



Local division Munich

Guiding principles:

1. The original claim version of a European patent can be used as an aid to interpretation in connection with amendments to the claim version made during the grant procedure.
2. As the unsuccessful party, the applicant of an unsuccessful application for provisional measures must generally also bear the costs incurred by the defendant in filing a protective letter.

Keywords:

Application for provisional measures; costs of the protective letter; interpretation; earlier version of the claim as an aid to interpretation

order
of the Court of First Instance of the Unified Patent Court in
proceedings for provisional measures relating to European
Patent 3 883 277 Case No UPC_CFI_292/2023
issued on: 20/12/2023

Date of receipt of the application: 4 September 2023

APPLICANT

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DEFENDANT

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- 4) **Hanshow Netherlands B.V.**, Represented by:
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PATENT IN DISPUTE

Patent no.

Holder

EP 3 883 277

SES-imagotag SA

DECIDING JUDGES

COMPOSITION OF THE PANEL

Presiding judge

Matthias Zigann

judge-rapporteur

Tobias Pichlmaier

Legally qualified judge

Margot Kokke

Technically qualified judge

Uwe Schwengelbeck

LANGUAGE OF THE PROCEEDINGS: German

ORAL HEARING: 28 November 2023

EXPIRED ON: 20 December 2023

Facts of the case

On 4 September 2023, the applicant applied to the Unified Patent Court (Munich Local Chamber) for an order for provisional measures, claiming that EP 3 883 277 (patent in suit) is directly infringed by the defendants.

The patent in suit was filed as a divisional application of the European patent application 12762019.3, which is based on the international patent application filed in French on 11 April 2012 with publication number WO 2013/153290 A1. The European Patent Office published the mention of the grant of the patent in suit on 9 August 2023. The patent in suit is in force in the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Republic of Finland, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia and the Kingdom of Sweden as contracting states to the Agreement on a Unified Patent Court.

Claim 1 of the patent in suit reads:

Étiquette électronique (3) pour surface de vente munie d'une série d'étiquettes électroniques (3) répartie, chaque étiquette électronique (3) étant identifiée par un unique identifiant d'étiquette qui lui est propre, comprenant:

- un module de communication radiofréquence (32) configuré pour recevoir en provenance d'un serveur central (2) des données représentatives d'informations relatives à un article;
- une mémoire (33) pour stocker lesdites données représentatives d'informations relatives à un article;
- un écran d'affichage (31) configuré pour afficher lesdites informations relatives à un article;
- un microcontrôleur (34) configuré pour commander l'affichage desdites informations relatives à un article sur l'écran d'affichage (31);

- un boîtier (30);
- une carte de circuit imprimé (35) logée dans le boîtier (30) du côté de la face arrière du boîtier et sur laquelle sont disposés le modul de communication radiofréquence (32), la mémoire (33) et le microcontrôleur (34);
- a radio frequency peripheral (36) adapted to establish a communication (S1) by radio frequency with a mobile terminal (1) and to communicate to the mobile terminal the identifier of the electronic label, the radio frequency peripheral (36) comprising an antenna (38) and an electronic chip (37) of the NFC or RFID type, the communication (S1) by radio frequency between the radio frequency peripheral (36) and the mobile terminal (1) being established by NFC or RFID communication, the electronic chip (37) of the radio frequency peripheral is disposed on the imprinted circuit card (35) and the antenna (38) of the radio frequency peripheral is disposed on or in the bit holder on the side of the face in front of said electronic tag.

Claim 3 reads:

Etiquette électronique (3) selon l'une des revendications 1 et 2, dans lequel le périphérique radiofréquence (36) a une portée de communication inférieure à 20 cm.

