



Milan - Local Division

UPC_CFI_240/2023
Procedural Order
of the Court of First Instance of the Unified Patent Court
delivered on *25/11/2024*
Order no. ORD 62633/2024

CLAIMANT

1) **Oerlikon Textile GmbH & CO KG**

Represented by Stefania
Bergia and Giulio Sironi

DEFENDANT

PATENT AT ISSUE

Patent no.

Owner/s

EP2145848

Oerlikon Textile GmbH & CO KG

DECIDING JUDGE

Judge rapporteur

COMPOSITION OF PANEL - FULL PANEL

Presiding judge	Pierluigi Perrotti
Judge-rapporteur	Alima Zana
Legally qualified judge	Carine Gillet
Technically qualified	judge Michel Abello

LANGUAGE OF PROCEEDINGS: Italian

ORDER

The judge rapporteur, after hearing the panel;

-Referred to its decision rendered on 7.10.2024;

-examined the authorised pleadings of the parties and the attached documents;

-held that, in the course of *case management*, in order to prepare for the Oral Hearing (cf. Rule 101 RoP), it is necessary, inter alia, to definitively crystallise the allegatory and evidentiary perimeter;

-all of the above:

- (I) specifies that the **f o l l o w i n g** issues in particular will be addressed during *the interim conference*:
- a. settlement hypothesis between the parties, in the light of the Oerlikon defence (see Rule 104(1)(D) RoP);
 - b. the actuated patent;
 - translation errors in the Italian validation (see the terms '*Treibwalze*' and '*Beweglichen*');
 - c. the *counterclaim for revocation* formulated by Himson. And in particular:
 - the scope of this claim introduced by Himson (Oerlikon requests that it be understood as limited to claim No. 1);
 - the attack on the inventive height (possible invitation of the Court to Himson to consider reducing the attacks to a reasonable number, also taking into account the actual reduction of *auxiliary requests* by Oerlikon and the duty of cooperation of the parties);
 - Oerlikon's request to exclude DE '042 and US 795 from the file; (see Rule 104(1)(a) and (b) RoP);
 - d. the *auxiliary requests* formulated by Oerlikon. In particular;
 - the limitation of their number by the owner (Nos. 4 to 7);
 - the nullity attack formulated by Himson;
 - e. Oerlikon's infringement claim. In particular:
 - the plaintiff's request to be allowed to provide evidence of video Doc 16 and 19 for the purpose of proving the actual online infringement in Italy (see Rule 104(1)(e) RoP);
 - the request for the admission of witness evidence formulated by Oerlikon (possible request for a written statement by the witness, pursuant to Rule 175 para 2, ROP); and this similarly to the videos already filed in the file.
 - f. the ancillary measures sought by Oerlikon (injunction, withdrawal from the market, publication and penalty; application for an order to pay under Rule 119 RoP in favour of the plaintiff a fine of EUR 100,000.00 for costs);

- g. value of the case and litigation costs (see rule 104(1)(i), (j), (k));
- h. organisation of Oral Hearing. In particular:
 - verification and confirmation, on an adversarial basis, of the scheduled hearing date (see Rule 104(1)(h) RoP);
 - possible preparation by the parties of a paper file for each of the members of the Panel (see Rule 101 RoP);
 - points to be considered during the Oral Hearing and focus on the most relevant documents (see Rule 104(1)(a) RoP);

(II) acknowledges that:

- the hearing of the party's experts may take place during the Oral Hearing - where the allegatory and evidentiary perimeter will have been definitively crystallised - in the technical cross-examination of the parties and the Technically Qualified Judge;
- During the Interim Conference, the costs of any private translators from the Italian language shall be borne by the party requesting their assistance (see rule 109(5) RoP);
- the Interim Conference is open to the public (see Rule 105(2) RoP), unless the Court decides in the course of the conference, for the protection of confidential information, to limit attendance to the parties' advocates only, with respect to specific issues dealt with, in particular with regard to the issues examined in the order rendered in the course of the proceedings;
- the Interim Conference is subject to recording. The recording will be made available to counsel for the parties following a party's application and subsequent order of the Court, which will also determine the manner in which it may be accessed, if confidential information is to be dealt with in the course of the proceedings (see Rules 105(2) and 106 RoP);
- following the Interim Conference and the judge's order, the parties will be granted a time limit to file, also in the light of the outcome of the Interim Conference, a final brief to be submitted to the Panel, the timing of which will be submitted to the parties during the Interim Conference (see Rules 9 and 104(1)(c) RoP).

(III) Orders that due to the general strike called for 29.11.2024 Italy by all categories of workers, which also affects public administration workers, the regular conduct of the hearing, including the registration service, is not guaranteed, the Interim Conference is postponed to 6.12.2024 at 10.30 a.m., at the Unified Patent Office,

Milan, 25 November 2024

The Judge Rapporteur

Alima Zana

Alima ZANA Digitally signed by Allima
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Date: 2024.11.25 11:38:03 +01'00"

INFORMATION ABOUT ENFORCEMENT (RULE 68(1) RGR)

ORDER DETAILS

Order no. ORD_62633/2024 in ACTION NUMBER: ACT_549550/2023

UPC number: Action type:

InfringementAction