



**Decision**  
**of the Court of First Instance of the Unified Patent Court local division**  
**Düsseldorf**  
**issued on 3 July 2024**  
**concerning EP 3 375 337 B1**

LEADERSHIPS:

1. Within the framework of Art. 28 UPCA, the user of the technology according to the invention can only invoke the rights granted to him by the respective national regulations of the respective contracting member states. On this basis, the existence of a right of prior use must be submitted for each of the protected contracting states.
2. The request for disclosure standardised in Art. 68 UPCA i.V.m. R. 131.1 (c) and R. 141 RP is part of the procedure for determining the amount of damages ordered and, where applicable, precedes the quantified claim for damages. An obligation to disclose the books in the infringement proceedings is therefore ruled out.
3. Art. 68 para. 3 (a), (b) UPCA in conjunction with R. 191 p. Alt. R. 191 S. 1 Alt. 2 VerFO provide a substantive entitlement to request information already in the infringement proceedings which the plaintiff needs in order to be able to check the validity of the information and to obtain indications for its calculation of damages. The content of such an application is directed at information on the cost factors on which the defendant relies in calculating its profits. In addition, the patent proprietor may, within the scope of this right of transmission, also request a documentary evidence for the information pursuant to Art. 67 (1) UPCA, namely invoices or, if these are not available, alternatively delivery notes.
4. The final removal from the distribution channels is a separate measure from the recall. It accompanies the recall, whereby removal can only be considered if the infringer has the actual and legal means to do so. The formulation of concrete and sufficiently specific measures must be based on this.
5. An application for a retrospective extension of the deadline must be submitted at the latest at the same time as the substantive submission for which the party is seeking the retrospective extension of the deadline. If such an application is filed subsequently, it has no prospect of success from the outset.

KEYWORDS:

Right of prior use; indirect patent infringement; final removal from the distribution channels; right to disclosure of the books; right to information; submission of supporting documents; subsequent extension of time limit

KLÄGERIN:

**Franz Kaldewei GmbH & Co. KG**, legally represented by its general partner, Kaldewei Verwaltungsgesellschaft mit beschränkter Haftung, which is represented by its managing director Franz Kaldewei, Christian Helmut, Siegfried Graap, Roberto Martinez and Patrick Nußmann, Beckumer Str. 33-35, 59229 Ahlen, Germany,

represented by: Cordula Schumacher, attorney-at-law, and Benjamin Schnäbelin, attorney-at-law, ARNOLD RUESS Rechtsanwälte Part- mbB, Königsallee 59a, 40215 Düsseldorf, Germany

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DEFENDANT:

**Bette GmbH & Co. KG**, legally represented by its general partner, Bette Verwaltungs- und Beteiligungsgesellschaft mit beschränkter Haftung, which is represented by its managing director Thilo Constantin Pahl, Heinrich-Bette-Str. 1, 33129 Delbrück, Germany,

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STREITPATENT:

EUROPEAN PATENT NO. EP 3 375 337 B1

Decision-making body/chamber:

Judges of the Düsseldorf local division:

This decision was announced with the participation of presiding judge Thomas, who legally qualified judge Dr Thom as rapporteur, legally qualified judge Kupecz and technically qualified judge Ledebor.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT MATTER: Action for infringement and action for annulment

ORAL NEGOTIATION: 16 May 2024

BRIEF DESCRIPTION OF THE FACTS:

The plaintiff accuses the defendant of infringing the European patent EP 3 375 337 B1 (Annex AR 12; hereinafter: patent in suit) in the Contracting Member States Austria, Belgium, Denmark, France, the United Kingdom and the United States of America,

Italy, Luxembourg and the Netherlands, where the patent in suit claims protection. With its counterclaim, the defendant attacks the legal status of the patent in dispute in the aforementioned contracting member states, which the plaintiff defends, inter alia, with an alternative application for amendment.

The plaintiff is the proprietor of the patent in dispute, which was filed on 29 January 2018 and whose application was published on 19 September 2018. The decision to grant was issued on 29 June 2022 has been published. The patent in suit is in force in the contracting member states Austria, Belgium, Denmark, France, Italy, Luxembourg and the Netherlands, among others. It protects a suction tub device.

Claim 1 of the patent in suit reads as follows:

"Sanitary tub device with a sanitary tub (1) and a support arrangement for the sanitary tub (1), wherein the sanitary tub (1) in the position of use has a tub edge (3) which is C-shaped in cross-section and has a lower edge (6), wherein the support arrangement comprises a plurality of profiled strips (2) which are inserted into the C-shaped tub edge (3) and are held there in a form-fitting manner,

**characterised in that**

the mouldings (2) are made of rigid plastic foam."

Claims 2 and 3, which are also asserted by the plaintiff both in the infringement action and in the counterclaim by way of auxiliary claims, are worded as follows:

Claim 2:

"Sanitary tub device according to claim 1,

**characterised in that**

the mouldings are each inserted into the C-shaped wall edge (3) with an upper fastening section (7) and protrude downwards over the bottom edge (6) with a base section (8)."

Claim 3:

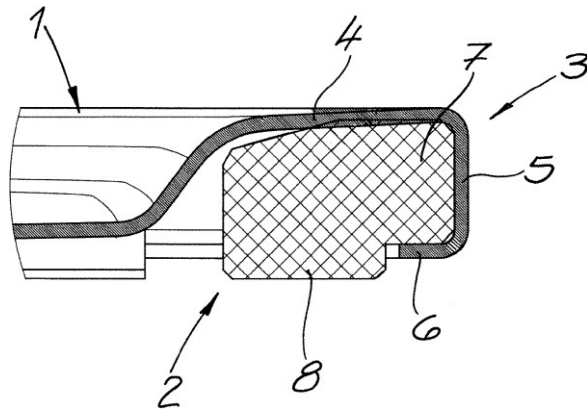
"Sanitary tub device according to claim 2,

**characterised in that**

the upper fastening section (7) in the unmounted state has an oversize relative to a receiving space formed by the C-shaped trough edge (3) and is compressible in such a way that it can be inserted into the receiving space."

(underlining added)

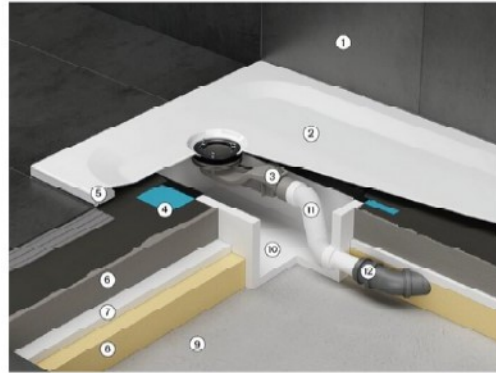
Figure 2 of the patent in suit, shown below in slightly reduced size, shows a sectional view of an edge of the sanitary tub device according to the invention.



The sanitary tub (1) has a tub rim 3 with a C-shaped cross-section. The C-shape is formed by an approximately horizontal mirror section 4, which is adjoined by the vertical section 5 and merges into a lower edge 6. The mouldings 2 comprise an upper fastening section 7 and a base section 8 projecting downwards over the bottom edge 6.

The applicant was also granted a German patent DE 10 2017 105 290 with almost identical claims, which was limitedly maintained by the DPMA by decision of 15 September 2022 (Annex AR 4).

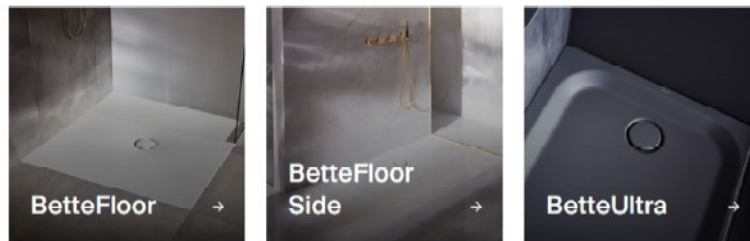
With the infringement action, the plaintiff is directed against the offering and sale of shower trays with the product names "Bette Floor", "BetteFloor Side" and "Bette Ultra", which are configured at the factory with a pre-assembled so-called minimum tray support (hereinafter: attacked embodiment I), in the aforementioned Contracting Member States. By way of example, a slightly reduced image of the contested embodiment I, taken from the statement of claim on p. 6, is shown here, with the minimum tub support bearing the reference number 5.



## Dusche mit einem Minimum-Wannenträger

1. Wandbelag
2. Duschwanne / Duschfläche
3. Ablaufgarnitur
4. Dichtvlies um Installationsbox, einbettet in vollflächige Flächenabdichtung
5. Minimum-Wannenträger
6. Estrich
7. Trittschall
8. Dämmung
9. Rohboden
10. Installationsbox Easy Connect
11. Vorkonfektionierter Flexschlauch
12. HT Reduktion DN 50 / 40 kurz

Kombinierbar mit:



The defendant has a dealer search function on its website at <https://www.my-bette.com/service/haendlersuche>. Here, sales establishments in Austria, Belgium, Denmark, France, Italy, Luxembourg and the Netherlands are listed, which also exhibit the attacked embodiment I, among other things. In addition to German, the website is also available in French, Dutch and Italian.

Furthermore, the plaintiff wishes to prevent the distribution and offer of the so-called minimum tub carrier with the product name "Flex" (hereinafter: attacked embodiment II) in the Contracting Member States at issue.

The following image, also taken from the statement of claim (p. 9), shows the contested version II, which is a separately available moulding set that can be retrofitted under a shower tray.



The German online retailer Reuter.com offers on its website the challenged Export Form II in the Contracting States at issue here (Exhibit AR 11) and purchases it directly from the defendant as manufacturer. The defendant offers the attacked embodiment II in each of the Contracting Member States at issue to its authorised dealers there and delivers to them. The authorised dealers, in turn, offer in particular to installation companies or craftsmen. The deliveries are generally related to specific construction projects. There is usually a very steep distribution gradient in this area without intermediate storage.

On 16 September 2022, the plaintiff submitted a request for authorisation to the defendant, in which the defendant did not counter the allegation of infringement, but referred to the patent DE 10 2017 105 - which was applied for earlier but later published and belongs to the defendant - for the scope of application of Germany (Annex AR 5). By letter dated 24 May 2023 (Annex AR 6), the plaintiff unsuccessfully warned the defendant for the contracting states at issue here.