In the German language version, these claims read as follows:

1. electronic label (3) for a sales area, equipped with a distributed row of electronic labels (3), each electronic label (3) is identified by a single label identifier that is unique to it:
 - a radio frequency communication module (32) adapted to receive from a central server (2) data representative of information relating to an article;
 - a memory (33) for storing data representative of information relating to an article;
 - a display screen (31) designed to display the information relating to an item;
 - a microcontroller (34) designed to control the display of information relating to an article on the display screen (31);

- a housing (30);
 - a printed circuit board (35) accommodated in the housing (3) on the side of the rear face of the housing and on which the radio frequency communication module (32), the memory (33) and the microcontroller (34) are arranged;
 - a radio frequency peripheral device (36) capable of establishing communication (S1) by radio frequency with a mobile terminal (1) and of communicating to the mobile terminal the identifier of the electronic tag, the radio frequency peripheral device (36) comprising an antenna (38) and an electronic chip (37) of the NFC or RFID type, wherein the communication (S1) is established by radio frequency between the radio frequency peripheral device (36) and the mobile terminal (1) by NFC or RFID communication, wherein the electronic chip (37) of the radio frequency peripheral device is arranged on the printed circuit board (35) and the antenna (38) of the radio frequency peripheral device is arranged on or in the housing on the side of the front surface of the electronic label.
3. The electronic tag (3) according to any one of claims 1 and 2, wherein the radio frequency peripheral device (36) has a communication range of less than 20 cm.

The applicant is registered as the proprietor of the patent in suit.

On 28 April 2023, the exclusive jurisdiction of the court for the application on which the patent in suit is based was excluded pursuant to Art. 83 (3) UPCA. The claim to the exception under Art. 83(3) UPCA was withdrawn on 29 August 2023 pursuant to Art. 83(4) UPCA. Furthermore, an application for unitary effect was filed for the patent in suit on 29 August 2023. The unitary effect was registered on 1 September 2023.

Defendant 1) is the parent company of the Hanshow Group based in China. Defendants 2), 3) and 4) are distribution companies based in Germany, France and the Netherlands.

With the application, the applicant is objecting to the offer of electronic labels, in particular the

- Nebular series with the model designations
 - Nebular-350(F) with the FCC IDs: 2AYMH-NEBULAR-350B, 2AYMH-NEBULAR-350D, 2AYMH-NEBULAR-350T,
 - Nebular-266(F), Nebular-213(F) and Nebular-290 with FCC ID: 2AYMH-NEBULAR-213K,
 - Nebular-750 with the FCC ID: 2AYMH-NEBULAR-750,
 - Nebular Plus-266 with the FCC ID: 2AYMH-NEBULARP-266,
- Stellar series with the model designation
 - Stellar Plus-266, Stellar Pro-266Q and Stellar Pro-266QO with the FCC ID: 2AYMH-STELLARPQ-266.

The applicant claims that these products are marketed by the defendants within the territorial scope of the UPCA and infringe the patent in suit.

The applicant is of the opinion that the skilled person understands the patent claim to mean that the antenna should be arranged in the front area of the label (but not necessarily in front of the display screen) in order to enable a reliable data connection with the mobile terminal device. According to the patent, the chip should be arranged on the printed circuit board at the rear of the electronic label, which does not mean, however, that the chip must be attached directly to the rear surface of the housing or be in contact with it. On that basis, an order in which the antenna is located behind the screen means that the antenna is positioned "in the direction of the display screen" (paragraph [0035] of the description of the patent in suit). This is also the case with the contested products. The patent in suit also does not advise against ordering the antenna of the radio frequency peripheral device behind the screen; rather, it advises against ordering the antenna on the back inside the housing next to the chip, as reading would then have to take place not only through the display screen of the electronic label, but also through the electromagnetic interference caused by the printed circuit board.

The applicant **has applied**,

- A. to the defendants,
- I. to refrain from doing so,

Electronic labels for a sales area, equipped with a distributed series of electronic labels, each electronic label being identified by a single label identifier specific to it,

in the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Republic of Finland, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Malta, the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia and/or the Kingdom of Sweden, or to offer, place on the market, use, import or possess for the aforementioned purposes,

where the electronic label comprises:

a radio frequency communication module adapted to receive from a central server data representative of information relating to an article, a memory for storing the data representative of information relating to an article, a display screen adapted to display the information relating to an article, a microcontroller adapted to control the display of the information relating to an article on the display screen, a housing, a printed circuit board housed in the housing on the side of the rear face of the housing and on which the radio frequency communication module is mounted, and a microcontroller adapted to control the display of the information relating to an article on the display screen, on the display screen, a housing, a printed circuit board accommodated in the housing on the side of the rear surface of the housing and on which the radio frequency communication module, the memory and the microcontroller are arranged, a radio frequency peripheral capable of establishing communication by radio frequency with a movable terminal and communicating the identifier of the electronic tag to the movable terminal, the radio frequency peripheral

comprising an antenna and an antenna module.

