



Düsseldorf local division
UPC_CFI_16/2024

Procedural Order
of the Court of First Instance of the Unified Patent Court issued
on 30 October 2024
concerning EP 3 466 498 B1

KLÄGERIN:

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

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

electronic Zustelladresse:kiefer@katheraugenstein.com

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

DEFENDANT:

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

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

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

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Contributing: Patent attorney Dr Dr Fabian Leimgruber, Thomann Fischer law firm, Elisabethenstrasse 30, CH-4010 Basel,

STREITPATENT:

European Patent No. EP 3 466 498 B1

ADJUDICATING BODY/CHAMBER:

Judges of the Düsseldorf local division;

This order was issued by presiding judge Thomas as judge-rapporteur. LANGUAGE OF THE PROCEEDINGS:

German

SUBJECT: R. 36 RoP - Application for leave to file a further document

REASONS FOR THE ORDER:

Pursuant to R. 36 RoP, the judge-rapporteur may authorise the exchange of further documents within a time limit to be fixed in response to an application by a party, accompanied by a statement of grounds, submitted one day before the day on which the judge-rapporteur wishes to conclude the written procedure.

In support of its application, which was submitted within the time limit, the plaintiff argues that it has since learnt that the defendants are not only offering and selling the "Barryvox S2", the version challenged to date, but also the "Barryvox S" with voice control, in each case with the information that the voice control is currently not available in Germany and Austria, among other countries. Immediately after gaining this knowledge, the plaintiff purchased a "Barryvox S" and a "Barryvox S2" device. It is currently in the process of testing the devices.

According to the current state of knowledge, voice control can currently only be activated via the "Barryvox" app for the first time. The location tracking of the smart phone in question is used to check whether the user is in a country in which voice control is not supposed to be available when voice control is activated. The plaintiff had the substantiated suspicion that users could also use the voice control in the territory of the Federal Republic of Germany or in Austria once it had been activated abroad. Based on the plaintiff's knowledge to date, the "Barryvox S" with voice control, like the "Barryvox S2", fulfils all the features of the patent in dispute. The only relevant difference appears to be that the "Barryvox S2", in contrast to the "Barryvox S", uses the "more advanced sound signals" already known to the court.

On this basis, there is neither reason nor scope for the admission of further documents.

Insofar as the product "Barryvox S2" is concerned, the plaintiff is already protected by the order for interim measures that has since been confirmed by the Court of Appeal (UPC_CFI_452/2024, orders of 11 December 2023 and 9 April 2024; UPC_CoA_182/2024, order of 25 September 2024). In the event of possible violations of this order, the plaintiff has the option of enforcing the order issued in its favour in summary proceedings.

In contrast, the product "Barryvox S" was, at least explicitly, neither the subject of the summary proceedings nor of these main proceedings. Its legal categorisation and treatment cannot be conclusively assessed on the basis of the merely fragmentary presentation to date, which is based on initial findings. Irrespective of this, it is not only the plaintiff's supplementary factual submissions that are required in this respect. Rather, the defendants must, taking into account

The defence must be given the opportunity to respond within a reasonable period of time in accordance with their right to be heard. There must then be sufficient time to prepare for the hearing.

The time available until the date of the oral hearing scheduled for 26 November 2024 is clearly not sufficient for this. There is therefore no reason to admit further pleadings.

ORDER:

The plaintiff's application to allow the exchange of one further document each for the plaintiff by 4 November 2024 and for the defendants by 11 November 2024, or alternatively within time limits to be set by the court, is dismissed.

Details of the order:

App_59050/2024 for the main file numbers ACT_2379/2024 and CC_17292/2024

UPC number: UPC_CFI_16/2024

Type of proceedings: Action for infringement and action for annulment

Issued in Düsseldorf on 30 October 2024 NAMES

AND SIGNATURES

Presiding judge Thomas

Ronny

Thomas

Digitally signed by
Ronny Thomas Date:
2024.10.30
14:07:09 +01'00'