The plaintiff bases its infringement action on a direct infringement of claim 1 by the contested embodiment I and on an indirect infringement of claim 1 by the contested embodiment II. It also submits direct and indirect infringement of claims 2 and 3 in the form of "in particular if" applications.

The defendant seeks cancellation of the patent in suit by way of a counterclaim, citing lack of novelty and lack of inventive step as grounds for invalidity. The plaintiff opposes this and, in the alternative, submits an application to amend the patent in suit in the form of the combination of the granted claims 1, 2 and 3. The defendant also opposes the maintenance of the patent in suit in the form of the plaintiff's alternative application.

To avoid repetition, reference is also made to the entire contents of the file.

**APPLICATIONS BY THE PARTIES:**

Firstly, the plaintiff applied for information in addition to the provision of information, order the disclosure of the books to prove the information provided to the defendant, whereby the accuracy of the information is to be verified by a person to be appointed by the plaintiff.

The accuracy of the financial statements should be verified by an auditor or, alternatively, confirmed by an affidavit,

order the defendant to recall and permanently remove the goods from the distribution channels for both direct and indirect acts of infringement

and further order the defendant to pay EUR 100,000.00 as interim damages and to compensate the plaintiff for any further damage it has suffered or will suffer in the future for all past and future acts of infringement.

Following the rapporteur's Order of 2 May 2024, the plaintiff has now applied at the oral hearing,

I. of the defendant,

1. Sanitary tub equipment with a sanitary tub and a support arrangement for the sanitary tub,

in Austria, Belgium, Denmark, France, Italy, Luxembourg and the Netherlands, or to place them on the market or use them, or to import or possess them for the aforementioned purposes,

wherein the sanitary tub in the position of use has a tub edge which is C-shaped in cross-section and has a lower edge, wherein the supporting arrangement comprises a plurality of profiled strips which are inserted into the C-shaped tub edge and are held there in a form-fitting manner, characterised in that the profiled strips are formed from rigid plastic foam,

especially if

the mouldings are each inserted into the C-shaped edge of the tray with an upper fastening section and protrude downwards over the bottom edge with a base section,

further especially if

the upper fastening section in the unmounted state is oversized in relation to a receiving space formed by the C-shaped tub edge and can be compressed in such a way that it can be inserted into the receiving space,

especially if this is done in the form of the "minimum tub support (pre-installed at the factory)";

2. Profiled mouldings made of rigid plastic foam suitable and intended for sanitary tub installations with a sanitary tub and a support arrangement for the sanitary tub

to customers in Austria, Belgium, Denmark, France, Italy, Luxembourg and the Netherlands,

wherein the sanitary tub in the position of use has a cross-sectionally C-shaped tub rim with a lower edge, wherein the supporting arrangement comprises a plurality of profiled strips which are inserted into the C-shaped tub rim and

are held there positively,

especially if this is in the form of the "Minimum tub support Flex".

- II. The defendant is further ordered to provide, within a period of 30 days after service of the notice within the meaning of R. 118 (8) sentence 1 VerfO and, if applicable, the certified translation,
  1. to provide the plaintiff with information on the extent to which it has committed the acts described in sections I.1. and I.2. since 29 June 2022, in the form of a statement for each month of a calendar year and in accordance with the criteria set out in section I.2.  
I. 1 and I.2, the following information is structured as a list of infringing products:
    - (a) Origin and distribution channels of the infringing products;
    - (b) the quantities delivered, received or ordered and the prices paid for the infringing products;
    - (c) the identity of all third parties involved in the manufacture or distribution of the infringing products;
    - (d) the number and dates of the products offered;
    - (e) the advertising carried out, broken down by advertising medium, its distribution, the distribution period and the distribution area; including evidence of these advertising activities;
    - (f) the costs, broken down by individual cost factors and the profits realised,whereby copies of the corresponding purchase documents (namely invoices, alternatively delivery notes) must be submitted as proof of the information, whereby details requiring confidentiality outside the data subject to disclosure and notification may be blacked out;
  2. Recall the infringing products referred to in Section I.1 by informing the third parties from whom the infringing products are to be recalled that this Court has found that the products infringe European Patent EP 3 375 337 B1, whereby the defendant must give the third parties a binding undertaking to reimburse the costs incurred, to bear the packaging and transport costs incurred, to reimburse the customs and storage costs associated with the return of the products and to take back the products;
21. Permanently remove the infringing products referred to in point I. 1 from the distribution channels by ordering the defendant, noting that this Court has found that the products infringe European patent 3 375 337 B1,
  - a) asserts and enforces contractual claims for repayment, if any;

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<sup>1</sup> The numbering shown corresponds to the application actually made at the hearing.



- b) third parties who are commercial customers, but not end customers, with regard to the products mentioned under I. 1,
- (1) to cancel all orders relating to the products referred to in Section I.1;
  - (2) to notify the location and owners of the products mentioned under I. 1;
  - (3) to remove or destroy the carrier arrangement from the products referred to in Section I. 1;
  - (4) bindingly agrees to reimburse the costs incurred and optionally offers to take back the shower tray against payment of the transport and storage costs or to install a non-infringing tray support without charge.
- d)<sup>2</sup> to provide the court and the applicant with written proof of the measures taken within four weeks of service of the judgement.

III. The defendant is sentenced,

1. in the event of any infringement of the Order pursuant to the application under para.  
I. a repeated penalty payment of at least EUR 1,000.00 per infringing product;
2. in the event of any infringement of the Order pursuant to the application under para.  
II. a repeated penalty payment of at least EUR 1,000.00 per day for each day of infringement

to the court.

IV. The defendant is ordered to pay to the plaintiff

1. EUR 10,000.00 as provisional damages, which will be adjusted if the actions referred to in Section I. continue.
2. It is established that the defendant is obliged on the merits to compensate the plaintiff for any further damage that she has suffered or will suffer in the future for all past and future acts in accordance with Section I.

The defendant claims,

Dismiss the action of 1 June 2023 (ACT\_459767/2023) with the applications now made.

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<sup>2</sup>The numbering shown corresponds to the application actually made at the hearing.

The defendant counterclaims,

declare the European patent 3 375 337 B1 invalid with effect for Austria, Belgium, Denmark, France, Italy, Luxembourg and the Netherlands to the extent of claims 1 to 3.

The applicant claims that the Court should,

1. dismiss the counterclaim,
2. in the alternative,

in the event that the court considers main claim 1 not to be legally valid, to maintain the European patent 3 375 337 B1 in Austria, Belgium, Denmark, France, Italy, Luxembourg and the Netherlands with the following claims:

1. Sanitary tub device with a sanitary tub (1) and a support arrangement for the sanitary tub (1), wherein the sanitary tub (1) has a tub edge (3) of C-shaped cross-section with a lower edge (6), wherein the support arrangement comprises a plurality of profiled strips (2) which are inserted into the C-shaped tub edge (3) and are held there in a form-fitting manner,

characterised in that

the profiled strips (2) are formed from rigid plastic foam, wherein the profiled strips (2) are each inserted with an upper fastening section (7) into the C-shaped tub edge (3) and project with a base section (8) downwards over the bottom edge (6) and the upper fastening section (7) in the unmounted state has an oversize relative to a receiving space formed by the C-shaped tub edge (3) and can be compressed in such a way that it can be inserted into the receiving space.

2. Sanitary tub device according to claim 1, characterised in that the foot section (8) has a height of between 3 mm and 15 mm.
3. Sanitary tub device according to one of claims 1 or 2, characterised in that the profiled strips (2) have inserts made of a sound-absorbing material (10) on their foot sections (8), which form the lower bearing surface of the foot sections.
4. Sanitary tub device according to one of claims 1 to 3, characterised in that the support arrangement comprises a central support (9) arranged under a central section of the sanitary tub.
5. Sanitary tub device according to one of claims 1 to 4, characterised in that the sanitary tub (1) is made of steel enamel.
6. Sanitary tub device according to one of claims 1 to 5, characterised in that the sanitary tub (1) has a rectangular base surface, with exactly one profiled strip (2) being provided on each side of the sanitary tub (1).

7. Sanitary tub device according to one of claims 1 to 6, characterised in that corner pieces (11) are inserted into the C-shaped tub edge (3) at corners of the sanitary tub (1).
8. Sanitary tub device according to claim 7, characterised in that the corner pieces (11) are connected to the respective adjoining profile strips (2) via connecting elements (12).
9. Sanitary tub device according to one of the claims 1 to 8, characterised in that the supporting order for height adjustment comprises substructure strips (13) which are to be arranged under the profile strips (2).

With regard to any further applications concerning the interim proceedings, reference is made to the documents of the parties.

KEY PROCEDURAL STEPS AND REQUESTS FOR DEADLINE EXTENSIONS:

By Order dated 2 May 2024, the Judge-Rapporteur concluded the interim proceedings and issued instructions and conditions for the conduct of the oral hearing. In particular, under point V. of the Order, she instructed the parties to upload any sketches or documents to which they may wish to refer in the oral proceedings for explanation and which have not yet been submitted to the file to the CMS by 13 May 2024. Reference is made to the further content of the Order.

In its document dated 15 May 2024, the applicant submitted an application to extend the deadline retroactively to 15 May 2024. It stated that the Order had been overlooked, although the specific reasons could no longer be fully understood within the law firm. It stated in its document on the preliminary estimate of its costs.

In its document dated 15 May 2024, the defendant submitted both a preliminary estimate of the costs and two drawings to which it intended to refer at the hearing.

At the oral hearing, the local division admitted both parties' time-limited submissions with regard to the preliminary cost estimate, but pointed out that the documents submitted by the defendants in their documents dated 15 May 2024 were not taken into account.

The defendant then filed an application for the first time to retroactively extend the deadline that had expired on 13 May 2024 and essentially based its justification on the fact that the defendant's representative had received 15 emails in the CMS on 2 May 2024, that he had then checked the file and that the procedural order of 2 May 2024 had not been visible to him for whatever reason. Reference is also made to the minutes of the oral hearing.