electronic chip of the NFC or RFID type, wherein the communication is established by radio frequency between the radio frequency peripheral device and the mobile terminal device by NFC or RFID communication, wherein the electronic chip of the radio frequency peripheral device is arranged on the printed circuit board and the antenna of the radio frequency peripheral device is arranged on or in the housing on the side of the front surface of the electronic label;

- Claim 1 of EP 3 883 277 B1 -

especially if

the radio frequency peripheral device has a communication range of less than 20 cm;

- Claim 3 of EP 3 883 277 B1 -

- II. subject to the final decision on the burden of costs, to pay an amount of EUR 11,000.00 as provisional reimbursement of costs until the decision on the legal costs.
- B. In the event of a breach of the order under A.I., the defendants shall pay a penalty payment to the court of up to EUR 250,000.00 for each breach.
- C. The order is provisionally enforceable.

The defendants **filed a motion**,

- I. reject the application for provisional measures of 4 September 2023;
- II. order the applicant to pay the costs of the proceedings, including the costs incurred in filing the protective letter of 10 August 2023.
- III. declare the order immediately enforceable.

The defendants have argued against the application for an injunction:

- The LK München of the EPG is not competent.

The applicant based its allegation of infringement predominantly on information from the time before the patent was granted and from third parties. In addition, only current offers from a website were submitted, which did not show the technical features relevant for the allegation of infringement. It could therefore not be inferred from this that a patent infringement existed or was imminent, which is why the jurisdiction of the local division seised could not be based on this. Moreover, there was no purchase option on the website of defendant 1) in this respect, so that a patent-relevant offer could not be assumed.

The alleged offer concerns at most respondent 1), since its website is affected; however, respondent 1) is based outside the EPG territory.

- The contested products did not make use of the teaching of the patent in suit. The features
 - "...where each electronic label is identified by a single label identifier that is unique to it, ...",
 - "...a printed circuit board (35) accommodated in the housing (3) on the side of the rear surface of the housing ..." and
 - "...the antenna (38) of the radio frequency peripheral device is arranged on or in the housing on the side of the front surface of the electronic tag."

were not realised in the contested products.

The patent claim requires a unique identifier which is assigned to the device as characteristic ("...which is peculiar to it..."). This could

cannot be assumed if the identifier is uploaded from outside and can be changed.

In the contested embodiments, the printed circuit board is not positioned directly on the rear wall, but rather at a distance from it. In the contested embodiments, the printed circuit board is not positioned on the rear surface of the housing.

The defendants are of the opinion that the subject matter of the features in dispute is the

"...a printed circuit board housed in the enclosure on the side of the rear surface of the enclosure ..."

and

"...the antenna of the radio frequency peripheral device is located on or in the housing on the side of the front surface of the electronic label"

is the distance between the antenna and the remaining components of the radio frequency peripheral device. The printed circuit board is aligned/assigned to the rear side of the housing; the specification of the position of the antenna (on the side of the front surface) is not to be understood as an arbitrary position in the - not further defined - front area, but in such a way that the intended optimisation of the radio connection to the front is achieved. This excludes a position of the antenna behind components such as, in particular, the display screen, which can cause interference or shielding and thus counteract the intended optimisation of the transmission and reception performance.

- The patent in suit is not legally valid (see the statements on pages 28 to 99 of the opposition of 9 October 2023 referring to the nullity action of 6 October 2023 (UPC_CFI_360/2023; ACT_578871/2023) and the statements on pages 26 to 57 of the rejoinder of 20 November 2023);

- The order for provisional measures was not necessary in terms of either time or substance (see the explanations on pages 99 - 103 of the objection of 9 October 2023 and the explanations on pages 99 - 103 of the objection of 9 October 2023).
on pages 58 to 60 of the duplicate dated 20 November 2023);
- At least in the context of the balancing of interests, the risk of damage on the part of the defendants outweighs the risk of damage; a loss of confidence in the products of defendant 1) cannot be outweighed financially (see the statements on pages 103 et seq. of the objection of 9 October 2023 and the statements on pages 60 to 61 of the duplicate of 20 November 2023).

With regard to further details of the parties' submissions, reference is made to their written submissions and to their submissions at the oral hearing.

