Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC-CoA-169/2026
UPC-CoA-170/2026
UPC-CoA-171/2026
UPC-CoA-172/2026

ORDER

of the Court of Appeal of the Unified Patent Court concerning an Application for suspensive effect issued on 29 October 2026

APPLICANT (CLAIMANT IN THE INFRINGEMENT ACTION, DEFENDANT IN THE COUNTERCLAIM FOR REVOCATION, APPLICANT IN THE ACTION FOR PROVISIONAL MEASURES AND THE ACTION FOR PRESERVATION OF EVIDENCE BEFORE THE COURT OF FIRST INSTANCE)

Hybridgenerator ApS, Årslev, Denmark

(hereinafter referred to as: "**Applicant**")

represented by Mikkel Kleis, attorney-at-law, Patrade A/S, Aarhus, Denmark

RESPONDENTS (DEFENDANTS IN THE INFRINGEMENT ACTION, CLAIMANTS IN THE COUNTERCLAIM FOR REVOCATION, DEFENDANTS IN THE ACTION FOR PROVISIONAL MEASURES AND THE ACTION FOR PRESERVATION OF EVIDENCE BEFORE THE COURT OF FIRST INSTANCE)

1. **HGSystem ApS,** Årslev, Denmark
2. **Infotech Concept ApS**, Årslev, Denmark
3. **Rune Eilertsen**, Årslev, Denmark

(hereinafter jointly referred to as: "**Respondents**")

all represented by Allan Christensen, attorney-at-law, Gorrissen Federspiel, Aarhus, Denmark

PATENT IN DISPUTE

EP 4 238 202

LANGUAGE OF THE PROCEEDINGS

English

DECIDING JUDGE

Bart van den Broek, standing judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- Cost decision of the Local Division Copenhagen, 17 September 2026

- Reference numbers of the Court of First Instance:
  - UPC-CFI-2308/2026: procedure for a cost decision infringement action (UPC-CFI-560/2024)
  - UPC-CFI-2309/2026: procedure for a cost decision counterclaim for revocation (UPC-CFI-89/2025)
  - UPC-CFI-2310/2026: procedure for a cost decision provisional measures (UPC-CFI-501/2024)
  - UPC-CFI-2311/2026: procedure for a cost decision preservation of evidence (UPC-CFI-492/2024)

SUMMARY OF THE FACTS

Application for preserving evidence (UPC-CFI-492/2024)

1. On 16 August 2024, Applicant filed an Application for preserving evidence held by Respondents. The application was filed with the Local Division Copenhagen ("**LD Copenhagen**") and was based on the patent in suit ("**patent**"). The value in dispute was determined by Applicant to be less than EUR 250,000.

2. On 26 August 2024, the LD Copenhagen issued an order allowing the preservation of evidence in accordance with Applicant's application.

3. On 30 August 2024, the order was enforced by the Bailliff's Court in Svendborg, Denmark, but the preservation of evidence could not be completed due to the inability to access the cloud-based solution and the data contained therein.

4. On 4 September 2024, the LD Copenhagen issued an order in which Respondents were held jointly liable to pay a daily penalty sum of EUR 5,000 until they provided the relevant usernames and passwords.

5. On 30 September 2024, Respondents requested a review of the order for the preservation of evidence dated 26 August 2024.

6. On 19 December 2024, the LD Copenhagen upheld the order for the preservation of evidence.

7. On 3 March 2025, with reference to R. 194.3 RoP, the presiding judge of the LD Copenhagen decided that the CAD files that were preserved as evidence could be handed over to the representatives of Applicant. The presiding judge further determined that, based on the available evidence, Respondents could not be ordered to pay the periodic penalty sums set by the Court in the order of 4 September 2024, since the requested information had been provided by Respondents. Leave to appeal was granted.

8. Applicant lodged an appeal against the part of the order relating to the penalty sums. On 4 June 2025, the Court of Appeal issued an order setting aside that part of the order and held that the order regarding the penalty sums should have been issued by the panel of the LD Copenhagen under R. 354.4 RoP (UPC-CoA-233/2025). The Court of Appeal referred the case back to the LD Copenhagen for adjudication.

