



**Düsseldorf local division**  
**UPC\_CFI\_115/2024 UPC\_CFI\_377/2024**

**Procedural order**  
**of the Court of First Instance of the Unified Patent Court**  
**issued on 4 March 2025**  
**concerning EP 2 755 901 B1**

KLÄGERIN:

**Hartmann Packaging A/S (formerly Brødrene Hartmann A/S)**, represented by Torben Rosen-krantz-Theil, Ornegardsvej 18, 2820 Gentofte, Denmark,

represented by: Attorney Dr Anton Horn, Attorney Birthe Struck, LLM,  
Georg-Glock-Straße 4, 40474 Düsseldorf, Germany,

electronic delivery address: a.horn@heuking.de  
b.struck@heuking.de

co-operating: European Patent Attorney Jan Sørensen; Schou A/S, Hausergade 3,  
1128 Copenhagen, Denmark,

DEFENDANT:

**1. Omni-Pac Ekco GmbH Verpackungsmittel**, represented by its Managing Director Pablo Libreros, An der Kaje 1, 26931 Elsfleth, Germany,

**2. Omni-Pac GmbH Verpackungsmittel**, represented by its Managing Director Pablo Libreros, Am Tidehafen 5, 26931 Elsfleth, Germany,

represented by: Attorney Dr Christof Augenstein, Attorney Nicole Schopp, Bahnstraße 16, 40212 Düsseldorf, Germany,

electronic delivery address: augenstein@katheraugenstein.com  
schopp@katheraugenstein.com

Contributing: Patent Attorney Claus Becker, Attorneys-at-Law and Patent Attorneys of GLAWE DELFS MOLL Partnerschaft mbB, Rothenbaumchaussee 58, 20148 Hamburg, Germany,

PATENT AT ISSUE:

European Patent No. EP 2 755 901 B1

PANEL/CHAMBER:

PANEL JUDGES :of the Düsseldorf local division

This Order was issued . 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:

The applications of the parties , which were filed before the conclusion of the written procedure and thus in good time were for authorisation to exchange further documents in the infringement proceedings,unsuccessful merits.on

1.

Pursuant to R. 36 RoP, the judge-rapporteur response to may authorise within a period to be determined in (cf: UPC\_CFI\_16/2024 (LK Düsseldorf), Order of 30 October 2024 - Or- tovox v. Mammüt; UPC\_CFI\_11/2024 (LK Düsseldorf), Order of 26 February 2025 - Grundfosthe exchange of further documents an application by a party, , submitted one day before the day on which the judge-rapporteur the written procedure accompanied a statement of groundswishes to conclude v. Hefei).

2.

In the present case, the plaintiff did not initially make such an application, but decided in favour of making a supplementary submission on the infringement of the patent in dispute in its reply to the nullity counterclaim and in this context, for the first time and without any specific reference to the nullity counterclaim, to invoke an equivalent infringement of the patent in dispute in the alternative.

Such an approach runs counter to the course of proceedings provided for in the Rules of Procedure, according to which each its party has two documents at disposal in the written procedure to submit arguments on the issue of patent infringement. This quota is usually exhausted with the submission of the duplicate in the infringement proceedings. If a party nevertheless further written submissions considers to be necessary, it the option of applying for permission to exchange further documents by submitting a reasoned application in accordance with R. 36 RoP procedure. The decision whether to allow further written submissions is at the discretion until the the end of written of the judge-rapporteur. Since the preamble of to the Rules Procedure stipulates aim of holding the oral hearing within one year of the action being brought, there must substantial grounds for the admission of further documents the be(see Tilmann/Plassmann/Steininger, Einheitspatent/Unified Patent Court, R. 36 RoP, para. 7). Submissions that into the written procedure outside the documents provided for in the Rules of Procedure without prior admission in accordance with R. 36 RoP are reintroduced will not be taken into account .in the further proceedings and in the decision-making process

The possibility of supplementary submissions on infringement referred to in R. 30.1 (b) RoP concerns the proposed amended patent claims and thus only those features which were introduced into the proceedings for the first time via the corresponding amendments.

3.

The plaintiff's application filed for nullity counterclaim the first time on 8 January 2025 and thus after filing the duplicate to the does not rise to the a further document in the infringement proceedings.give possibility of filing

a)

To the extent that the plaintiff in its reply to the action for annulment additional on the interpretation submitted arguments patent in dispute and the scope of protection and submitted a supplementary expert opinion on this issue in response to the defendant's submissions, these are of the questions relevant . In this respect, there was no need for a separate admission or permission to exchange not only to the action for infringement but also to the action for annulmentfurther documents. Rather, the plaintiff had its atdisposal the duplicate response to the action for annulment provided for procedural rules, into which the corresponding submissions were to be integrated - as was done.already in the

b)

However, the situation is different insofar as the plaintiff's submission on a possible equivalent infringement of the patent in dispute is found . for the first time in the reply to the nullity counterclaimIn this respect, it is matter of anew written submissions in support of the allegation of infringement, which would have required . prior authorisation by the judge-rapporteurHowever, the plaintiff did not initially file , but rather integrated its further submissions directly into the duplicate to the nullity counterclaim. The plaintiff's subsequent application in response to a corresponding complaint by the defendant does not provide any grounds for authorising the exchange of further documents.a corresponding application

aa)

Even if an application for the admission of further documents pursuant to R. 36 RoP can , be filed up to the conclusion of the written procedurethe judge-rapporteur must take into account . the time of such application an as part of his discretionary decision on the admission of further written submissions in the written procedurelf wishes to the plaintiff comment on submissions in the duplicate in the infringement proceedings in the form of a further document, the an application to this effect must be submitted . is the only promptly after receipt of the duplicateThis way to ensure that the proceedings are only delayed to the extent necessary by the granting of a possible further period to comment. The only application filed two months after receipt of the duplicate in the infringement proceedings does not these requirements.

bb)

Apart from this, the application also lacks a viable justification. Insofar as the plaintiff justifies its request for admission of a further document in the infringement proceedings with the double relevance of the statements on the interpretation of the patent in dispute and the scope of protection, this is correct as stated. However, this alone does not justify why, on basis the of the defendant's submissions in the duplicatealso the first time to submit written statements on a possible , it was necessary for . equivalent infringement of the patent in suitThe supplementary reference to

R. 30.1 lit. b) RoP, according to which also in connection with the application for amendment of the patentinfringement issues must , be presented does not justify a different assessment because the feature in question not introduced into with the requests for amendment.was the proceedings Rather, its realisation has already been in dispute since the statement of defence.

4.

Since the plaintiff's application for the admission of the exchange of further documents in the objection proceedings in the objection proceedings.must be , it rejected on this basis also necessary for the admission of a further document

There is no for a defence to the plaintiff's submissions in the defendant's document.room

ORDER:

- I. The plaintiff's application for leave to file a further document in the infringement proceedings is dismissed.
- II. The defendant's application for leave to file a further document in the infringement proceedings is dismissed.

DETAILS:

App\_1153/2025 and App\_66627/2024 for the main file numbers ACT\_13359/2024 and CC\_39587/2024 UPC number: UPC\_CFI\_115/2024 and UPC\_CFI\_377/2024

Type of proceedings: Action for infringement and action for annulment

Issued in Düsseldorf on 4 March 2025 NAMES

AND SIGNATURES

Presiding judge Thomas