FACTUAL AND LEGAL ISSUES:

The plaintiff is of the opinion that limiting the application for disclosure of the books to a subsequent Höhe process would lead to the process possibly proceeding in three stages. The necessity already results from the fact that the plaintiff has no other way of verifying the accuracy of the defendant's information. Apart from this, further proceedings and thus further costs could also be avoided. From

R. 191 p. 1 2nd Alt. VerfO, it follows that the application for disclosure is already possible in the present proceedings.

The defendant is of the opinion that the application for disclosure of the books is inadmissible. The application is part of the separate proceedings to determine the amount of damages ordered, which follow the final decision in the infringement proceedings. The application should also only be made there to the extent necessary.

The defendant is of the opinion that the timing and deadlines of the extrajudicial pre-correspondence were deliberately chosen by the plaintiff only in order to be the first to try out the new system of the Unified Patent Court.

According to the plaintiff, the defendant continues its distribution to online retailers in the Contracting Member States at issue, as shown by an order in Austria. For example, the contested embodiment I is supplied to Austria via the internet platform "megabad.com" (see Annex AR 30). The defendant claims that this is already a modified embodiment and no longer the contested embodiment I.

The defendant is also of the opinion that it is entitled to a right of prior use. It believes that it already had possession of the invention in September 2016. A draft drawing dated 16 August 2016 (Annex KMG 6) already shows all the features of the patent in dispute. The development of the flexible support system made of foam elements was to be further developed and built with a supplier company, as evidenced by an email dated 3 November 2016 (Annex KMG 5). The defendant's own patent application DE 10 2017 105 180 (Annex KMG 7), which is three days older, also proves ownership of the invention. The defendant had also put the patent in dispute into use or made arrangements to do so before the priority date. On 17 January 2017, the supplier company had already offered to supply the defendant with finished and marketable profile strips for the bathtub support. The profiled strips manufactured by the company were publicly exhibited at the SHK Essen trade fair between 6 and 9 March 2018 and then delivered.

The defendant is of the opinion that the institutions which led to a right of prior use in Germany related from the outset to all countries to which the defendant sells products in accordance with the provisions. It is not appropriate to take into account a right of prior use arising in a Member State of the UPCA only in that country pursuant to Art. 28 UPCA. Such an understanding would miss the reality and the necessities of uniform patent jurisdiction.

The plaintiff is of the opinion that the documents submitted did not show ownership of the invention at issue in the patent, at least not in the limited scope of the amendment request.

version. Furthermore, the use or the establishments were not sufficiently demonstrated and the trade fair appearance only took place after the priority date. Ownership of the invention in Germany could also be left open, as the defendant had not put forward any right of prior use in the Member States at issue. The right of prior use is also territorially limited according to Art. 28 UPCA. It only arises on the basis of a conscious, entrepreneurial decision in a particular state.

The defendant is of the opinion that both claim 1 of the patent in suit and the combination of claims 1, 2 and 3 asserted in the plaintiff's auxiliary request are not new compared to DE 197 10 945 C1 (Annex KMG 8a; hereinafter DE 945). Furthermore, it believes that the patent in suit is also not inventive over DE 945. The patent in suit also lacks the necessary inventive step in view of a combination of the inventions shown in the citations DE 92 08 770 U1 (Annex KMG 9; hereinafter KMG 9) and DE 199 61 255 A1 (Annex KMG 10; hereinafter KMG 10).

The plaintiff, on the other hand, is of the opinion that the patent in suit is both new and inventive, at least in the version formulated in the amendment request asserted in the alternative, consisting of the combination of claims 1, 2 and 3.

To avoid repetition, reference is also made to the parties' documents and attachments.

#### REASONS FOR THE DECISION:

The admissible action is well-founded. The admissible counterclaim is partially justified. A.

As this is the first decision of the local division in the main proceedings, the following general comments on the structure of the grounds for the decision appear appropriate:

By Order of 1 December 2023, the Board decided to hear the infringement action and the counterclaim together pursuant to Art. 33(3)(a) UPCA.

In principle, a distinction must be made between questions of admissibility and questions of the merits of both actions. If the actions are already inadmissible, there is no need for any further examination of the merits.

Furthermore, the order in which the merits are examined must be based on the standard of which questions must in principle be answered uniformly for both actions and then which legal questions take precedence over others.

The Court of Appeal has already confirmed that the principles for the interpretation of a European patent claim under Art. 69 EPC in conjunction with the Protocol on the Interpretation of Art. 69 EPC

apply equally to the assessment of the infringement and the legal validity of a European patent (see UPC Court of Appeal, GRUR-RS 2024, 2829 - NanoString/10x Genomics (rebuttal proceedings)). The interpretation is therefore the common basis on the basis of which both the legal status and the question of infringement must be decided.

By basing its defence on the lack of legal validity of the patent in dispute, the defendant was forced to file a counterclaim in accordance with R. 25.1 VerfO. Even if the counterclaim is purely procedurally dependent on the action, the purpose of the provision is to prevent an isolated examination of the legal validity in the context of the defence on the infringement issue without a conclusive decision on the legal validity. In the end, attacks on the existence of rights should provide clarity about the existence or non-existence of the property right. On the one hand, this promotes legal certainty for all parties involved and, on the other hand, prevents divergent decisions with regard to invalidity. Furthermore, the existence of the patent in dispute is a necessary prerequisite for the granting of the asserted rights. If it is cancelled, the patent in suit lapses with effect *ex tunc*, i.e. it is treated as if it had never existed (Art. 65 para. 4 UPCA, 68 EPC). The effects specified in Art. 64 EPC and 67 EPC have then not occurred, so that the patent proprietor no longer has any rights *vis-à-vis* third parties. This also applies to the prohibition rights under Art. 25 and 26 UPCA. An infringement of a null and void patent is therefore ruled out.

Having said this, the following structure of the grounds for the decision appears justified: Firstly, the admissibility issues of both the infringement action and the counterclaim and other procedural issues are dealt with (see section B). Then the uniform interpretation of the patent in suit is given (see section C). The question of validity is then discussed (see section D). Finally, the Board comments on the infringement (see point E.), the substantive legal consequences of the infringement (see point F.) and the decision on costs and enforceability (see points G and H).

B.

Both the action and the counterclaim are admissible. The defendant's request for an extension of the deadline regarding the content of the document dated 15 May 2024, which was made for the first time at the oral hearing, had to be rejected.

I.

The action for infringement is admissible.

1.

The Düsseldorf local division is indisputably competent under Article 33(1)(b) UPCA. Apart from this, the jurisdiction of the local division chosen by the plaintiff is deemed to be recognised in the absence of an objection by the defendant, see R. 19.7 RP.

2.

The application for prohibition of contributory infringement was to be interpreted to the effect that it also relates to the limited version of the patent in suit asserted in the form of the auxiliary request. It is true that the plaintiff did not expressly list the wording of sub-claims 2 and 3 in the application. However, an interpretation of the application to this effect is required here because the plaintiff addressed the sub-claims in its infringement submission from the outset. This submission remained undisputed between the parties until the end of the oral hearing. Furthermore, the defendant neither objected to the wording of the application nor did it recognise

that it was of the opinion that its scope would be narrower.

II.

There are no concerns regarding the admissibility of the counterclaim. In particular, the UPC also has international jurisdiction. Pursuant to Article 32(1)(e) UPCA, the UPC has exclusive jurisdiction for counterclaims for revocation of (European) patents. Since there is currently no opt-out (Art. 83 (3) UPCA) from the exclusive jurisdiction of the court in relation to the patent in dispute in force, the UPC - as the common court of the member states of the UPCA - has international jurisdiction for the present counterclaim pursuant to Art. 24 (4), 71a (2) (a), 71b (1) of Regulation (EU) No. 1215/2012.

III.

The defendant's application for a retrospective extension of the deadline from the document dated 15 May 2024 for the submission of documents was not to be granted. R. 9.3 (a) VerFO gives the court discretion to extend a deadline set by the court retroactively upon a reasoned application by the party.

In the present case, the application cannot be granted for two reasons. Firstly, such an application must be made at the latest at the same time as the substantive submission for which the party is requesting the retroactive extension of the deadline. If such an application is filed later - as is the case here - it has no prospect of success from the outset. Secondly, the application cannot be granted because the missed deadline served to ensure the proper preparation of the oral hearing by the international panel. This circumstance is accompanied by considerable travelling time for the judges. Any (preliminary) consultations and/or individual preparations by the individual members of the panel - as well as undisturbed preparation by the other parties to the proceedings - must be ensured from the time of the conclusion of the interim proceedings without further written submissions, unless the rapporteur and/or the panel authorise them by setting deadlines. This objective is the basis of the decidedly regulated course of the process with the preliminary interim proceedings and is undoubtedly *ratio legis*. Furthermore, it is an indispensable prerequisite for a speedy decision.

C.

It is necessary to interpret the patent in suit, whereby, in view of the defendant's auxiliary request in the counterclaim, the combined features of the granted claims 1, 2 and 3 are directly taken into consideration.

I.

The invention in dispute relates to a sanitary tub device with a sanitary tub and a support arrangement for the sanitary tub.

The patent in suit first explains that the sanitary tray is preferably a shower tray. Especially in the case of sanitary and shower trays made of a laminated material, the provision of a lower edge is expedient for reasons of stability. Starting from a roughly horizontal area, the C-shaped edge of the tray with a first radius initially merges into a vertical section, with the lower edge then joining via a second radius. According to the patent in dispute, the advantage of an enamelled steel sheet in particular is that the outer edge of the corresponding sheet metal blank is drawn inwards in relation to the outer circumference of the sanitary tub and is thus protected. This reduces the risk of damage when

(see paragraph [0002] of the patent in suit; the following paragraphs are those of the patent in suit without reference to the source). The patent in suit further states that a C-shaped tub edge with a lower edge corresponds to the usual design for tubs made of enamelled steel. The height of the tub edge along the vertical section could be 32 mm, for example. The bottom edge has a length of between 5 and 15 mm, for example (see paragraph [0003]).