Reasons for the order

The Munich local division of the Unified Patent Court (hereinafter "UPC") is competent to decide on the application for an order for provisional measures at issue here. However, the local division is not convinced with sufficient certainty that the defendants are infringing the patent in dispute. Therefore, the application for an order for provisional measures had to be dismissed.

A.

I. **The Munich local division of the UPC is responsible for deciding on the application for an order for provisional measures.**

The basis for the jurisdiction of the Munich local division of the UPC is Article 33(1) UPCA. Pursuant to Article 32(1)(c) UPCA, the applicants have filed an application for an order for provisional measures due to the infringement of the patent in suit by the respondents in Germany and elsewhere.

The applicant has alleged acts of patent infringement within the territorial scope of the UPCA, citing specific product names. Among other things, reference was made to the use of corresponding products in a Munich supermarket (application dated 4 September 2023, page 25). In addition, samples from a test purchase were submitted, which is said to have taken place on 20 August 2023. In view of the above, the defendants' allegation is not correct,

- the allegation of infringement is based predominantly on information from the time before the patent was granted and from third parties,
- In addition, only current offers were submitted from a website that did not show the technical features relevant to the infringement allegation,

not comprehensible and not suitable to deny the jurisdiction of the local division.

The acts of infringement alleged in the application of 4 September 2023 establish the jurisdiction of the Munich local division of the UPC. It is not relevant for the question of jurisdiction whether the court's legal assessment of the conclusively presented allegation also leads to patent infringement. The legal assessment of the allegation of an act carried out in Germany as a patent infringement is not the subject of the examination of jurisdiction; in this respect, a conclusive submission is sufficient.

The applicant's application of 4 September 2023 also conclusively argues that the alleged infringing acts are attributable to all defendants. In this respect, the applicant correctly referred in the oral hearing to page 1-1-292 of Annex FIN 21a, among other things, which mentions various European trading partners, including *Netto* and *Aldi*:

"...major sales contracts include framework contracts ... that have been fulfilled, are being performed, and will be **performed by the Issuer and its subsidiaries**..." (bold print and underlining by the court)

The local division therefore assumes, together with the applicant, that the contested embodiments and their offer in Europe are attributable to all opponents of the application.

II. However, the local division is not convinced with sufficient certainty that the defendants infringe the patent in suit.

1. Subject matter of the patent in suit

The subject matter of the patent in suit is an electronic label which is used in particular for product and price labelling.

Electronic labels were already known at the time of application; compared to conventional labels, which are labelled manually, electronic labels have the particular advantage that changes can be made quickly and automatically thanks to the remote-controlled information display.

The patent in suit refers in its description (paragraphs [0007] et seq.) to the fact that the electronic labelling systems known in the prior art have disadvantageous limitations. In this respect, for example, limited display options and a lack of individual interaction options between the information display and the consumer are mentioned. Paragraph [0007] (German translation submitted as Annex FIN 2a) states:

"Although electronic labelling systems have become increasingly sophisticated over time, they are still relatively rigid in terms of the various display options and the temporal and spatial design of these different options."

The patent in suit therefore sets itself the task of "providing a means for providing a consumer with spatially limited information, depending on the location and context in which that consumer is located, which complements the information already visually available in a sales area." (paragraph [0015]). "Another objective is to be able to provide the consumer at the point of sale with information that is specifically intended for and personalised to that consumer." (paragraph [0016]).

On this basis, the patent in suit proposes a label for a sales area, in the housing of which a radio frequency communication module, a memory, a

display screen, a microcontroller, a printed circuit board and a radio frequency peripheral device (comprising an antenna and an electronic chip). Such an electronic label should be identified by a single label identifier that is unique to it. The communication module should receive product data from a server, which can be stored in the memory and displayed on the display screen controlled by the microcontroller. The radio frequency peripheral device should be able to establish communication with a mobile terminal device using the label identifier.

While certain design aspects - such as the design of the housing - are left open in the patent claim on the one hand, on the other hand there are concrete specifications for the spatial and physical design, in particular of the interior of an electronic label in accordance with the patent: For example, the communication module, memory, microcontroller and chip are to be arranged on the printed circuit board, which in turn is to be "accommodated in the housing on the side of the rear surface of the housing"; in contrast, the antenna of the radio frequency peripheral device is to be "arranged on or in the housing on the side of the front surface of the electronic label".