9. On 5 December 2025, the LD Copenhagen issued an order in which Respondents were ordered to pay a penalty sum of EUR 67,000 due to the late provision of the relevant usernames and passwords. The imposed penalty was subsequently paid by the Respondents.

Application for provisional measures (UPC-CFI-501/2024)

10. On 28 August 2024, Applicant filed an Application for provisional measures based on the patent, requesting the issuance of the provisional measures without hearing Respondents. The value in dispute was determined by Applicant to be less than EUR 250,000.

11. On 13 September 2024, the LD Copenhagen refused to issue the requested provisional measures without hearing Respondents and ordered that Respondents be notified of the application and be allowed to provide comments.

12. On 18 October 2024, Respondents lodged an Objection to the Application for provisional measures.

13. On 14 January 2026, an interim conference was held at which the question was raised whether Applicant wished to maintain the Application for provisional measures.

14. By letter of 26 January 2026, Applicant informed the Court and Respondents that it withdrew the Application for provisional measures.

Infringement action (UPC-CFI-560/2024) *and Counterclaim for revocation* (UPC-CFI-89/2025)

15. On 27 September 2024, Applicant started an Infringement action against Respondents based on the patent. Respondents subsequently filed a Counterclaim for revocation on 3 February 2025.

16. Following an interim conference on 14 January 2026 and an oral hearing on 13 April 2026, the LD Copenhagen rendered a decision on 29 May 2026, in which the patent was revoked and the infringement claims were dismissed ("**Decision on the merits**"). In the Decision on the merits, Applicant was ordered to pay Respondents' costs in the Infringement action and the Counterclaim for revocation. The value in dispute was set in each case to be less than EUR 500,000. The maximum amount of recoverable attorney's fees was set at a total of EUR 112,000 for the Infringement action and the Counterclaim for revocation together.

17. On 27 July 2026, Applicant lodged an appeal against the Decision on the merits (UPC-CoA-124/2026 and 125/2026).

*The proceedings for a cost decision relating to the infringement action (UPC-CFI-2308/2026; **UPC-CoA-170/2026**), Counterclaim for revocation (UPC-CFI-2309/2026; **UPC-CoA-169/2026**), provisional measures (UPC-CFI-2310/2026; **UPC-CoA-172/2026**) and preservation of evidence (UPC-CFI-2311/2026; **UPC-CoA-171/2026**)*

18. On 26 June 2026, Respondents lodged an Application for a cost decision under R. 150 *et seq*. RoP with the judge-rapporteur of the LD Copenhagen in relation to the Infringement action, the Counterclaim for revocation, the Application for provisional measures and the Application for preserving evidence. In its Application for a cost decision, Applicant requested payment of the following amounts:

Infringement action:	EUR 56,000 (representatives' fees)
Counterclaim for revocation:	EUR 56,000 (representatives' fees) + EUR 6,600 (court fees)
Provisional measures:	EUR 38,000 (representatives' fees)
Preservation of evidence:	EUR 38,000 (representatives' fees)

19. On 9 July 2026, Applicant filed a response to the Application for a cost decision. Applicant argued that Respondents did not provide sufficiently detailed information and documentation regarding the alleged representatives' fees relating to the Infringement action, the Counterclaim for revocation and the Application for provisional measures. Furthermore, according to Applicant, these costs were disproportionally high, also in view of its own costs in connection with these actions. With respect to the costs in relation to the preservation of evidence, Applicant argued that it, rather than Respondents, was entitled to the reimbursement of costs in this action, as the action had resulted in the successful preservation of evidence. Applicant claimed the following amounts: EUR 38,000 (representatives' fees), around EUR 26,000 (IT costs and court fees) and EUR 9,514,30 (representatives' costs in connection with the appeal regarding the penalty sums).

20. On 17 September 2026, the judge-rapporteur rendered a decision in the cost proceedings ("**impugned decision**"). In the impugned decision, the judge-rapporteur ordered Applicant to pay the maximum amounts of recoverable attorney's fees in the Infringement action and the Counterclaim for revocation (total: EUR 112,000), supplemented by the court fees in the Counterclaim for revocation (EUR 6,600). In the action for provisional measures, the judge-rapporteur ordered Applicant to pay an amount of EUR 15,000. This amount was lower than the maximum amount of EUR 38,000 given that the PI action was discontinued. Regarding the action for the preservation of evidence, the judge-rapporteur ordered each party to bear its own costs. In total, the amount of costs to be reimbursed by Applicant was determined to be EUR 133,600.

