Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Reference number:

UPC-CoA-140/2026

ORDER

of the Court of Appeal of the Unified Patent Court concerning an application for reinstatement of the previous status (Rule 320 of the Rules of Procedure) issued on 28 September 2026

APPLICANTS AND APPELLANTS (DEFENDANTS AND COUNTER-CLAIMANTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE AND RESPONDENTS IN THE APPEAL PROCEEDINGS UPC-CoA-55/2026)

1. **NVIDIA Corporation**, 2788 San Tomas Expressway, Santa Clara, CA 95051, USA

2. **NVIDIA GmbH**, Adenauer Straße 20/A4, 52146 Würselen, Germany

(hereinafter 'NVIDIA')

represented by: Johannes Heselberger and other solicitors and patent attorneys of the law firm Bardehle Pagenberg Partnerschaft mbB

RESPONDENTS ON APPEAL (CLAIMANTS AND COUNTER-RESPONDENTS IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE AND
APPELLANTS IN THE APPEAL PROCEEDINGS UPC-CoA-55/2026)

1. **BF exaQC AG**, Nördliche Münchner Straße 31, 82031 Grünwald, Germany

2. **ParTec AG**, Possartstraße 20, 81679 Munich, Germany

(hereinafter collectively referred to as 'the respondents')

represented by: Iram Kamal, solicitor, Frohwitter Intellectual Property Counselors, and Jan Gigerich, patent attorney, IPCGS Gigerich Sedlmaier Patentanwalt Rechtsanwalt PartG mbB

PATENT IN DISPUTE

EP 3 743 812

PRESIDING JUDGES AND PANEL

Panel 1a

Klaus Grabinski, President of the Court of Appeal
Emmanuel Gougé, legally qualified judge and rapporteur Peter Blok,
legally qualified judge
Klaus Loibner, judge with technical expertise
Udo Matter, judge with technical expertise

LANGUAGE OF THE PROCEEDINGS

German

CONTESTED DECISION OF THE COURT OF FIRST INSTANCE

□ Decision of the Munich Local Chamber of 11 March 2026

□ Case number:
- UPC_CFI_210/2025 (counterclaim for annulment)
- UPC_CFI_180/2025 (infringement proceedings)

BRIEF SUMMARY OF THE FACTS

1. The respondents brought proceedings against NVIDIA before the Munich Local Chamber (the 'Local Chamber') for infringement of the patent in dispute (UPC_CFI_180/2025).

2. NVIDIA brought a counterclaim against the second respondent seeking a declaration of invalidity of the patent in dispute (UPC_CFI_210/2025). When asked during the oral hearing whether NVIDIA would wish a decision on the counterclaim should the court otherwise conclude that the patent in dispute had not been infringed, NVIDIA stated that it agreed to such a condition for the counterclaim for revocation.

3. By decision of 11 March 2026 (the 'contested decision'), the Local Chamber dismissed the infringement claim and held that there was no need for a decision on the counterclaim for revocation of the patent in dispute, as this had been made contingent upon the infringement claim being successful.

4. On 14 April 2026, the respondents lodged an appeal against the dismissal of the infringement action (UPC-COA-55/2026).

5. NVIDIA did not lodge an appeal before the expiry of the time limit within which the notice of appeal referred to in Rule 224.1 of the Rules of Procedure must be filed.

6. The parties to this appeal were informed by an order of the Court of Appeal dated 16 July 2026 regarding a clarification concerning the possibility of making a counterclaim for nullity contingent upon a finding of infringement (EPG-BerfG, UPC-COA-40/2026, Emboline v AorticLab).

7. On 17 August 2026, NVIDIA filed an application for reinstatement to the previous state pursuant to Rule 320.1 of the Rules of Procedure and, subject to the Court upholding the infringement claim in whole or in part, lodged an appeal against the contested decision on the counterclaim for revocation and submitted a statement of grounds of appeal (UPC-COA-140/2026).

8. NVIDIA refers to the decision of the Court of Appeal dated 16 July 2026 (UPC-COA-40/2026, Emboline v. AorticLab), in which the Court of Appeal ruled for the first time that, where the court of first instance had not ruled on the merits of the conditionally filed counterclaim for nullity because infringement of the contested patent had already been ruled out, an appeal must be lodged in respect of the counterclaim for nullity. NVIDIA, being unaware of this decision, had not lodged a separate appeal, as the counterclaim for nullity, which it had conditionally filed and which had been declared admissible, was to continue to be pursued solely as a defence.