Correspondingly designed sanitary tub devices that are supported on a support arrangement are known in the prior art, for example, from the documents DE 10 2009 037 904 B3 and DE 199 61 255 A1 (see para. [0004]). The documents differ in the design of the support arrangement. DE 10 2009 037 904 B3 provides for a base frame. In DE 199 61 255A1 (Annex KMG 10), a one-piece foamed-on tub support made of polyurethane foam is provided as a support arrangement (cf. para. [0005]). With regard to DE 199 61 255 A1, the patent in suit further states that here - unlike with the base frame - no height adjustment is possible and that a tub support made of plastic must be placed on a level surface. The patent in dispute criticises the manufacturing process of DE 199 61 255 A1 as being relatively complex. In particular, different moulds for foaming the sanitary tub must be kept ready for different tub sizes (cf. para. [0006]).

Furthermore, US 537 510 describes a bathtub made of a metallic layered material, which is supported at its edge by a metallic frame. The geometry of the metal frame must be precisely matched to the shape of the bathtub. The patent in suit mentions a high weight and high material costs as consequences of this design (see para. [0007]).

DE 107 40 445 A1 discloses a tub support which is formed from several interconnected individual elements, whereby the individual elements consist of a load-bearing foam material. The elements must first be joined together to form a tub support before a sanitary tub, in particular a shower tray, is placed on top. The patent in suit considers the handling of the support and the connection to the sanitary tub to be in need of improvement (see para. [0008]). Furthermore, DE 198 49 394 A1 shows a tub support for bathtubs or shower trays, whereby a voluminous moulded body made of hard foam is provided. The sanitary tub is also placed on such a tub support from above (see para. [0009]).

Furthermore, a support system for a bath or shower tray is known from US 5 960 489, whereby the bath or shower tray can be supported on the one hand on a building wall via a rail and on the other hand on a wall provided as a facing. The wall provided as a facing is characterised by the patent in suit as being elaborately formed from several layers and materials (see para. [0010]).

Finally, one-piece tub supports made of plastic, in particular hard foam, on which the sanitary tub is placed during installation are also known in practice. Here too, according to the patent in dispute, the tub support must be precisely matched to the size and shape of the associated sanitary tub. The patent in dispute criticises a comparatively large contact surface, which could be disadvantageous in terms of sound insulation (see para. [0011]).

The patent in suit is therefore based on the task of specifying a sanitary tub device which can be easily formed in different sizes and has good functional properties (cf. para. [0012]).

To solve this problem, the patent in suit provides a sanitary tub device according to claim 1 with the following features.



1. Sanitary bath equipment with
  - a. a sanitary tub (1) and
  - b. a support arrangement for the sanitary tray (1).
2. In the position of use, the sanitary tub has a C-shaped tub rim (3) with a lower edge (6).
3. The support arrangement comprises several mouldings (2).
4. The mouldings are inserted into the C-shaped edge of the tray (3) and held there in a form-fitting manner.
  - a. The mouldings are made of rigid plastic foam.

The combination of claims 1, 2 and 3 asserted in the respective auxiliary requests can be structured as follows.

1. Sanitary bath equipment with
  - a. a sanitary tub (1) and
  - b. a support arrangement for the sanitary tray (1).
2. In the position of use, the sanitary tub has a C-shaped tub rim (3) with a lower edge (6).
3. The support arrangement comprises several mouldings (2).
4. The mouldings are inserted into the C-shaped edge of the tray (3) and held there in a form-fitting manner.
  - a. The mouldings are made of rigid plastic foam.
  - b. The mouldings are each inserted into the C-shaped edge of the tray (3) with an upper fastening section (7).
    - (1) In the unmounted state, the upper fastening section (7) is oversized compared to a receiving space formed by the C-shaped edge (3) of the tray.
    - (2) The upper fastening section is compressible so that it can be inserted into the mounting space.
  - c. The mouldings protrude over the bottom edge (6) with a base section (8) facing downwards.

## II.

It is necessary to take a closer look at what the specialist, who is a qualified engineer (FH) with five years of experience in the development and manufacture of sanitary products (bath elements), means by a C-shaped bath rim with a lower edge (item 1.), a load-bearing arrangement

(item 2.) and mouldings (item 3.) as well as an upper fastening section of the mouldings (features 4b), (1), (2) and (4c)) (number 4).

1.

In its position of use, the sanitary tub has a tub rim that is C-shaped in cross-section and has a lower edge (feature 2). Functionally, the lower edge serves as a stabiliser and protection for baths made of a layered material such as steel enamel and forms part of the C-shape (see paragraphs [0002], [0040]). According to the embodiment example in Figure 2, a C-shaped design is formed in such a way that, starting from an approximately horizontal mirror section, a vertical section is connected via a first radius. This vertical section then merges into a second radius with a bottom edge. The lower edge pulls the edge of the sheet metal blank inwards and, according to the patent in suit, provides optimum protection. Similarly, the C-shape provides stability (see para. [0040]).

2.

The support arrangement as part of the sanitary tub device comprises several mouldings (feature 3). According to the wording of the claim, the support arrangement can also provide ("comprise") other components in addition to several profile strips. By several profiled strips, the person skilled in the art understands at least two. The profile strips are each installed in the sanitary tub device in accordance with the specifications of feature group 4 and are formed from rigid plastic foam. The claim does not specify any other requirements for the mouldings. Furthermore, the wording allows the supporting arrangement to consist of additional components in addition to the mouldings. This can already be seen in conjunction with sub-claim 6, according to which the support arrangement comprises a centre support, and sub-claim 10, according to which corner pieces are connected to the respective adjoining profile strips via connecting elements.

This understanding is supported by the description of the patent in suit. For example, the patent in suit states for the manufacture of the profiled strips that either adapted moulds can be used to obtain profiled strips of different lengths or a strand profile from which the profiled strips can then be cut to the desired length (cf. para. [0015], [0016]). In this respect, mouldings of different lengths can be used. The skilled person takes corresponding installation examples from paragraph [0024], according to which, in the case of a usually rectangular base area of the tray, exactly one moulding is provided on each side, so that four mouldings must be installed. For other base areas, mouldings of different lengths can be provided or, alternatively, long mouldings can be provided which are to be shortened to the required length. The patent in suit also recognises corner pieces which are formed from cut-outs of the profile strips (para. [0028]).

The separate provision and assembly result in different design options for the support arrangement (see para. [0025]). The patent in suit leaves it to the skilled person to decide which lengths and how many mouldings to use. In this respect, it also makes no statement about their single or multiple pieces.

Functionally, the support arrangement ensures that the sanitary tray is supported on the substrate. The use of profiled mouldings can reduce the contact surface of the sanitary tub unit. This in turn can lead to improved sound insulation properties (see para. [0022]). Any additional components that the support structure may include must participate in this support function, i.e. contribute to it.

Claim 1 protects a device in which the profiled strips are built into the sanitary tub device as part of the support arrangement. The device claim does not require more.

3.

According to claim 1, the mouldings are inserted into the C-shaped edge of the tub and held there in a form-fitting manner (feature 4).

Paragraph [0014] shows what the patent in suit understands by a form-fitting holder. It is a fixation that avoids incorrect positioning and holds the mouldings securely. Retention can be achieved without further aids simply by the shape of the mouldings, which has a complementary cross-sectional shape to the C-shape of the edge of the tray (see paragraph [0020]).

The mouldings are made of rigid plastic foam. The use of rigid plastic foam for the design of tub supports is known to the skilled person from practice (see para. [0011]). It is left to the skilled person to decide which type of rigid plastic foam is used. The patent in suit does not impose any increased requirements in this respect. The description merely mentions that the profiled strips can be formed from rigid plastic foam for production in a mould (cf. para. [0015]). Functionally, the material provides a certain degree of sound insulation (see paragraph [0023]). Foams based on polystyrene, such as expanded polystyrene (EPS) and extruded polystyrene (XPS), are mentioned as preferred embodiments (cf. para. [0035]).

4.

The claim further specifies the method of inserting the profiled mouldings into the C-shaped edge of the tub, namely that the mouldings are inserted with their upper fastening section (feature 4b). The upper fastening section is characterised by the fact that it has an oversize compared to the receiving space available to it in the unmounted state (feature 4b) (1)). In addition, the upper fastening section can be compressed in such a way that it is suitable for insertion into the receiving space (feature 4b) (2)).

The patent in suit does not specifically define the oversize. It refers to the ratio of the upper fastening section of the profile strip to the opening of the C-shaped tub edge, the extent of which is determined by the vertical section 5 (see Figure 2, paragraph [0043]). In the unmounted state, the upper fastening section is larger or wider than the receiving opening of the C-shaped tub edge. In one embodiment example, the height of the profiled strip is given as 20 to 50 mm (see para. [0036]). The patent in suit is otherwise silent on the determination of a specific oversize. The skilled person will therefore approach its determination via the technical function. In connection with feature 4b)(2), he recognises that the oversize can only be of such a size that the upper fastening section can still be compressed in such a way that it can be inserted into the receiving space. The profiled strips can then be pushed into the receiving space of the C-shaped tub edge against the resistance, so that the form fit is additionally supported by the elastic restoring forces (see para. [0020], [0043]). The oversize thus ensures a particularly secure and reliable fixation of the profile mouldings (see para. [0020]). In addition to the positive fit, the compressed oversize creates a force-fit connection that prevents sliding back. The person skilled in the art will therefore select an oversize which, on the one hand, already enables a frictional connection and, on the other hand, still permits insertion into the edge of the tub. In feature 4b)(2), the patent in suit only describes a compressibility that leads to a frictional connection. Neither the claim nor the other description of the patent in suit addresses a material closure in which the upper fastening section of the profiled strip and the edge of the tub are held together by atomic/molecular forces. About the upper

The compressible part, which is accommodated in the C-shaped edge of the tray, is therefore part of the upper fastening section of the moulding. No longer part of the upper fastening section of the profile moulding is the sophisticated foot section within the meaning of feature 4c), which protrudes downwards over the lower edge of the tub. Functionally, the foot section serves to carry and support the sanitary tub (see para. [0018]). The mouldings typically have an L-shape, with one leg of the L-shape being inserted into the C-shaped rim of the bath as the upper fastening section and the other leg projecting downwards over the lower edge of the rim of the bath as the foot section.

D.

