



Reference number:

UPC-CoA-97/2026

**ORDER
of the
Court of Appeal of the Unified Patent Court
issued on 10 September 2026
concerning a request pursuant to R. 361 RoP**

APPELLANT (AND DEFENDANT IN THE R. 361 RoP APPLICATION)

Dainese S.p.A., Colceresa (Vicenza), Italy

(hereinafter referred to as “Appellant”)

represented by Federico Caruso, attorney-at-law, and other representatives of SIB LEX, Milan, Italy and Società Italiana Brevetti (SIB) S.p.A., Italy

RESPONDENTS (AND APPLICANTS IN THE R. 361 RoP APPLICATION)

1. **Alpinestars S.p.A.**, Asolo (Treviso), Italy
2. **Alpinestars Research S.p.A.**, Maser (Treviso), Italy
3. **Motocard Bike S.L.**, Barcelona, Spain

(hereinafter jointly referred to as “Respondents”)

all represented by Massimiliano Tiberio, attorney-at-law, and other representatives of DLA Piper Italy, Milan, Italy and DLA Piper UK LLP, Munich, Germany

PATENT AT ISSUE

EP 4 072 364

DECIDING JUDGE

Nathalie Sabotier, legally qualified judge and judge-rapporteur

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

- ☐ Decision of the Local Division Milan issued on 21 April 2026
- ☐ Reference number:
UPC_CFI_472/2024 – Infringement proceedings

LANGUAGE OF THE PROCEEDINGS

English

SUMMARY OF FACTS AND PARTIES' REQUESTS

1. On 8 August 2024, the Appellant lodged an infringement action against six defendants, including the Respondents, concerning the patent at issue, before the Local Division Milan.
2. In its decision issued on 21 April 2026 (“the impugned decision”), the Local Division Milan dismissed the action for infringement lodged by the Appellant (and the counterclaims for revocation lodged by the Respondents).
3. On 19 June 2026, the Appellant lodged an appeal against the impugned decision.
4. Following an invitation from the Registry on 26 June 2026 to comply with the requirement of R. 228 RoP to pay the court fees, the Appellant filed on 2 July 2026 the proof of payment of the court fees applicable in the present appeal proceedings (“Exhibit A Payment receipt”), which corresponds to a bank transfer dated 30 June 2026 regarding the payment that was ordered by the Appellant on 29 June 2026.
5. On 27 July 2026, the Respondents filed a request pursuant to R. 361 RoP arguing that the court fees would have been paid by the Appellant after the expiry of the appeal term. They request that the Court of Appeal:
 - I. *dismiss the appeal (UPC_CoA_97/2026) as inadmissible;*
 - II. *order Dainese to bear the costs of the appeal proceedings;*
 - III. *order Dainese to pay the Respondents jointly an interim award of costs in the amount of EUR 25,000.*
6. In its written comments dated 21 August 2026, the Appellant requests that the Court of Appeal:
 - I. *dismiss the request for dismissal filed by the Respondents,*
 - II. *reject the request for an interim awards of costs submitted by the Respondents,*
 - III. *order the Respondents to pay the Appellant an interim awards of costs in the amount of EUR 25,000.*

INDICATION OF PARTIES' SUBMISSIONS

7. The Respondents argue that the appeal is inadmissible due to a failure by the Appellant to effectively file the Statement of appeal within the applicable deadline which expired in this case on 22 June 2026. The Respondents indicate in this respect that R. 15.2 RoP, to which R. 228 RoP refers, is to be understood as meaning that, as the Statement of appeal, the payment of the court fees must occur within the two-month period to lodge the appeal. Therefore, as the bank transfer occurred on 30 June 2026, the appeal should be deemed filed after the expiry of the two-month deadline for filing the appeal and be declared inadmissible. The Respondents further argue that, although R. 229.2 (b) RoP provides the possibility for the Appellant to pay the appeal fee within 14 days after being informed of the lack of payment by the Registry, this provision cannot extend the time limit to lodge an appeal and, therefore, does not alter the finding that the appeal is inadmissible. Respondents add that similar provisions of the EPC are interpreted in that sense by the EPO.
8. The Appellant contends for its part that R. 15.2 RoP concerns the Statement of claim before the Court of First Instance, which is not subject to any deadline, and expressly applies "*mutatis mutandis*" to the Statement of appeal in accordance with R. 228 RoP. Therefore, according to the Appellant, this provision only applies to the extent compatible with the rules governing the appeal and does not mean that, absent the payment of the court fees within the time limit to file the Statement of appeal, the appeal should be deemed inadmissible. The Appellant adds that R. 15.2 RoP is not interpreted in the sense asserted by the Respondent, neither by the Court of Appeal as shown in its decision dated 1 April 2025, which declared the appeal inadmissible only after the failure to pay the court fees within the 14-day period allocated by the Registry (UPC-CoA-80/2025, NJOY v. VMR), nor by the Court of First Instance (see Order of 12 December 2024, UPC-CFI-201/2024). According to the Appellant, this interpretation is consistent with the wording of R. 15.2 RoP and other provisions of both the Agreement (Art. 70.2 UPCA) and the Rules of Procedure (R. 229 RoP).