2. Claim 1 of the patent in suit can be structured as follows:

1. **Electronic label** (3) for a sales area, equipped with a distributed row of electronic labels (3),
 - 1.1. wherein each electronic label (3) is identified by a single label identifier unique to it,
comprehensive:
2. **a radio frequency communication module** (32) adapted to receive from a central server (2) data re-representative of information relating to an article;
3. a **memory** (33) for storing data representative of information relating to an article;
4. a **display screen** (31) designed to display the information relating to an article;

5. a **microcontroller** (34) adapted to control the display of the information relating to an article on the display screen (31) to control;
6. a **housing** (30);
7. a **printed circuit board** (35) accommodated in the housing (30) on the side of the rear surface of the housing, and
 - 7.1 on which the radio frequency communication module (32), the memory (33) and the microcontroller (34) are arranged;
8. a **radio frequency peripheral device** (36) capable of establishing communication (S1) by radio frequency with a movable terminal (1) and communicating the identifier of the electronic tag to the movable terminal,
 - 8.1. wherein the radio frequency peripheral device (36) comprises an antenna (38) and an electronic chip (37) of the NFC or RFID type,
 - 8.2. wherein the communication (S1) is by radio frequency between the radio frequency peripheral (36) and the mobile terminal (1) by NFC or RFID communication,
 - 8.3. wherein the electronic chip (37) of the radio frequency peripheral device is arranged on the printed circuit board (35) and
 - 8.4. the antenna (38) of the radio frequency peripheral device is arranged on or in the housing on the side of the front surface of the electronic label.

3. The meaning of individual features of the patent claim is disputed between the parties, so that these require interpretation.

In particular, the parties are in dispute as to how the spatial and physical specifications of the patent claim for the location of the PCB containing the chip and the antenna are to be understood.

According to feature 7. of the patent claim

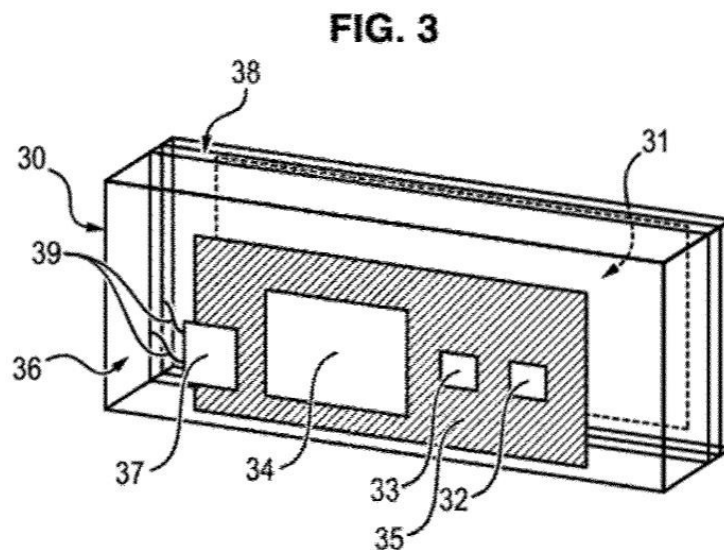
a **printed circuit board** housed in the enclosure on the side of the rear surface of the enclosure

be. According to feature 8.4.

the antenna of the radio frequency peripheral device is located on or in the housing on the side of the front surface of the electronic label

be.

- a) According to the applicant, the skilled person understands feature 7. to mean that the printed circuit board must be accommodated in a part of the housing which is associated with the side of the rear surface of the housing. However, the feature does not require the printed circuit board to be mounted directly on the rear surface of the housing or to be in contact with it. It is therefore harmless for the realisation of the feature if the printed circuit board is somewhat spaced from the rear of the housing due to the components mounted on it (at the rear); this understanding is also supported by the order of the printed circuit board in Fig. 3 of the patent in suit (figure following; see also paragraph [0018] of the description).



The skilled person understands feature 8.4 to mean that the antenna is to be arranged in the front area of the label in order to enable a reliable data connection with the mobile terminal device. The applicant points out that paragraph [0035] of the description of the patent in suit explains that

"...the antenna is located on the front side of the electronic label towards its display screen, while the electronic chip is located on the printed circuit board on the back side of the electronic label".