The version granted in the main request of the patent in suit lacks legal validity (point I.) However, the patent in suit is legally valid in the version of the auxiliary request (point II).

I.

Although claim 1 of the patent in suit is new compared to DE 945 (point 1), it is in any case not inventive (point 2).

1.

Claim 1 of the patent in suit is new compared to DE 945 (Annex KMG 8a).

a)

The burden of presentation and proof for facts relating to an attack on the novelty and/or inventive step of the patent in dispute lies with the defendant. A technical teaching is new if it deviates from the prior art in at least one of the known features. Only that which is directly apparent to a person skilled in the art from the publication or prior use is anticipated in the prior art. Knowledge that a person skilled in the art only gains on the basis of further considerations or the consultation of further writings or uses is not prior art (see UPC\_ CFI\_452/2023 (LK Düsseldorf), Order of 9 April 2024 with further references).

b)

DE 945 relates to a device for the centred positioning of bathtubs and shower trays in bathtub and shower tray supports made of rigid foam.

The document discloses a device for centring a shower tray on a support. This involves profiled pieces (or angle pieces) whose thickness is designed for the distance between the outer surface of the tray support and the inner surface of the bend and which fill this distance in such a way that displacement of the tray in the relevant direction is avoided (appendix CMM 8a, column 1, lines 28 ff.). The embodiment in Figure 3b (left) shows an embodiment with an angle piece with knob-like projections (6). If the skilled person visualises the installation situation of the profile piece/angle piece in the support of the shower tray, he will turn figure 3b 90 degrees to the left in his mind's eye. Seen in this way, the inner leg 1a with the narrower bevelled edge 8 is pushed into the C-shaped edge of the tray and the bevelled edge 7 of the profile piece is placed on the upper edge of the tray support.

c)

DE 945 discloses all features except feature 4a) to the person skilled in the art.

With regard to the embodiment example of Figure 3 in column 3, lines 25-39, it is stated that the disclosed

angle pieces are inserted loosely from below into the corners of the edge of the tub with its opening on the floor and the tub is later turned and the tub support is inserted. A sanitary tub device with a sanitary tub and a support arrangement for the sanitary tub is thus shown (feature 1a) and feature 1b)). Furthermore, the skilled person recognises in the description passage in lines 30-32 that the tub in the position of use has a cross-sectional C-shaped tub edge with a lower edge (feature 2). There it says: "In the case of steel trays, the edge of the bend usually has a web pointing inwards at a right angle, i.e. towards the tray wall."

Contrary to the plaintiff's view, DE 945 also discloses feature 3 of the claim, according to which the support arrangement comprises several profile strips. According to a correct interpretation of the patent in suit, the support arrangement can consist of several components. The fact that the profile pieces for centred positioning do not in themselves have a directly load-bearing function does not detract from this. Nor does the fact that the bevelled edge 7 of the angle piece in Figure 3 forms a guide or sliding surface for the upper edge of the tray support when the tray is inserted (Annex CMM 8a, column 3, lines 42 et seq.) mean anything else. This is because this inclined surface also develops a support function from the moment it rests on the tub support. Thus, the angle pieces shown in Figure 3 with the reference number 1 together with the tub support form the sophisticated support arrangement once the tub has been inserted into the tub support. The skilled person recognises that the angle pieces thus contribute to supporting the tub by centring the tub on the support. Since the patent in suit expressly mentions the possibility of different lengths of profiled strips as well as subsequent shortening and the claim makes no statement about a mandatory one-piece design, the skilled person recognises that the angle pieces can form profiled strips according to the invention as additional components.

DE 945 further discloses that the angle pieces are clamped between the inward-facing web and the underside of the tub edge (appendix CMM 8a, column 3, lines 33-35). In this respect, the form-fit holding in the sense of feature 4 is also shown.

However, the skilled person cannot directly and unambiguously infer from DE 945 that the profile or angle pieces are also formed from rigid plastic foam (feature 4a). The only points of disclosure that come into consideration are the description at the beginning (column 1, lines ff.) and claim 1. According to DE 945, the invention relates to a device for the centred positioning of bathtubs and shower trays in bathtub and shower tray supports made of rigid foam, whereby claim 1 repeats this formulation. On an unbiased reading, the material specification refers linguistically only to the bathtub support, but not to the device for centred positioning, i.e. the profile piece. Consequently, the material of the profile piece is not shown here. In addition, an understanding according to which the material specification also refers back to the centring device appears possible. However, the mere fact that the skilled person has two options for understanding the information speaks against the existence of a direct and unambiguous disclosure.

The additional disclosure (column 2, lines 13-16) cited by the defendant is not convincing. This shows that in the case in which the distance between the outer surface of the trough support and the inner surface of the bend is smaller than the thickness of the profile piece, recesses on the profile pieces create a kind of "crumple zone" which allow a reduction in the thickness of the profile piece. The defendant is of the opinion that this is an obvious disclosure that the profile strips can be compressed via recesses and are therefore elastically deformable to a certain extent. This is not convincing for two reasons: Firstly, the recesses create the space and thus a crumple zone, without the material of the profile piece changing as a result.

would necessarily have to be elastically deformable. Secondly, it cannot be ruled out that materials other than rigid plastic foam can also be elastically deformable.

2.

However, based on DE 945, claim 1 is not inventive because the considerations which the person skilled in the art makes in order to form the profiled pieces/angle pieces from rigid plastic foam (feature 4a)) do not leave the area of routine further development.

a)

Only a person skilled in the art who is inventive is rewarded with a patent, see Art. 56 EPC. This inventive solution begins beyond the area which, based on the state of the art, is defined by what the skilled person with average knowledge, skill and experience can routinely develop and find in the relevant technical field (see Benkard/Söldenwagner, EPC, 4th ed., Art. 56 para. 9). An invention is deemed to exist if it does not result from the usual approach of the person skilled in the art, but requires an additional creative effort on their part.

b)

The local division is convinced that, based on DE 954, it is a routine consideration for a person skilled in the art who is faced with the task of specifying a sanitary tub device which can be easily formed in different sizes and has good functional properties to form the profile pieces as well as the tub support from rigid plastic foam. On the one hand, the material is well known in the prior art for the formation of wall supports in addition to the other, height-adjustable frames (see patent in suit, paragraphs [0005], [0008]) and its use in the field of shower tray manufacture is common (see also paragraph [0011], "from practice"). Secondly, it is a flexible but dimensionally stable and sound-absorbing material that is easy to manufacture and not too expensive. Furthermore, it is plausible that the specialist would also choose the same material for the tub support for the profile pieces in order to avoid different tolerances and thermal expansion. Insofar as the plaintiff believes that the use of rigid foam harbours the risk of the profile piece breaking off and is therefore unsuitable for this fine structure and would not normally be chosen by the specialist, the local division does not agree. This is because the skilled person is aware of the different hardness grades available to them when using rigid plastic foam. They will usually choose the appropriate degree of hardness for the design of the profile pieces and use appropriate means to make the rigid plastic foam softer or harder accordingly. In this respect, the skilled person would form the profile pieces of DE 945 from rigid plastic foam without any inventive intervention.

II.

The patent in suit in the version of the auxiliary request is new and inventive.

1.

There are no reservations regarding the formal admissibility of the auxiliary request pursuant to R. 30 of the Rules of Procedure. 2.

The patent in suit is new in the version of the auxiliary request (claim combination of claims 1, 2 and 3 of the granted version) compared to DE 945.

DE 945 does not clearly and directly disclose feature group 4b) and feature 4c).

a)

Despite the broad interpretation of the term "oversize", the Board is not able to recognise a direct and unambiguous disclosure of the upper fastening section of the profile strip. Contrary to the defendant's view, the indication of the upper fastening section in feature group 4b) of the patent in suit is not to be seen as relative, but as spatially and physically distinct from the base section of the moulding.

The defendant, which is burdened with the burden of presentation in this respect, first of all relies on the fact that in column 3, lines 33 to 40, it is shown that the angle pieces are clamped in such a way that the nub-like projections 6 on their downwardly and upwardly directed surface cause the angle pieces 1 to spread, so that the angle pieces are held immovably and do not fall out. It is already questionable here to what extent this point of description in conjunction with Figure 3 of DE 945 discloses an oversize of the upper fastening section in the unmounted state. Only clamping of the mouldings in the installed state is expressly described here. Whether the dimple-like projections in Figure 3 lead to an oversize of the angle piece in relation to the wall edge cannot be clearly assessed from the drawing either. Even if the skilled person wanted to recognise an oversize of the angle piece, there is no direct and unambiguous disclosure of the upper fastening piece. The defendant does not explain which parts of the angle piece still belong to the upper fastening section - which must have the oversize - and which do not. It does not distinguish the upper fastening section from the base section of the contra-angle handpiece.

b)

Contrary to the defendant's view, DE 945 also does not directly and unambiguously disclose a protruding foot section of the angle piece. DE 945 does not show the claimed L-shape. The defendants argued at the hearing that the inclined surface of the angle piece in Figure 3 is supported on the tub support, whereby a support strip is attached to the tub support on which the inclined surface rests and which transmits the forces downwards. However, this does not change the fact that although the tub support in DE 945 is part of the support arrangement according to the invention, it is a different spatial and physical component than the angle piece which discloses the profiled strips according to the claim. However, the profiled strips as a concrete spatial-physical component should have a foot section projecting downwards over the lower edge of the tub rim, not the support arrangement as such. In addition, a projection over the lower edge of the tub rim in Figure 3 is not clearly and directly disclosed due to the lack of representation of the tub rim. Finally, no protrusion with a foot section within the meaning of feature 4c) can be inferred from the description of the two horizontal planes offset in height relative to each other (column 2, lines 31 ff.). This is because it says "the lower level serves to support the section on the shoulder of the wall support". This means that a base section of the profile piece does not protrude over the lower edge of the tub rim, but rests on the tub support below.

3.