21. The judge-rapporteur held that 80% of the total amount (i.e. EUR 106,880.00) had to be paid to HGSystem ApS (Respondent 1) and that 10% of that amount (i.e. EUR 13,360.00) had to be paid to each of Infotech Concept ApS (Respondent 2) and Rune Eilertsen (Respondent 3). The judge-rapporteur ordered Applicants to pay these amounts by 1 October 2026.

22. On 30 September 2026, one day before the expiry of the payment deadline set in the impugned decision, Applicant lodged an Application for leave to appeal the impugned decision under R. 221.3 RoP, together with an Application for suspensive effect as meant in Art. 74(1) UPCA ("**Application for suspensive effect**; jointly with the Application for leave to appeal: "**Application**"). On that same day, the Registry identified a number of deficiencies, including the non-payment of the appeal fees, and notified the Applicant that it had a 14-day term to correct the deficiencies and pay the appeal fees. Two days before the expiry of the deadline, on 12 October 2026, Applicant corrected the deficiencies and paid the applicable fees. Thereupon, with the agreement of the parties, the language of the proceedings was changed from Danish to English, and following an invitation by the standing judge, on 22 October 2026 Respondents filed their comments to the Application for suspensive effect ("**Response**").

REQUESTS OF THE PARTIES (REGARDING THE REQUEST FOR SUSPENSIVE EFFECT)

23. In the Application for suspensive effect, Applicant requests that the Court of Appeal grant suspensive effect to the appeal against the impugned decision and suspend both the obligation to pay and the enforceability of the cost decision until final determination of the appeal.

24. In their Response, Respondents request that the Court of Appeal reject the Application for suspensive effect in its entirety, with costs of this application to be determined together with the decision on the Application for leave to appeal or, in the alternative, the costs of the main appeal proceedings.

SUMMARY OF THE PARTIES' SUBMISSIONS (REGARDING THE REQUEST FOR SUSPENSIVE EFFECT)

25. To substantiate its request for suspensive effect, Applicant refers to its arguments in the Application for leave to appeal and argues that there is a "*serious possibility*" that the payment obligations will be reduced, reallocated or set aside in the appeal. Immediate enforcement before review of these

appeal grounds would "*materially complicate effective appellate relief*", according to Applicant. In particular, Applicant argues that if the cost decision is altered in appeal, Applicant may need to pursue restitution against each recipient. In addition, the principal allocation may change if the pending merits appeals succeeds. According to Applicant *"[s]uspension avoids a sequence of payment, distribution, repayment and potentially further enforcement proceedings*". Applicant argues that this drawback does not apply to cost decisions in general, but that this is a case-specific consequence of the combined cost decision, the three recipients, the four underlying proceedings, the omitted separate claim for costs in the appeal proceedings regarding the penalty sums and the pending merits appeals concerning the foundation of the largest cost awards.

26. Respondents argue that the Applicant has not established the presence of exceptional circumstances that would justify a suspensive effect. According to Respondents, Applicant merely refers to the grounds that in its opinion would justify leave to appeal, rather than evidencing why the Applicant's interest in not paying should exceptionally outweigh Respondents' interest in immediate enforcement. According to Respondents, Applicant has not established that immediate enforcement would render its appeal devoid of purpose. In case the Court of Appeal would reduce, allocate or set aside any part of the cost decision, this could straightforwardly be reversed by repayment of the relevant amounts. Applicant does not suggest or establish that any Respondent would be unable or unwilling to repay any amount found not to have been due. According to Respondents, also the balance of interests favors Respondents as they have incurred the costs and are entitled to prompt payment. Despite the expiry of the deadline of 1 October 2026 set in the impugned decision, Applicant has not paid any of the ordered amounts.

GROUNDS FOR THE ORDER

27. The Application for suspensive effect is admissible but must be dismissed for the following reasons.

Legal framework

28. Art. 74(1) UPCA stipulates that an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties.

29. R. 223.5 RoP provides that there shall be no suspensive effect for an appeal of an order pursuant to R. 220.2, R. 220.3 and R. 221.3 RoP. With respect to orders under R. 220.2 RoP, this Court already decided that R. 223.5 RoP does not preclude that an application for suspensive effect is lodged – and if justified, granted – for such orders (UPC-CoA-301/2024, 19 June 2024, ICPillar v ARM). The same applies to the other orders mentioned in R. 223.5 RoP, including those under R. 221.3 RoP relating to cost proceedings (cf. UPC-CoA-121/2026, 4 August 2026, AMMS v Gilead).