GROUND FOR THE ORDER

9. The request to declare the appeal manifestly inadmissible is not well-founded and shall be rejected.

I – Legal framework

R. 361 RoP request

10. Pursuant to R. 361 RoP, where it is clear that the Court has no jurisdiction to take cognisance of an action or of certain of the claims therein or where the action is, in whole or in part, manifestly

inadmissible or manifestly lacking any foundation in law, the Court may, after giving the parties an opportunity to be heard, give a decision by way of order.

11. Orders dismissing manifestly inadmissible claims shall be taken by the panel upon recommendation of the judge-rapporteur (R. 363.1 RoP), while orders denying a R. 361 RoP request is a case management order as meant in R. 333.1 and R. 334(h) RoP that may be issued by the judge-rapporteur (UPC-CoA-454/2024, Order of 21 August 2024, Microsoft Corporation v. Suinno Mobile, para 29).

Payment of court fees

12. Regarding the payment of court fees, Art. 70(2) UPCA states that court fees shall be paid in advance, unless the Rules of Procedure provide otherwise. Any party which has not paid a prescribed court fee may be excluded from further participation in the proceedings.
13. In accordance with this provision, R. 371 RoP specifies that the fees (fixed fee and value-based fee) shall be paid at the time of lodging the relevant pleading or application (R. 371.1 RoP) and that the proof of payment shall be provided together with the relevant pleading or application (R. 371.2 RoP). R. 15.2 RoP further specifies that the Statement of claim shall not be deemed to have been lodged until the fixed fee and, where applicable, the value-based fee has been paid, unless otherwise provided.
14. R. 15.2 RoP, which is declared applicable *mutatis mutandis* in appeal proceedings (R. 228 RoP), does not expressly state that the payment of the court fee shall occur before the expiry of the time limit to lodge an appeal and that the appeal will otherwise be inadmissible, as the Appellant rightly argues. Rather, this provision means that the appeal is not deemed lodged in the absence of payment of the court fee, and that further steps of the proceedings, described in R. 230 *et seq.* RoP, will only follow the lodging of the appeal once the fees are paid. R. 15.2 RoP (or R. 228 RoP) does not stipulate that the date of lodging the appeal shall be the date of payment of the court fee. In this respect, the Rules of Procedure allow at various instances for an extra 14-day period to pay the fixed fee (see R. 16.3(b), R. 27.2(b), R.229.2(b) RoP). Under this latter provision, in case of an appeal, the Registry shall, as soon as practicable after the lodging of the Statement of appeal, examine whether the requirements of Rules 224.1, 225, 227 and 228 RoP have been complied with. In particular, R. 229.2 RoP provides that, if the appellant has not complied with the requirement referred to in R. 228 RoP (the obligation to pay the court fees), the Registry shall invite the appellant to pay the fee for the appeal within 14 days.
15. It is only in case the appellant does not pay the fees within the 14-day period following the invitation from the Registry, that the appeal shall be deemed not to have been lodged, and be declared inadmissible, as provided for in R. 229.4 RoP (see for example UPC-CoA-80/2025, Decision dated 1 April 2025, NJOY v. VMR).

16. R. 371.3 RoP provides for an exception in cases of urgency and stipulates that, where a payment in advance is not possible, the representative of the party in question shall pay the fixed fee within the period set by the Court and the Court may order that the relevant pleading or application shall be deemed lodged and effective when received by the Registry if payment of the fixed fee is made within such period.
17. The Court of Appeal has clarified that these provisions must be interpreted such that court fees are considered paid on time if an order to transfer the due amount to the Court's bank account has been given to a bank at the time of lodging the relevant pleading or application, provided the payment is subsequently received in the Court's bank account (UPC-CoA-286/2025, Order of 23 June 2025, Sumi Agro v. Syngenta, para. 12).

II – Application to the case

18. It is not in dispute that the impugned decision dated 21 April 2026 has been served the same day (21 April 2026). Therefore, the two-month period to lodge an appeal expired on (Monday) 22 June 2026.
19. The Statement of appeal has been lodged on 19 June 2026. This is within the time limit to lodge an appeal against the impugned decision stipulated in R. 224.1 RoP.
20. According to "Exhibit A Payment receipt", the order to transfer the due amount of fees to the Court's bank account has been given by the Appellant to its bank on 29 June 2026, i.e. within the 14-day period of R. 229 RoP following the invitation of the Registry dated 26 June 2026.
21. The lodging of the appeal and the payment of the court fee shall therefore be deemed in time and the request to declare the appeal manifestly inadmissible shall be rejected.

III – Costs

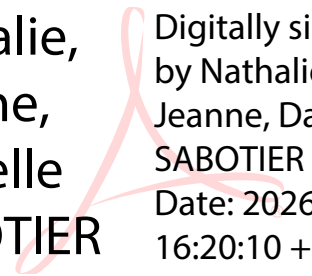
22. An interim award of costs may only be granted in the context of a final decision (R. 150.2 RoP) or a final order (R.211.1(d) RoP). The present order is not final. There is therefore no need to decide on costs and the requests for the payment of an interim award of costs are rejected.

ORDER

The requests are rejected.

Issued on 10 September 2026.

Nathalie,
Jeanne,
Danielle
SABOTIER



Digitally signed
by Nathalie,
Jeanne, Danielle
SABOTIER
Date: 2026.09.10
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Nathalie Sabotier, legally qualified judge and judge-rapporteur

Case management decisions or orders made by the judge-rapporteur shall be reviewed by the panel, on a reasoned Application by a party (R. 333.1 RoP).