent it contains Gilead's plea as to the reason to reject the request to set aside the impugned order and the auxiliary request to grant an extension of payment (para. 26 to 58 of Gilead's Response of 30 July 2026).

Effect of an appeal against a decision on actions or counterclaims for revocation of Art. 74(2) UPCA

13. According to Art. 74 UPCA ("Effect of an appeal"), an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties (Art. 74(1) UPCA, first sentence) and, notwithstanding paragraph 1, an appeal against a decision on actions or

counterclaims for revocation and on actions based on Art. 32(1)(i) UPCA shall always have suspensive effect (Art. 74(2) UPCA).

14. This Court has consistently held, under Art. 74(1) UPCA, that, as a matter of principle, proceedings before the Court of First Instance must as much as possible continue unhindered by any (procedural) appeals, and that the Court of Appeal shall only give suspensive effect to appealed orders under exceptional circumstances (ICPillar v ARM, UPC_CoA_301/2024, 19 June 2024).
15. Art. 74(2) UPCA provides, in the specific situation of an appeal against a decision on actions or counterclaims for revocation and on actions based on Art. 32(1)(i) UPCA, for an exception to the principle of no suspensive effect of the appeal set forth in Art. 74(1) UPCA. Under Art. 74(2) UPCA, the appeal has automatic suspensive effect, without the need for a decision by the Court of Appeal. It reflects the specific nature and effects of validity decisions, which apply *erga omnes* and are not confined to the legal relationship between the parties to the proceedings, and preserves the legal status of the patent while the decision on its validity remains subject to an appeal proceeding. By contrast, under Art. 74(1) UPCA, suspensive effect may be granted by the Court of Appeal, upon a motivated request, where the circumstances of the case justify a departure from the general rule.
16. As an exception to a general rule, Art. 74(2) UPCA shall be given an application limited to its purpose and may not extend beyond its scope, from which it follows that, in case of an appeal against a decision on actions or counterclaims for revocation, the suspensive effect shall be limited to said decision.
17. A decision on actions or counterclaims for revocation pursuant to Art. 74(2) UPCA refers to the substantive ruling by the Court on the issue of validity and its decision to revoke, or not, a patent. Although such a decision of the CFI may be part of a broader decision deciding other matters in the same case, the automatic suspensive effect of an appeal pursuant to Art. 74(2) UPCA remains limited to the part of the decision deciding on the validity of the patent and, if so ordered, its revocation.
18. Pursuant to R. 118.5 RoP, as part of the decision on the merits, the Court shall decide in principle on the obligation to bear legal costs in accordance with Art. 69 UPCA which sets forth the principles governing the allocation of legal costs and other expenses.
19. The Rules of Procedure further provide that proceedings for costs decision are separate proceedings (R. 150 RoP on “separate proceedings for cost decision”). Even if formally contained in the decision document of the Court which also decides on a revocation action or counterclaim for revocation, as in the CD Milan decision, a decision on costs remains a decision separate and to be distinguished from the decision regarding the (counter)claim for revocation. As rightly pointed out by the CFI, cost proceedings are independent from the appeal proceedings against the first instance decision on the merits (impugned order, para. 7). Accordingly, a decision on costs pursuant to Art. 69 UPCA and R. 150 ff RoP may not benefit from the automatic suspensive effect provided for under Art. 74(2) UPCA, even where the cost decision relates to proceedings in a claim for revocation of a patent.