30. Given the clear principle underlying Art. 74(1) UPCA and R.223.5 RoP, that proceedings before the Court of First Instance and the enforcement of cost decisions must as much as possible continue unhindered by any (procedural) appeals, the Court of Appeal only gives suspensive effect under exceptional circumstances, especially in the cases stipulated in R. 223.5 RoP.

31. The Court of Appeal can therefore grant the application only if the circumstances of the case justify an exception to the principle that the appeal has no suspensive effect. It must be examined whether, on the basis of these circumstances, the Appellant's interest in maintaining the status quo until the decision on its appeal exceptionally outweighs the Respondent's interest (e.g. Court of Appeal, UPC-CoA-549/2024, 29 October 2024, Belkin v Philips; UPC-CoA-365/2025, 21 May 2025, Knaus Taubert v Yellow Sphere; UPC-CoA-48/2026, 14 April 2026, La Siddhi v Athena; UPC-CoA-57/2026, 24 April 2026, Polytechnik v Dall). An example of such exceptional circumstances would be where the appeal is devoid of purpose or would render the appeal largely ineffective if the impugned order were not given suspensive effect, because the consequences of enforcement of the impugned cannot be

effectively reversed if the order is later set aside (UPC-CoA-407/2023, 6 November 2023, Ocado v Autostore; UPC-CoA-430/2025, 20 May 2025, Chint v Jingao; UPC-CoA-76/2026, 26 May 2026, Xingi v Avient).

32. The requirement of exceptional circumstances has to be established by the applicant.

Present case

Request for suspensive effect of the cost decision regarding the preservation of evidence (UPC-CFI-2311/2026)

33. In the impugned decision, the judge-rapporteur ordered each party to bear its own costs in relation to the preservation of evidence. Therefore, the Applicant has no obligation to pay any amount to Respondents in this regard. Already for this reason, the Application for suspensive effect of the cost decision regarding the preservation of evidence must be dismissed.

Request for suspensive effect of the cost decisions regarding the Infringement action, the Counterclaim for revocation and the provisional measures (UPC-CFI-2308/2026, UPC-CFI-2309/2026 and UPC-CFI-2310/2026)

34. In the Application for suspensive effect, Applicant has not evidenced the existence of exceptional circumstances which would justify why the lodging of the appeal shall have suspensive effect.

35. Applicant argues that immediate enforcement would result in a sequence of payment, distribution, repayment and potentially further enforcement proceedings in case its payment obligations would be reduced, allocated or set aside in the appeal. This does not mean, however, that the appeal becomes devoid of purpose in the absence of suspensive effect. The consequences of enforcement of the impugned decision and a later decision in appeal altering or setting aside this decision, can effectively be reversed by returning the relevant amounts by one or more of the recipients (cf. UPC-CoA-301/2024, 19 June 2024, ICPillar v ARM and UPC-CoA-430/2025, 20 May 2025, Chint v Jingao). As Respondents correctly note, Applicant does not suggest or demonstrate in its application that any of the Respondents would be unwilling or unable to repay any paid amounts or that repayment of would otherwise be impossible or unlikely. The mere fact that repayment may be needed by more than one recipient is insufficient for suspensive effect.

36. Furthermore, Applicant has failed to demonstrate that its interest in not paying the costs until the appeal on the impugned decision is ruled upon exceptionally outweighs Respondents' interest in immediate payment of the ordered amounts. Instead, rather than immediately applying for suspensive effect under R. 223.4 RoP in view of the approaching payment deadline on 1 October 2026, Applicant waited two weeks before filing the Application for suspensive effect and another two weeks before correcting the notified deficiencies, while in the meantime ignoring its payment obligations in the impugend decision. This approach additionally weighs against granting suspensive effect in this case.

ORDER

The request for suspensive effect is dismissed.

Bartholomeus Johannes van den Broek

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Bart van den Broek, standing judge