The patent in suit in the version of the auxiliary request (claim combination of claims 1, 2 and 3 of the granted version) is inventive over DE 945 (see a)), as well as over the combinations of the citations KMG 9 and KMG 10 (see b)).

a)

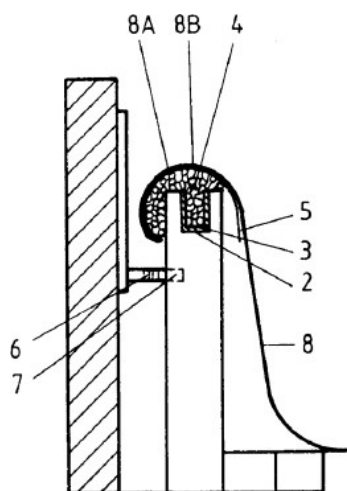
With regard to the auxiliary request, the defendant, which is burdened with the burden of proof in this respect, has already failed to state specifically with which caveat the specialist - faced with the task of specifying a sanitary tub facility that can be easily formed in different sizes and

DE 945 or which missing feature should be shown in which other font.

Moreover, with regard to feature 4c), there is no apparent reason to combine DE 945 with the general knowledge in order to provide a design of the profiled pieces with compressed oversize, the base section of which protrudes beyond the lower edge of the tub rim, instead of the nub-like protrusions which spread in the tub rim. This is because the solution shown in Figure 3 of DE 495 is self-contained, as it places the inserted angle pieces on the tub support. A protrusion of the profile pieces would run counter to this, as the tub support would then be spaced apart.

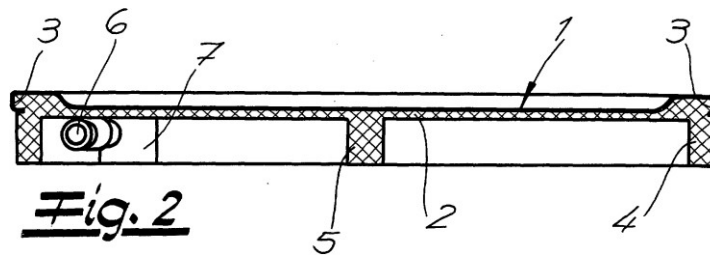
b)

KMG 9 discloses a bathtub support for mounting hard foam bathtubs and shower trays. Figure 4, slightly reduced in size, shows, among other things, that the tub support has a circumferential upper edge with a groove-like recess (2) for receiving a U-profile (3), whereby the U-profile is filled with PU foam (4).



The CMM 10, which already represents prior art recognised by the patent in suit, discloses a sanitary article consisting of a tub and an integrally moulded wall support (2) made of polyurethane foam. Figure 2, slightly reduced in size, shows the sanitary article. This has a tub edge (3) with a U-shaped cross-section, which is foamed by the polyurethane foam of the tub support. The design in Figure 2 shows a tray support with a circumferential collar (4) and with reinforcing ribs (5) supporting the centre area of the tray.





aa)

The defendant is of the opinion that the CMM 9 already shows all the features of claim 1 with the exception of feature 4a), according to which the profiled mouldings are made of rigid plastic foam. The Board cannot agree with this. Similar to the DPMA in its decision of 15 September 2022 (see Annex AR 04, p. 9), the Board is already unable to see that the KMG 9 discloses several profiled strips within the meaning of feature 3. The bathtub support of the KMG 9 has a U-profile that accommodates polyurethane foam to support the bathtub. It is a bath support with a continuous edge structure, the receiving space of which is filled with polyurethane foam. In this respect, a plurality of mouldings are not disclosed (feature 3), which are inserted into the edge of the bathtub.

Since the KMG 10 also only discloses a one-piece moulded tub support made of polyurethane foam, a possible combination of both citations does not already show feature 3. The tub support of the KMG 10 is designed in one piece and is foamed into the tub edge (see Annex KMG 10, column 1, items 53-55; Annex AR 04, p. 9, item 1.6). Since the KMG 10 is already recognised prior art, the defendant also has a higher burden of presentation with regard to the prospects of success of this attack.

The two documents are therefore different solutions which already differ in their approach from that of the patent in suit.

bb)

In addition, a combination of both writings does not disclose features 4b) (1), (2). Apart from the fact that it has not been shown for what reason the skilled person should combine the citations, neither CMM 9 nor CMM 10 show a frictional connection achieved by inserting the tub support. The defendant argues that a certain amount of pressure inevitably develops when the tub support is skimmed, so that the foamed material in the C-shaped edge both sticks and is fixed in a force-fit manner. Apart from the fact that foaming does not disclose any oversize in the unassembled state, it already appears questionable whether the defendant's statements do not speak in favour of a materially bonded connection rather than a force-fit connection according to the invention.

Finally, contrary to the defendant's view, it is also not apparent why the skilled person should consider a more flexible design on the basis of CMM 10 and see an adjustment of the size of the carrying arrangement disclosed in CMM 9 of all things. As explained, CMM 9 does not show several elements of the tub carrier.

E.

The action is also well-founded on the merits. The defendant directly and indirectly infringes the patent in suit and cannot invoke a right of prior use.

I.

It is undisputed that both challenged embodiments make use of the teaching of the patent in suit both in the version of the main request and in the version of the auxiliary request.

II.

In any case, the defendant cannot successfully invoke a right of prior use in relation to the Contracting Member States at issue.

Art. 28 UPCA stipulates that anyone who has acquired a right of prior use to an invention in a contracting member state, if a national patent would have been granted for this invention, also has the same rights in this contracting member state with regard to a patent which has this invention as its subject matter.

The narrow wording of the provision is clear in this respect. The user of the technology according to the invention can only invoke the rights granted to him by the respective national regulations of the respective contracting member states. In this respect, the existence of a right of prior use must be claimed for each of the protected states under their own conditions. The standard does not provide for a European right of prior use, but instead refers to the respective national law (see Tilmann/Plassmann/Busche, Unified Patent Court, Art. 28 UPCA, para. 6). The fact that a Union-wide right of prior use could restrict effective European patent protection via fees speaks in favour of this legal structure. And even if literary voices criticise the provision as being contrary to the system (see Smeet, GRUR Patent 2024, 18, 23 para. 25 with further references), its clear wording must be observed and accepted by the court.

Having said this, there is already a lack of sufficient submissions by the defendant, which is burdened with the burden of presentation in this respect and which invokes the objection. At most, the defendant has submitted information on the ownership of the invention and its utilisation within Germany, but not on the Contracting Member States at issue here.

III.

The defendant has also indisputably committed acts of infringement under Art. 25 (a) UPCA.

It offers the contested embodiment I via its own website by identifying the dealer search in the Member States at issue and places it on the market via the intermediary dealers (Art. 25 (a) UPCA). The latter is sufficient if the defendant as supplier has concrete evidence of onward supply, which can be assumed here in the absence of any other submission by the defendant. Even if the plaintiff has not presented a delivery for every contracting member state applied for here, the plaintiff's submission is sufficient in any case if the defendant does not specifically deny its delivery activities. The denial with regard to the delivery to megabad.de is made with regard to a possible modification, not with regard to the deliveries to the disputed Contracting Member States.

By offering and placing on the market, the defendant has a rebuttable presumption that it also uses the accused embodiment or imports or possesses it for the purposes of offering, placing on the market or using it.

IV.

Pursuant to Art 26(1) UPCA, the defendant may not, without the consent of the plaintiff, disclose the patent in suit to any person other than for use in the territory of the Contracting Member States in which the patent in suit has effect.

The third party may offer or supply to persons authorised to use the protected invention means relating to an essential element of the invention for the use of the invention in this field if the third party knows or should have known that these means are suitable and intended to be used for the use of the invention. These conditions are also met.

a)

The contested embodiment II is a profiled moulding in accordance with the claim and thus, as a component explicitly mentioned in the claim, is in principle an essential means. The design of the profiled moulding for installation in the sanitary tub device constitutes the core of the invention according to the patent in suit.

b)

In the case of contributory infringement, a double territorial connection is required. This means that, on the one hand, the offer and/or delivery must take place in the territory and, on the other hand, the invention must also be used in the territory.

Since the patent in dispute is a European patent subject to the UPCA without unitary effect, it is questionable whether it is sufficient for this that the offering/delivery exists in one of the contracting member states in dispute and is intended for direct use of the invention in the other protected states (according to Tilmann/Plassmann/Grabin- ski/W.Tilmann, Unitary Patent, Unified Patent Court, UPCA Art. 26, para. 16) or whether, in the case of a European (bundle) patent, it is required that the unauthorised act must be directed to the same Contracting Member State in which the direct patent infringement is realised by the supply (Tilmann/Plassmann/Tilmann, Unitary Patent, Unified Patent Court, UPCA Art. 33, para. 36).

This question cannot be decided in the present case because the defendant also fulfils the objective element of contributory patent infringement according to the narrower view.

With regard to the offering and delivery of the contested embodiment II, the plaintiff has argued without contradiction that the German online retailer Reuter.com offers the contested embodiment II on its website to the contracting states at issue here. According to Annex AR 11, the user of the website can select various countries and regions as the place of delivery, with Denmark, France and Italy being recognisable as examples of the Contracting Member States at issue in Annex AR 11. The plaintiff submits in this regard that all Contracting Member States at issue can be selected and that it is clear from the online offer - shown in German - that the attacked embodiment II is purchased directly from the defendant as manufacturer. At the oral hearing, the plaintiff added that the defendant offers and supplies the attacked embodiment II to its authorised dealers in each Contracting Member State at issue. The authorised dealers, in turn, offer in particular to installation companies or craftsmen. The deliveries are generally related to specific construction projects, whereby there is usually a very steep distribution gradient in this area without intermediate positions. The defendant has not countered this argument.

c)

Furthermore, the subjective offence of contributory patent infringement is also given. Due to the offer and the delivery to the authorised dealers in the contracting member states in dispute, it is obvious from the circumstances that the defendant is aware that these dealers supply the accused embodiments for installation in specific construction projects which are not in the public domain.

are regularly found in the respective countries. The defendant therefore also knows that the contested embodiment is suitable for installation in a sanitary tub as part of the tub support and is also intended as a "practical retrofit set" (see Annex AR 11).

d)

No circumstances are apparent or have been presented that would indicate that the measure ordered by the decision is disproportionate. In particular, it is not apparent for what other purpose the contested embodiment II would otherwise be used.

F.

The previous statements justify the legal consequences explained in detail below.

I.

