



**Procedural order**  
**of the Court of First Instance of the Unified Patent Court local division**  
**Düsseldorf**  
**issued on 15 April 2024**  
**concerning EP 3 466 498 B1**

GUIDELINES:

If the adjudicating body has already dealt with both questions of infringement and legal validity in a previous summary proceeding, a joint hearing of the infringement and nullity counterclaims appears to be sensible and necessary for reasons of efficiency alone.

KEYWORDS:

Proceedings on the merits; uniform decision; prior summary proceedings; efficiency

KLÄGERIN:

**Ortovox Sportartikel GmbH**, Rotwandweg 5, 82024 Taufkirchen, represented by the managing director Christian Schneidermeier, *ibid*,

represented by: Attorney Miriam Kiefer, Attorney Robert Knaps, Kanzlei Kather Augenstein, Bahnstraße 16, 40212 Düsseldorf,

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Contributing: Patent attorney Michael Siebel, law firm Hofstetter, Schurack & Partner, Patent- und Rechtsanwälte PartG mbB,

DEFENDANT:

**1. Mammut Sports Group AG**, Birren 5, 5703 Seon, Switzerland represented by its legal representatives, *ibid*,

**2. Mammut Sports Group GmbH**, Mammut-Basecamp 1, 87787 Wolfertschwenden, Germany, represented by its legal representatives, *ibid*,

represented by: Attorney Oliver Jan Jüngst, Attorney Dr Moritz Schroeder, Dr Alexander Bothe, lawyer, Bird & Bird LLP, Carl-Theodor-Straße 6, 40213 Düsseldorf,

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STREITPATENT:

European Patent No. EP 3 466 498 B1

ADJUDICATING BODY/CHAMBER:

Judges of the Düsseldorf local division:

This order was issued by presiding judge Thomas, legally qualified judge Dr Thom and legally qualified judge Dr Schober.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: Rule 37.2 RP in conjunction with Art. Art. 33 para. 3 UPCA

REASONS FOR THE ORDER:

Since the parties did not raise any objections to such a procedure, the question of how to proceed with regard to Art. 33 para. 3 UPCA could already be decided before the conclusion of the written procedure and answered in the sense of a procedure according to Art. 33 para. 3 lit. a) UPCA.

Even if, according to R. 37.1 RP, the panel is to decide on the procedure under Article 33(3) UPCA by order as soon as possible after the conclusion of the written procedure, it may, according to R. 37.2 RP, take an earlier decision if it takes into account the parties' submissions and grants them the right to be heard. In the present case, such an early decision is justified and necessary due to the current situation of the court, which is in its infancy. As parts of the panel are currently only employed on a part-time or case-by-case basis, it appears appropriate for reasons of procedural economy to obtain the allocation of the technical judge at an early stage in order to be able to take this into account as early as possible in the scheduling. Otherwise, there would be a considerable risk of delays if the technical judge is only called in during the interim proceedings and is already temporarily prevented from attending elsewhere.

The local division exercises its discretion to hear both the infringement action and the counterclaim for a declaration of invalidity (Art. 33(3)(a) UPCA). Such a joint hearing of infringement and nullity counterclaims appears to be sensible and necessary for reasons of efficiency alone, since the panel has already dealt with both infringement and validity issues in the previous summary proceedings (ACT\_589655/2023, UPC\_CFI\_452/2023). It is also advantageous in terms of content, as it allows a decision to be made on both the legal status and the question of infringement on the basis of a uniform interpretation by the same panel of judges in the same composition. Such a uniform approach is all the more justified if the complexity of the technology at issue - as here - is rather moderate in the known spectrum of patent disputes and the number of validity attacks is also manageable.

ORDER:

For these reasons, the Düsseldorf local division orders, after hearing the parties, that it will hear both the infringement action and the counterclaim for a declaration of nullity.

Instructions to the judge-rapporteur:

The judge-rapporteur shall request the President of the Court of First Instance to allocate a technically qualified judge to the panel.

Issued in Düsseldorf on 15 April 2024 NAMES  
AND SIGNATURES

Presiding judge Thomas

Ronny  
Thomas

Digitally signed by Ronny  
Thomas Date: 2024.04.14  
17:42:44 +02'00'

Legally qualified judge Dr Thom

Anna  
Bérénice  
Dr THOM

Digitally signed by  
Anna Bérénice Dr  
THOM  
Date: 2024.04.15  
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Legally qualified judge Dr Schober

Walter  
Schober

Digitally signed  
by Walter  
Schober  
Date: 2024.04.15  
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DETAILS OF THE ORDER:

ORD\_18121/2024 for the main file numbers ACT\_2379/2024 and CC\_17292/2024

UPC number: UPC\_CFI\_16/2024

Type of proceedings: Action for infringement and action for annulment