



Reference no.:
UPC_CoA_581/2025
App_30685/2025

PROCEDURAL ORDER
of the Court of Appeal of the Unified Patent Court
issued on 10 July 2025
concerning an application for suspensive effect

APPLICANT (APPELLANT AND DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

OTEC Präzisionsfinish GmbH, Heinrich-Hertz-Straße 24, 75334, Straubenhardt-Conweiler, Germany
(hereinafter "**OTEC**")

represented by Klaus Haft, attorney-at-law, HOYNG ROKH MONEGIER, Düsseldorf, Germany

RESPONDENT (RESPONDENT AND APPLICANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Steros GPA Innovative S.L., Calle Salvador Alarma, 16, ES-08035 Barcelona, Spain (hereinafter "**Steros**")

represented by Sebastian Ochs, Grünecker PartG mbB, Munich, Germany

PATENT AT ISSUE

EP 4 249 647

DECIDING JUDGE

Emmanuel Gougé, Legally qualified judge and judge-rapporteur

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, Hamburg Local Division, dated 16 June 2025
- ☐ Numbers attributed by the Court of First Instance:

UPC_CFI_281/2025
ACT_14764/2025
ORD_28305/2025

FACTS AND REQUESTS OF THE PARTIES

Procedural background

1. Steros has filed on 25 March 2025 an application for provisional measures asserting claims against OTEC for infringement of its patent EP 4 249 647 before the Hamburg Local Division of the Unified Patent Court (hereafter respectively the “patent at issue” and the “Hamburg LD”).
2. On 16 June 2025, the Hamburg LD held that it is more likely than not that the patent at issue has been infringed by OTEC and, while considering the grant of a preliminary injunction to be appropriate and justified (Art. 62(1), 25(a) UPCA), *inter alia*, ordered OTEC to cease and desist from manufacturing and/or offering, placing on the market or using or exporting or possessing for the purposes referred to in Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia, and Sweden, an electrolytic medium, as claimed in claim 1 of the patent at issue, and ordered OTEC to pay to the Court a recurring penalty payment of up to EUR 250,000 (repeatedly if necessary) for each case of non-compliance with the cease and desist measures (hereafter the “impugned order”, ORD_28305/2025).

Appeal and application for suspensive effect

3. On 27 June 2025, OTEC filed an appeal against the impugned order (APL_30654/2025 UPC_CoA_579/2025).
4. On the same day, 27 June 2025, OTEC filed an application for suspensive effect of the appeal against the impugned order under R. 223 RoP (App_30685/2025 UPC_CoA_581/2025).
5. OTEC requests that the effect of the impugned order is suspended until the Court of Appeal has decided on OTEC’s appeal against the impugned order.
6. According to OTEC, the exceptional circumstances justifying the request for suspensive effect are that the impugned order is manifestly erroneous and is based on severe violations of the right to be heard. OTEC thus claims that the impugned order is erroneously based on facts that were clearly disputed but in the impugned order are incorrectly described as undisputed. Furthermore, OTEC also claims that the Hamburg LD simply ignored statements made by OTEC’s counsel in the oral hearing (without giving any reason).

GROUND FOR THE ORDER

7. The requests shall be dismissed for the following reasons.
8. 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). According to R. 223.2 RoP, the application for suspensive effect shall set out (a) the reasons why the lodging of the appeal shall have suspensive effect and (b) the facts, evidence and arguments relied on.
9. The Court of Appeal can grant the application only if the circumstances of the case justify an exception to the principle that the appeal has no suspensive effect (UPC_CoA_388/2024, APL_39884/2024, 19 August 2024, Sibio v Abbott; UPC_CoA_12/2025 APL_366/2025 App_1182/2025, 16 January 2025, Bhagat v Oerlikon).

10. Exceptional circumstances shall be assessed having regard to the relevant circumstances of the case. 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. An exception to the principle that an appeal has no suspensive effect may apply, for instance, if the appealed order or decision is manifestly erroneous, or if the appeal becomes devoid of purpose in the absence of suspensive effect (Court of Appeal 19 June 2024, UPC_CoA_301/2024 APL_33746/2024 App_35055/2024 - ICPillar vs. ARM).
11. The required exceptional circumstances have to be submitted by the applicant. In its application, OTEC has not provided evidence of exceptional circumstances which would justify why the lodging of the appeal shall have suspensive effect.
12. OTEC claims that the Hamburg LD came to an erroneous finding of infringement and validity, a wrong assumption of objective necessity, an incorrect balance of interests and an incorrect decision on security. OTEC submits, *inter alia*, that the Hamburg LD ignored statements made by OTEC's counsel in the oral hearing (without giving any reason), which is a violation of the right to be heard, and that it is a manifest error to decide that a product is infringing while a product similar in all relevant aspects was publicly used before the priority date. A further manifest error is, according to OTEC, the fact that with respect to the defence of public prior use, the Hamburg LD applied the same (extremely strict) burden of proof in provisional measures proceedings as in proceedings on the merit, while in provisional measures proceedings a provisional measure should not be granted if the defendant establishes that it is more likely than not that the patent is invalid (or at least partly invalid as far as it covers the alleged product).
13. Whether the impugned order is based on errors is a matter for the Court of Appeal to decide in its order in the main appeal proceedings. In any event, OTEC has failed to demonstrate that the Court of First Instance's findings and considerations constitute *manifest* errors, i.e. factual findings or legal considerations that are clearly untenable even on the basis of a summary assessment (Court of Appeal 29 October 2024, UPC_CoA_549/2024 APL_51838/2024 App_53031/2024 - Belkin vs. Philips).
14. Moreover, OTEC's submission does not indicate an infringement of fundamental procedural rights (in particular the right to be heard and the right to a fair trial). It is not apparent from OTEC's submissions that OTEC was prevented at the oral hearing from also making statements on infringement and validity and within the time frame granted (see R.113.1 RoP). Although OTEC asserts that certain of OTEC's statements at the oral hearing have not been taken into account in the impugned order, these may have been implicitly considered and found to be inadequate for challenging Steros' submissions. Nor does the impugned order manifestly lack reasoning which would justify the granting of suspensive effect.
15. The Court does thus not consider the circumstances of the present case to be of such a nature that the interests of OTEC outweigh the interest of Steros and the principles of due process.
16. By reference to the provisions of R. 223.3 RoP, according to which the Court shall decide the Application without delay, and considering that the circumstances raised by OTEC are such that they are not sufficient reasons why the lodging of the appeal shall have suspensive effect, this order is issued without the respondent having been heard.

ORDER

The application for suspensive effect is rejected.

This order was issued on 10 July 2025.

Emmanuel Gougé, Legally qualified judge and judge-rapporteur