Stay of proceedings (R. 295 RoP)

20. Notwithstanding the foregoing, the Court may stay proceedings pursuant to R. 295 RoP, including under its paragraph (m) following which proceedings may be stayed in any other case [than those listed under para. (a) to (l)] where the proper administration of justice so requires.
21. When exercising its discretionary power to stay, the Court shall consider the balance of interests of the parties and the specific circumstances of the case. When doing so in the context of a (counter)claim for revocation, the Court may, subject to the circumstances of the case, take into account the suspensive effect in the revocation proceedings.
22. As a general rule, the review by the Court of Appeal is limited to determining whether the CFI has exceeded its discretionary power in deciding the requests. In the present case, AMMS failed to demonstrate that the Milan CD overstepped the boundaries of its discretion in rejecting its request to stay the proceedings for costs pursuant to R. 295 RoP. The amount claimed by Gilead was not contested and AMMS merely relied on a short document of a few lines attesting to its public nature which the judge-rapporteur held insufficient to establish that a stay under R. 295 RoP would be justified.
23. Unlike as argued by AMMS, R. 295 (c) RoP, which provides for the possibility of a stay of proceedings where an appeal is brought before the Court of Appeal against a decision or order of the Court of First Instance (i) disposing of the substantive issues in part only (ii) disposing of an admissibility issue or a Preliminary objection, is not relevant in the present case, as the impugned order disposes neither of the costs proceedings in part only nor of an admissibility issue or a Preliminary objection.

AMMS's alternative request for payment by instalments

24. AMMS' auxiliary request that payment of the recoverable costs of € 800,000 be effected in three instalments, and at the latest by 31 December 2026, will be rejected.
25. According to R. 156 RoP, the judge-rapporteur shall decide in writing on the costs to be awarded or apportioned in accordance with Art. 69(1) to (3) of the Agreement (R. 156.2 RoP) and the costs shall be paid within the period ordered by the judge-rapporteur (R. 156.3 RoP).
26. When exercising its discretion in view of determining both the costs to be awarded (R. 156.2 RoP) and the period within which it shall be paid (R. 156.3 RoP), the judge-rapporteur shall take into account all circumstances of the case.

27. In the present case, the parties agreed, during the CFI proceedings, to set the ceiling for cost recovery at € 800,000 (Gilead's communication to the Court of 15 April 2026 and CD Milan decision, para. 4). No reference was made to a payment of the costs by instalments.
28. Whether, in the absence of an explicit agreement of the parties on a possible payment by instalments, such a payment modality could have been ordered or whether, as decided by the CFI, it cannot be imposed in the absence of an agreement between the parties (impugned order, para. 12), can be left open. Even assuming that, in their agreement on the ceiling for cost recovery, the parties had not excluded such possibility, AMMS has not established that the judge-rapporteur, referring to the alleged difficulties of AMMS in paying the sums due (impugned order, para. 12), has exceeded its discretionary power in ordering the costs to be paid within 4 weeks of service of the impugned order and rejecting the alternative request for payment by instalments.
29. The fact that, according to AMMS, the parties should have discussed the payment modalities (AMMS Grounds of appeal, para. 93 ff), is for the parties to decide but cannot prevent the successful party in the revocation action to seek a cost decision pursuant to R. 151 RoP.

AMMS' new evidence

30. AMMS relies in the appeal, in support of its auxiliary request for payment by instalments, on three additional pieces of evidence (exhibits #10, entitled Measures for the Administration of External Collaboration on Research Projects at AMMS; #11, entitled Notice on Procurement procedures for Goods, Materials and Services Over RMB 1 Million; #12, entitled Reference Procedures for the Implementation of External Collaboration on Research Projects at AMMS), the content of which is partially protected as confidential information following an order of this Court of 31 July 2026 on the protection of confidential information pursuant to R. 262A RoP.
31. Whether these three exhibits filed in the appeal proceedings shall be rejected as late filed, as requested by Gilead, can be left open since AMMS does not establish to what extent said exhibits evidence that a payment of the costs in instalments is justified. AMMS refers in broad terms to the absence of specific internal approval procedures "for such a situation", to "various publication requirements and appeal deadline that must be respected before the budget can be allocated" under Chinese public law and to the ceilings and time periods set out in one of the three exhibits (AMMS Grounds of appeal, para. 117 ff), without further evidencing to what extent a payment by instalments is likely to meet AMMS alleged internal approval process while the payment of the costs as decided in the impugned order would not.

ORDER

The appeal is rejected.

This order was issued on 18 September 2026.

Emmanuel Gougé, legally qualified judge and standing judge