The skilled person would not infer from this descriptive passage that the antenna should only be arranged around the display screen or even in front of the display screen. Rather, the term

"in the direction of its display screen"

especially an order of the antenna *behind* the display screen. According to the description relevant for the design (paragraphs [0035] to [0040]), any order in which the antenna is located between the printed circuit board and the display screen constitutes an arrangement of the antenna "in the direction of the display screen".

- b) According to the defendants, the printed circuit board should be positioned on the side of the rear surface of the housing; thus, it is technically and functionally aligned with the rear side of the housing and assigned to it.

In the opinion of the defendants, the purpose of the claim is

"on the side of the front surface"

that additional elements between the front surface and the antenna should be avoided as a matter of principle in order to achieve the intended optimisation of the wireless connection with a terminal device. Therefore, any barriers such as the display screen between the front surface and the antenna should be avoided. Since the core of the invention is to counter the risk of interference with a corresponding order of the components, the antenna should have as free a radio connection as possible to the front. The concretisation

"on the side of the front surface"

is therefore not to be understood as an arbitrary position in the - not further defined - front area, but in such a way that the intended optimisation of the radio link to the front is achieved. This includes a position of the antenna behind

components such as, in particular, the display screen, as these could cause interference or shielding and thus counteract the intended optimisation of the transmission and reception power. In this respect, it is important for the understanding of the skilled person that the patent in suit in paragraph [0038] advises against positioning the antenna behind the display screen.

- c) From the point of view of the local division, the spatial arrangement of the circuit board with the electronic chip on the one hand and the antenna on the other hand, as discussed by the parties, should not be considered separately but in context from the point of view of the expert addressed (from the point of view of the local division, a graduate engineer in electrical engineering with several years of experience in the development and design of electronic labels with RFID/NFC functionality). Both components interact with each other technically. Paragraphs [0034] et seq. and in particular paragraphs [0039] et seq. deal very clearly with this interaction: for example, paragraph [0038] describes electromagnetic interference emanating from the printed circuit board containing the chip; in this context, paragraph [0039] then suggests separating the antenna and the chip. The patent claim is thus obviously an attempt to regulate the technically existing interaction between chip and antenna by the spatial order of both components. The original version of the claim, which can be used as an aid to interpretation in connection with amendments made during the grant procedure, had already established a direct connection between the chip arranged on the printed circuit board and the antenna. It was formulated there that the chip arranged on the printed circuit board and the antenna should be at a distance from each other ("...à distance de..."). The technical purpose of the spacing was to limit interference. The technical effect to be achieved in this way was to be specified as follows following the amendment of the claim wording made during the grant procedure:

"...and à distance de l'antenne (38) du périphérique radiofréquence étant dis- posée sur ou dans le boîtier du côté de la face avant de ladite étiquette élec- tronique."

Thus, according to the wording of the claims of the granted fibre, the antenna and the printed circuit board are to be arranged to a certain extent diametrically from each other, the printed circuit board

"in the housing

on the side of the rear surface of the housing"

and the antenna

"on or in the housing

on the side of the front surface of the electronic label",

whereby the antenna can be arranged on or in the housing.

The patent claim thus describes the position (order) of these two components in space (housing) and thus indirectly in spatial relation to each other; the relevant reference point for the order is the *housing* of the electronic label with its sides and their surfaces. Both claim features refer to these. It follows from the spatial delimitation made in this way that a component to be assigned to the side of the front surface of the electronic label cannot be assigned to the side of the rear surface of the housing at the same time - and vice versa. On the contrary, the spacing between chip and antenna, which is considered necessary for technical reasons, means that a clear assignment can and must be made to the surface selected as the reference point in each case. It also follows from the wording of the claim and the technical purpose of the spatial order that the antenna as such should be unrestricted and thus arranged as a *whole* on the side of the front surface of the electronic label. It also follows from the wording of the claim and the technical purpose of the spatial order that the chip should be arranged *in its entirety on the side of* the rear surface of the housing.