The following applies to direct injury:

1.

Taking into account the circumstances of the case, the plaintiff has a right to prohibit the continuation of the infringement pursuant to Art. 25 (a) UPCA in conjunction with Art. 63 (1) UPCA. Art. 63 (1) UPCA. The defendant may not continue to offer or distribute the product in the contracting member states covered by the action. The same applies - as seen above - to use, importation and possession.

The prohibition of continuation in Art. 63 UPCA implies that there must still be a possibility of continuing the infringement. The defendant has the burden of presentation and proof with regard to the fact that it has ceased all acts of use.

The plaintiff has specifically shown that there are still acts of use in at least one of the Contracting Member States covered by the action (see Annex AR 30). Thus, there is a rebuttable presumption that the defendant also continues its acts in the other states that previously belonged to its commercialisation area. In contrast, the defendant has only argued that it had already ceased its acts of use at the end of May 2023. The defendant claims that the order shown in Exhibit AR 30 had already been supplied with a modified version via the online retailer Megabad. With the general submission without further substantiation, it obviously does not fulfil its burden of presentation.

2.

The plaintiff also has a right to information pursuant to Art. 25 (a) UPCA in conjunction with Art. 67 UPCA. Art. 67 UPCA. The application now submitted under points 1 a) to e) raises no objections with regard to the manner in which the information is provided and its proportionality.

a)

The original application for disclosure of the books pursuant to Art. 68 para. 1 UPCA in conjunction with Art. 68 para. 1 UPCA was rejected.

R. 131.1 (c) and R. 141 VerfO was rightly withdrawn by the plaintiff. This is an application that is or can be part of the proceedings to determine the amount of the damages ordered and can precede the quantified claim for damages. The systematic position of this application in Chapter 4 of the Rules of Procedure already speaks in favour of this. The application should therefore not have been granted in the infringement proceedings.

b)

However, the applicant is entitled to make an application for the transmission of information which the applicant reasonably requires for the purpose of its legal proceedings pursuant to Art. 68 para. 3 (a), (b) UPCA  
i.V.m. R. 191 S. 1 Alt. 2 VerfO.

Art. 68 para. 3 (a), (b) UPCA in conjunction with R. 191 p. Alt. R. 191 S. 1 Alt. 2 VerfO, the local division is of the opinion that there is a substantive entitlement to demand information which the plaintiff needs in order to be able to check the validity of the claims and to obtain indications for its calculation of damages.

In principle, R. 191 VerfO is aimed at information during the proceedings in order to compel parties to submit information with regard to submissions to be made (see Tilmann/Plassmann/Ahrens, Rule 191 para. 1 - based on the discovery procedure). However, the wording of the second alternative in particular does not preclude ordering the submission of the aforementioned information in the final decision. This interpretation is easily possible in all three languages (information reasonably required for the purpose of prosecution/au soutien des prétentions de cette partie/for the purpose of advancing the party's case).

The legal basis in the Convention in conjunction with the aforementioned procedural rule can be found in Art. 68 para. 3 (a), (b) UPCA. According to these provisions, the court must take into account all relevant aspects when determining the amount of damages. These include, for example, the negative economic effects of the patent infringement, including the loss of profit. The unjustly realised profit of the infringer can also be taken into account. It is also possible to set a lump sum on the basis of a fictitious licence instead. However, if all of the above factors can play a role in the calculation, then the patent proprietor must conversely also be able to obtain this information from the infringer. The power to order the communication of the information is a prerequisite of Art. 68 (3) (a), (b) UPCA (referred to by Bopp/Kircher/Sonntag, Hdb., 2nd ed. § 13 para. 287b) as so-called annex power).

Efficiency aspects in particular speak in favour of the chosen point in time already in the infringement proceedings. On the one hand, the question of infringement is conclusively examined in these proceedings and there is no reasonable reason to subject the information claim to further proceedings and delay them (see Bopp/Kircher/Sonntag, Hdb., 2nd ed. § 21 para. 12). On the other hand, it is in the interest of both parties to avoid a second, costly trial on the merits. Past experience in the national legal systems shows that in a large number of cases, the parties generally reach an out-of-court settlement on damages after the accounts have been rendered. There is therefore little to be said in favour of referring the parties to a second trial solely for the transmission of information on cost calculation and checking the information. In the opinion of the local division, such a narrow understanding contradicts the otherwise prevailing idea of efficiency and effective, Europe-wide legal protection in proceedings before the UPC.

The substance of this application is therefore directed to the information on the cost factors relied upon by the defendant in calculating its profits (paragraph (f) of the application).

In addition, the patent proprietor may, within the scope of this right of transmission, also request a documentary basis for the information under Art. 67(1) UPCA (points (a) - (e)), namely invoices or - if these are not available - alternatively delivery notes. Apart from the interest in the pure information that the patent proprietor receives under Art. 67(1) UPCA, it is also necessary to provide

The court's interest in being able to check the accuracy of this information, at least on a random basis, is worth recognising. The possibility of redaction takes account of any confidential information (R. 190 1 p. 2 VerFO).

3.

The decision regarding the recall from the distribution channels in relation to the directly infringing products is justified under Art. 64 (2) (b), (4) UPCA. The distribution channels include all commercial end users. The defendant must request the owners of the attacked embodiment I to surrender it to them in return for reimbursement of costs. The measure is also proportionate.

4.

The decision on final removal from the distribution channels is taken in accordance with Art. 64 para. 2 (d), 64 para. 4 UPCA.

According to the wording of the UPCA, permanent removal from the distribution channels is a separate measure from recall. It accompanies the recall, whereby removal can only be considered if the infringer has the actual and legal possibilities to do so. The formulation of concrete and sufficiently specific measures must be based on this.

In this respect, only the part of the plaintiff's application shown in the decision below was to be granted. Accordingly, the plaintiff can demand that the defendant requests the commercial customers to cancel all orders received concerning the challenged embodiment I. This measure is not yet covered by the recall. This measure is not yet covered by the recall because it concerns cases in which the tub supports have only been ordered but not yet delivered to the end customers. There is no evidence or argument that the ordered measure is disproportionate.

The application under point a), on the other hand, is not sufficiently specific. In particular, it is not clear how the defendant is to enforce the contractual recovery claims and, above all, when this enforcement is to end in order to comply with the decision.

Point b) (2) (location/owner) is not a removal measure, but ultimately a kind of request for information. The plaintiff has not argued that it is justified, especially since it has itself stated that there are typically no intermediate warehouses or intermediate dealers in this market segment.

On closer inspection, point b) (3) is directed at the removal of the attacked embodiment II. However, the claim for removal is not granted in the case of indirect infringement - and was therefore also withdrawn - because in the present case in particular it is possible to use the attacked embodiment II in Germany, which is not covered by the action. According to the defendant's submission, this is its main market segment.

Point b) 4) is in fact already included in the recall and is not to be pronounced separately as a removal measure.

5.

The threat of a penalty payment for failure to do so (Art. 63 para. 2 UPCA) does not raise any objections.

The penalty for the measures of disclosure, information, recall and removal are based on Art. 82 para. 1 and 4 UPCA, R. 354.3 VerfO. The number of days is a fixed figure for calculating the penalty payments. Setting a minimum limit has deterrent potential. In view of the scope of the case, however, this had to be reduced to EUR 250.00, which is considered sufficient but also appropriate.

6.

The decision on the payment of provisional damages is based on Art. 68 para. 1 UPCA in conjunction with R. 119 RP. R. 119 VerfO. In view of the defendant's submission that its acts of use in the contracting member states at issue were very manageable, the plaintiff adjusted the application to EUR 10,000.00. The defendant did not object to the condition that the payment be adjusted in the event of a possible continuation, and it does not raise any objections from the point of view of the local division either.

It is only necessary to clarify that the payment of provisional damages fully covers both types of patent infringement, as evidenced by the withdrawal and the lack of differentiation in the application.

Furthermore, the decision on the award of damages on the merits is based on Art. 68 (1) UPCA. With due care, the defendant should have recognised that it was infringing the patent in dispute through its actions.

II.

With regard to the indirect infringement of the patent in suit by the contested embodiment II, the plaintiff's right to prohibit the continuation of the infringement follows from Art. 26 para. 1 UPCA in conjunction with Art. 65 para. 1 UPCA. Art. 65 para. 1 UPCA. The plaintiff also has a right to information and transmission of information pursuant to Art. 26 para. 1 UPCA in conjunction with Art. 67 UPCA, Art. 65 para. 1 UPCA. Art. 67 UPCA, Art. 68 para. 3 a), b) UPCA i.V.m. R. 191 S. 1 Alt. 2 of the Rules of Procedure as well as payment of provisional damages and determination of the award of damages on the merits (Art. 26 para. 1 UPCA in conjunction with Art. 68 para. 1 UPCA, R. 119 of the Rules of Procedure). The threat of coercive measures is governed by Art. 63 para. 2, 82 para. 1 and 4 UPCA, R. 354.3 RP and applies accordingly only to decisions on indirect infringement. Reference is also made to the above statements.

G.

Pursuant to Art. 69 para. 2 UPCA, R. 118.5 of the Rules of Procedure, a basic decision on costs was to be made, whereby in this case the costs were to be allocated on an equitable basis due to the partial victory and defeat of the parties.

Since the plaintiff partially withdrew the action with regard to the amount of the reimbursement of the provisional damages, the recall and removal claim with regard to the indirect infringement and the order to disclose the books, and the order to permanently remove the products from the distribution channels falls largely short of the application, it was ordered to pay a small part of the costs of the infringement action. With regard to the counterclaim, the 50/50 division of costs reflects the fact that the plaintiff was unsuccessful with the main claim and the patent in dispute was upheld in the auxiliary claim.

Even if Art. 69 para. 2 UPCA does not expressly mention an upper limit of the reimbursable costs determined in accordance with the Rules of Procedure, there is no reason why the upper limit set out in Art. 69

(1) UPCA should not apply to an apportionment of costs on an equitable basis. Pursuant to Art. 1(4) of the Administrative Committee's decision of 24 April 2023 on the table of the upper limit for recoverable costs, in the present case of partial victory, the applicable upper limit corresponds to the share of the victory of the party requesting reimbursement of costs.