9. The respondents were given the opportunity to comment on NVIDIA's application pursuant to Rule 320.1 of the Rules of Procedure, as well as on the rapporteur's proposal that the response to the appeal be filed within one month of the date of the order on the application for reinstatement.

10. On 4 September 2026, the respondents informed the court that they did not object to the application for reinstatement filed by NVIDIA on 17 August 2026 pursuant to Rule 320.1 of the Rules of Procedure, and that they considered the proposed timeframe for filing the response to the appeal to be appropriate.

REASONS FOR THE ORDER

Application for reinstatement

11. Where a notice of appeal has not been filed within the time limit laid down in Rule 224 of the Rules of Procedure, Rule 320.1 of the Rules of Procedure provides for the possibility of reinstatement. Accordingly, where a party has, despite exercising all due care, failed to comply with a time limit laid down in the Rules of Procedure or by the Court for a reason beyond its control, and has, as a direct consequence of that failure, lost a right or a legal remedy, the competent panel may, upon application, grant reinstatement to the previous status. The application must, in accordance with Rule
320.2 of the Rules of Procedure, within one month of the cause of the failure to meet the time limit having been removed, but no later than six months after the expiry of the time limit in question. Within this period, a fee for the application for reinstatement must be paid in accordance with Part 6 of the Rules of Procedure.

12. Taking into account the case law of the Court of Appeal regarding the necessary legal interest in seeking redress in the case of an appeal under Rule 220.1 of the Rules of Procedure, according to which an appeal may be lodged by a
'aggrieved' party (EPG BerG, Orders of 17 April 2026, UPC-COA-901/2025, Abbott v Sinocare, para. 208, and of 2 July 2026, UPC-COA-19/2026, Guardant Health v Sophia Genetics, para. 150), it was not obvious that a conditional counter-claimant would have a sufficient interest in an appeal if, in accordance with that counter-claimant's application, the GEI had not ruled on the counter-claim on the grounds of non-fulfilment of the condition and had ordered the counter-claimant to pay the costs, as the claim had been brought unnecessarily.

13. NVIDIA could reasonably assume that it would in any event still be permitted to pursue its counterclaim as part of its response to the appeal or as part of a cross-appeal to be lodged together with the response to the appeal in accordance with Rule 237 of the Rules of Procedure.

14. The Court of Appeal provided this clarification in its order of 16 July 2026, that is to say, after the expiry of the two-month period following service of the contested decision, within which, pursuant to Rule 224.1(a) of the Rules of Procedure, an appeal against the contested decision should have been lodged, and after the expiry of the four-month period following service of the contested decision, within which, pursuant to Rule 224.2(a) of the Rules of Procedure, a statement of grounds of appeal should have been submitted.

15. In view of the above clarifications set out in the Court of Appeal's order of 16 July 2026, and in view of the fact that NVIDIA could not have been aware of this clarification at the time the deadline for lodging the notice of appeal, as set out in Rule 224 of the Rules of Procedure, expired, NVIDIA's application for reinstatement of its right to lodge a notice of appeal against the contested decision and to submit grounds of appeal must therefore be granted.

16. The application for reinstatement was filed and the required fee was paid within one month of the removal of the cause of the failure to meet the time limit in accordance with Rule 320.2 of the Rules of Procedure, i.e. within one month of the issuance of the clarification order. In accordance with Rule 320.4 of the Rules of Procedure, the notice of appeal and the grounds of appeal were filed within the same time limit.

17. The respondents did not object to the application for reinstatement filed by NVIDIA on 17 August 2026 pursuant to Rule 320.1 of the Rules of Procedure.

Time limit for filing the response to the appeal

18. In view of the arguments already put forward in the proceedings at first instance in connection with the counterclaim for nullity, the time limit for filing the response to the appeal is set at one month from the date of this order on the application for reinstatement. The respondents to the appeal have agreed to this.

Costs

19. As this order does not conclude the proceedings, a decision on costs is not required at this stage.

ORDER

The Court of Appeal:

I. grants NVIDIA reinstatement of its right to lodge a notice of appeal against the contested decision and to submit a statement of grounds of appeal;

II. declares the notice of appeal and the grounds of appeal filed on 17 August 2026 to be admissible;

III. sets the time limit for filing the response to the appeal at one month from the date of this order.

This order was made on 28 September 2026.

KLAUS STEFAN MARTIN Grabinski

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Klaus Grabinski, President of the Court of Appeal

Emmanuel Gougé

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Emmanuel Gougé, legally qualified judge and rapporteur

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Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Klaus Loibner, technically qualified judge

Udo Matter

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