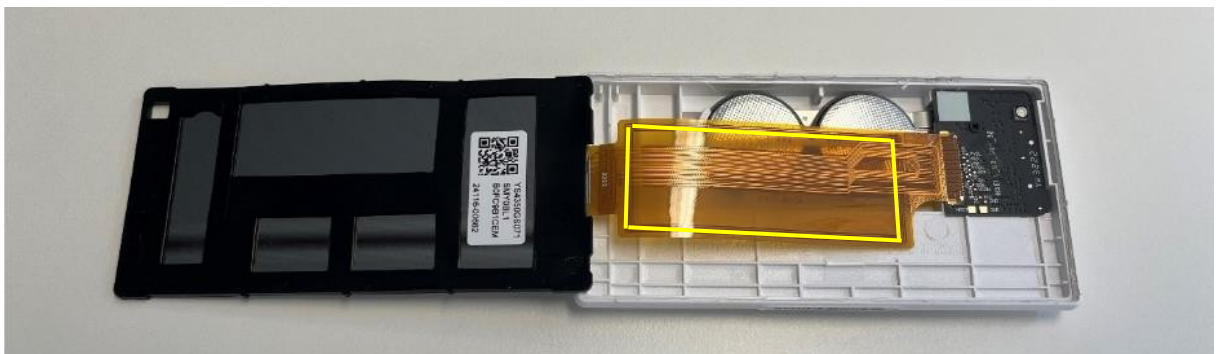
Whether the antenna can also be arranged behind the screen in accordance with the claim remains open according to the wording of the claim insofar as the

claim wording does not establish an explicit spatial relationship between the screen and the antenna.

4. The local division is not convinced that the contested embodiments infringe the patent in suit.

Assuming that a "front area" and a "rear area" are to be localised within the housing of the contested products in accordance with the understanding of the patent claim set out in point 3 in order to be able to answer the question of the order of the components "printed circuit board with chip" and "antenna", the following results:

In the case of the labels with the type designation "Nebular-350 Y-N" submitted by the applicant as Annex FIN 18 - as shown in the following illustration (page 27 of the application)



(Explanation: In the illustration, the area where the antenna is attached to the rear of the foil is marked in yellow by the court; the "upper area" (section) of the rear housing surface can be seen in the illustration *below*; the lower section of the rear housing surface (battery compartment and black circuit board) is moulded deeper than the area above it in view of the order of the batteries and the circuit board)

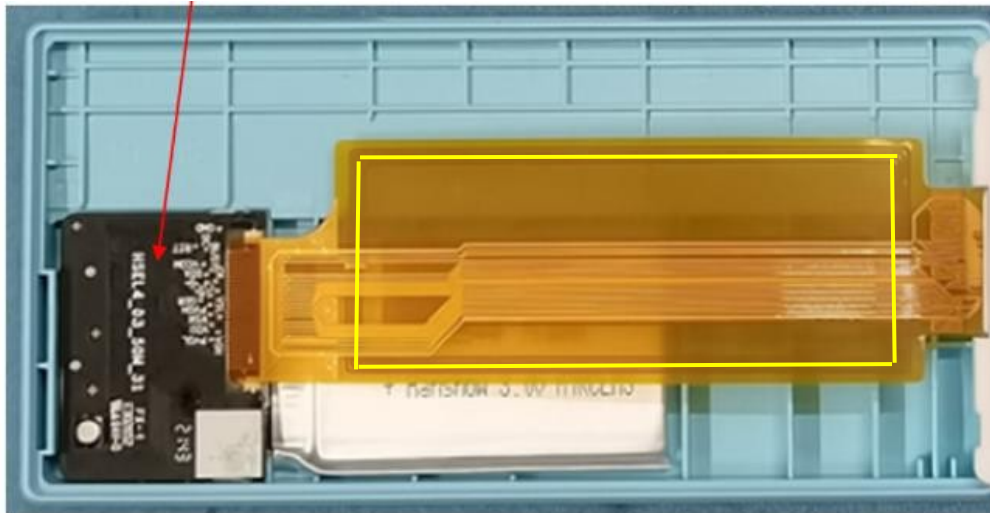
At least a substantial part of the antenna, which is applied to the back of an orange-coloured foil, rests - at least almost - on the upper section of the inside of the rear housing surface in the unopened state of the label. It can even be assumed that the pressure exerted on the antenna foil by fitting the front part of the housing with the display window causes the antenna to *rest directly on* a part of the inner surface of the rear wall of the housing, since the antenna - as described above - is not attached to the rear wall of the housing.

The antenna is designed with the antenna facing the rear wall of the housing.