H.

Pursuant to Art. 82 para. 2 UPCA, R. 118.8 sentence 2 of the Rules of Procedure, the court may make any Order or measure subject to the provision of security, which it must set.

The local division has discretionary powers when ordering the provision of security. In the present case, the local division refrained from issuing such an Order. The infringement of the patent in suit by the challenged embodiments is undisputed between the parties. As can be seen from the above, the defendant did not submit anything at first instance with regard to its right of prior use in the contracting member states in dispute. Even in the rather unlikely possibility that the Court of Appeal would assess the purely legal question of the scope of the right of prior use differently from the local chamber, any submission by the defendant in this regard would no longer have to be taken into account. Despite a corresponding indication by the rapporteur on 2 May 2024, no submission was made by the defendant in this regard at the oral hearing. Finally, the scope of the infringements appears manageable based on the parties' submissions. These circumstances do not indicate a significant risk of damage within the meaning of Art. 82 para. 2 UPCA, which would have required protection.



DECISION:

A.

European patent 3 375 337 is declared invalid with effect in Austria, Belgium, Denmark, France, Italy, Luxembourg and the Netherlands insofar as its subject-matter extends beyond the following version of the claims:

1. Sanitary tub device with a sanitary tub (1) and a support arrangement for the sanitary tub (1), wherein the sanitary tub (1) has a cross-sectionally C-shaped wall edge (3) with a lower edge (6), wherein the support arrangement comprises a plurality of profiled strips (2) which are inserted into the C-shaped tub edge (3) and are held there in a form-fitting manner,  
  
characterised in that  
  
the profiled strips (2) are formed from rigid plastic foam, wherein the profiled strips (2) are each inserted with an upper fastening section (7) into the C-shaped tub edge (3) and project with a base section (8) downwards beyond the bottom edge (6) and the upper fastening section (7) in the unmounted state has an oversize relative to a receiving space formed by the C-shaped tub edge (3) and can be compressed in such a way as to be inserted into the receiving space.
2. Sanitary tub device according to claim 2 or 1, characterised in that the foot section (8) has a height of between 3 mm and 15 mm.
3. Sanitary tub device according to one of the claims 1, characterised in that the profiled strips (2) have inserts made of a sound-absorbing material (10) on their foot sections (8), which form the lower bearing surface of the foot sections.
4. Sanitary tub device according to one of claims 1 to 3, characterised in that the support arrangement comprises a centre support (9) arranged under a centre section of the sanitary tub.
5. Sanitary tub device according to one of claims 1 to 4, characterised in that the sanitary tub (1) is made of steel enamel.
6. Sanitary tub device according to one of claims 1 to 5, characterised in that the sanitary tub (1) has a rectangular base surface, wherein exactly one profiled strip (2) is provided on each side of the sanitary tub (1).
7. Sanitary tub device according to one of claims 1 to 6, characterised in that corner pieces (11) are inserted into the C-shaped tub edge at corners of the sanitary tub (1). (3) are used.
8. Sanitary tub device according to claim 7, characterised in that the corner pieces (11) are connected to the respective adjoining profile strips (2) by means of connecting elements.  
(12) are connected.
9. Sanitary tub device according to one of claims 1 to 8, characterised in that,

that the support arrangement for height adjustment comprises substructure strips (13), which are to be arranged below the profiled strips (2).

The remainder of the counterclaim is

dismissed. B.

I.

The defendant is prohibited from doing so,

1.

Sanitary tub equipment with a sanitary tub and a support arrangement for the sanitary tub, in Austria, Belgium, Denmark, France, Italy, Luxembourg and the Netherlands, to offer, place on the market or use or to import or possess for the aforementioned purposes,

wherein the sanitary tub in the position of use has a tub edge which is C-shaped in cross-section and has a lower edge, wherein the supporting arrangement comprises a plurality of profiled strips which are inserted into the C-shaped tub edge and are held there in a form-fitting manner, characterised in that the profiled strips are formed from rigid plastic foam, wherein the profile strips are each inserted with an upper fastening section into the C-shaped wall edge and project with a base section downwards over the lower edge and the upper fastening section in the unmounted state has an oversize relative to a receiving space formed by the C-shaped tub edge and is compressible in such a way that it can be inserted into the receiving space,

especially if this is done in the form of the "minimum tray support (pre-assembled at the factory)";

2.

Profiled mouldings made of rigid plastic foam, suitable and intended for sanitary bath fittings with a sanitary bath and a support arrangement for the sanitary bath

or deliver to customers in Austria, Belgium, Denmark, France, Italy, Luxembourg and the Netherlands,

wherein the sanitary tub in the position of use has a tub edge which is C-shaped in cross-section and has a lower edge, wherein the support arrangement comprises a plurality of profiled strips which are inserted into the C-shaped tub edge and are held there in a form-fitting manner, wherein the profile strips are each inserted with an upper fastening portion into the C-shaped tub edge and the upper fastening portion in the unmounted state has an oversize relative to a receiving space formed by the C-shaped tub edge and is compressible in such a way that it can be inserted into the receiving space, and projects with a foot portion downwards beyond the lower edge,

especially if this is in the form of the "Minimum tub support Flex".

II.

The defendant is further ordered, within a period of 30 days from the date of service

the notification within the meaning of R. 118 (8) sentence 1 VerfO and, if applicable, the certified translation,

1.

to provide the plaintiff with information on the extent to which it has committed the acts referred to in I.1. and I.2. since 29 June 2022, in the form of a list of the following information structured for each month of a calendar year and according to the products referred to in I.1. and I.2:

- (a) Origin and distribution channels of the infringing products;
- (b) the quantities delivered, received or ordered and the prices paid for the products sold;
- (c) the identity of all third parties involved in the manufacture or distribution of the infringing products;
- (d) the number and dates of the products offered;
- (e) the advertising carried out, broken down by advertising medium, its distribution, the distribution period and the distribution area; including evidence of these advertising activities;
- (f) the costs, broken down by individual cost factors and the profits realised,

whereby copies of the corresponding purchase documents (namely invoices, alternatively delivery notes) must be submitted as proof of the information, whereby details requiring confidentiality outside the data subject to disclosure and notification may be blacked out;

2.

to recall the infringing products referred to in Section I.1 by informing the third parties from whom the infringing products are to be recalled that this Court has found that the products infringe European Patent EP 3 375 337 B1, whereby the defendant must give the third parties a binding undertaking to reimburse the costs incurred, to bear the packaging and transport costs incurred, to reimburse the customs and storage costs associated with the return of the products and to take back the products;

3.

permanently remove the infringing products referred to in point I. 1 from the distribution channels by ordering the defendant to cease and desist from distributing them, noting that this Court has found that the products infringe European Patent 3 375 337 B1,

third parties who are commercial customers, but not end customers, with regard to the products named in Section I.1, to cancel all orders relating to the products named in Section I.1, and

provide the court and the applicant with written proof of the measure taken within the aforementioned period of 30 days after service of the notification within the meaning of R. 118 (8) sentence 1 VerfO and, if applicable, the certified translation.

III.

The defendant is further convicted,

1.

in the event of any infringement of the Order pursuant to the application under I., a recurring penalty payment of at least EUR 1,000.00 per infringing product;

2.

in the event of any infringement of the Order pursuant to the application under II. above, a recurring penalty payment of at least EUR 250.00 per day for each day of infringement

to the court. IV.

The defendant is ordered to pay the plaintiff EUR 10,000.00 in provisional damages, which will be adjusted if the actions mentioned under I. continue.

V.

It is established that the defendant is obliged on the merits to compensate the plaintiff for any further damage that it has suffered or will suffer in the future for all past and future acts pursuant to Section I.

VI.

The remainder of the action is dismissed.

C.

Orders the plaintiff to pay 50% of the costs of the counterclaim and the defendant to pay 50%. The plaintiff shall bear 15% of the costs of the action and the defendant 85%.

The upper limit of the reimbursable representation costs for the action is set at EUR 47,600.00 for the plaintiff and EUR 8,400.00 for the defendant. For the counterclaim, the upper limit for both parties is set at EUR 28,000.00 each.

D.

The Orders under B.I to B.II. 1-3 and B.IV are enforceable first,

after the plaintiff has notified the court which part of the Orders it intends to enforce and has submitted a certified translation of the Orders into the official language of the Contracting Member State in which enforcement is to take place, and after the notification and the (respective) certified translation have been served on the defendant.

NAMES AND SIGNATURES:

Presiding judge Thomas

**Ronny** Digitally signed by  
Ronny Thomas

**Thomas** Date: 2024.07.01  
14:08:01 +02'00'

Legally qualified judge Dr Thom

**Anna** Digitally signed by  
Anna Bérénice Dr  
**Bérénice Dr** THOM

**THOM** Date: 2024.07.01  
13:31:46 +02'00'

Legally qualified judge Kupecz

**András** Digitally signed by  
András Ferenc Kupecz

**Ferenc** Date: 2024.07.01  
14:53:59 +02'00'

**Kupecz**

Technically qualified judge Ledebor

**Bernard** Digitally signed by  
Bernard Christiaan  
**Christiaan** Ledebor

**Ledebor** Date: 2024.07.02  
09:24:06 +02'00'

for the Deputy Chancellor Boudra-Seddiki

**Rachida** Digitally signed by  
Rachida Boudra- Seddiki

**Boudra-** Date: 2024.07.02  
**Seddiki** 10:01:03 +02'00'

INFORMATION ON THE APPOINTMENT:

An appeal against this decision may be lodged with the Court of Appeal by any party whose applications were unsuccessful in whole or in part within two months of notification of the decision (Art. 73(1) UPCA, R. 220.1(a), 224.1(a) RP).

Information on enforcement:

Information on enforcement (Art. 82 UPCA, Art. Art. 37(2) EPGs, R. 118.8, 158.2, 354, 355.4 RP):

A certified copy of the enforceable decision is issued by the Deputy Registrar on application by the enforcing party, R. 69 RegR.

This decision was announced in open court on 3 July 2024. Presiding judge Thomas

Ronny  
Thomas

Digitally signed by  
Ronny Thomas  
Date: 2024.07.03  
09:08:59 +02'00'