This means that at least a significant part of the antenna must be assigned to the surface of the rear side of the housing, as a closer spatial order than "almost lying on" or touching is not possible. Insofar as the plaintiff is of the opinion that it is not relevant that the antenna partially comes into contact with the inside of the rear side of the housing, the local division does not follow this for the reasons stated above.

The recess for the PCB and the batteries is not the only, or not the main, side of the rear surface of the housing. Rather, from the point of view of the local division - in addition to the upper area of the rear wall of the housing - the ribs or webs, which are located on the rear wall of the housing in the lower area next to the recess for the circuit board and the batteries, also form a significant part of the rear surface of the housing, which must be considered as part of the injury test.

If, in the opinion of the local division, the antenna is to be assigned to the rear housing surface, it cannot be arranged on the side of the front surface of the electronic label at the same time, especially since the front surface of the label with the type designation "Nebular-350 Y-N" is not the back of the screen, but of the window arranged in front of it. However, if the antenna can be assigned to at least a substantial part of the rear housing surface, no infringement can be established. The situation is no different with the other contested embodiments, insofar as these - such as the following figure (Exhibit FIN 10b; antenna area or course again marked yellow by the court)



- were presented in the documents or inspected during the oral proceedings.

III. Since the local division is not convinced with sufficient certainty that the products offered by the defendants infringe the patent in suit, it was not necessary to deal with the question of the validity of the patent in suit.

B.

As the unsuccessful party pursuant to Art. 69 para. 1 UPCA, the applicant must bear the costs of the legal dispute and the other costs of the proceedings incurred by the defendants up to the upper limit depending on the value in dispute.

The "other costs" here also include the costs incurred by the opponents of the application due to the filing of the protective letter dated 10 August 2023 (App_560285/2023). In the view of the local division, this results from the fact that the filed protective letter has become part of the proceedings for the adoption of provisional measures through its submission in accordance with Rule 207.8 of the Rules of Procedure. The costs incurred by the filing of a protective letter are therefore to be reimbursed by the unsuccessful applicant as a rule. No reasons to deviate from this in the present case have been presented or are otherwise apparent.

The amount in dispute is to be set at € 2 million. The applicant has stated the amount in dispute as € 2 million. The defendants have not disputed this figure. The Chamber has no deviating or better information on the amount in dispute.

The upper limit of the costs to be reimbursed for a value in dispute of € 2 million is as follows

€ 200.000,00.

For these reasons, the Munich local division of the UPC, presided over by Judge Dr Zigann, legally qualified Judge Kokke, legally qualified Judge Pichlmaier and technically qualified Judge Schwengel- beck, issues the following order

order

- A. The application for an order for provisional measures is dismissed.
- B. The applicant shall pay the costs of the legal proceedings and the other costs incurred by the defendants, including the costs incurred by filing the protective letter of 10 August 2023, up to a maximum of € 200,000.00 must be borne.
- C. The amount in dispute is set at € 2,000,000.00.

INFORMATION ON THE APPOINTMENT






An appeal against this decision may be lodged with the Court of Appeal within 15 calendar days of service of the decision by any party whose applications were unsuccessful in whole or in part (Art. 73(2)(a) UPCA, R. 220.1(c), 224.1(b) RP).

DETAILS OF THE ORDER

Procedure number: UPC_CFI_292/2023

Number of the related procedural request: ACT 567009/2023

Type of application: Application for provisional measures

Dr Zigann Presiding judge	Matthias ZIGANN  Digitally signed by Matthias ZIGANN Date: 2023.12.19 11:06:08 +01'00'
Pichlmaier judge-rapporteur	Tobias Günther Pichlmaier  Digitally signed by Tobias Günther Pichlmaier Date: 2023.12.19 11:06:08 +01'00'
Coke legally qualified judge	Margot Elsa KOKKE  Digitally signed by Margot Elsa KOKKE Date: 2023.12.20 09:07:50 +07'00'
Schwengelbeck technically qualified judge	Uwe Schwengelbeck  Digitally signed by Uwe Schwengelbeck Date: 2023.12.19 17:36:41 +01'00'
Ruisinger Employee of the law firm	Veronika Ruisinger  Digitally signed by Veronika Ruisinger Date: 2023.12.20 08:13:25 +01'00'