



Düsseldorf local division
UPC_CFI_213/2025

Procedural order
of the Court of First Instance of the Unified Patent Court
issued on 1 May 2025
concerning EP 2 892 442 B1

APPLICANT:

Aesculap AG, represented by the Management Board Dr Jens von Lackum, Andreas Hahn, Prof. Dr Holger Reinecke, Am Aesculap-Platz, 78532 Tuttlingen, Germany

represented by: Attorney at law Miriam Kiefer, Attorney at law Carsten Plaga, Lawyer Christoph Heringlage, Kather Augenstein law firm, Bahnstraße 16, 40212 Düsseldorf, Germany

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supported by: European Patent Attorney and European Patent Litigator Michael Wegerer, Winter Brandl Partnerschaft mbB, Alois-Steinecker-Str. 22, 85354 Freising, Germany

RESPONDENT:

Shanghai International Holding Corporation GmbH (Europe), represented by its legal representative, Mr Liang Jin, Eiffestrasse 80, 20537 Hamburg, Germany

represented by: Patent Attorney Philippa Eke, Patent Attorney Douglas Cole, Law Firm IK-lp Ltd, 3 Lloyd's Avenue, London EC3N 3DS, United Kingdom

PATENT AT ISSUE:

EUROPEAN PATENT NO. EP 2 892 442 B1

PANEL/Chamber:

PANEL JUDGES of the Düsseldorf local division:

This Order was issued by presiding judge Thomas as judge-rapporteur.

SUBJECT: Art. 8 para. 5 sentence 2 UPCA, R. 34 RoP - Consultation of TQJ

REASONS FOR THE ORDER:

In principle, the ordering of provisional measures can only be considered if the legal validity of the patent at issue is sufficiently secured, Art. 62 (4) UPCA in conjunction with R. 211.2 RP. R. 211.2 RoP. It is therefore incumbent on the panel to obtain a sufficient picture of the legal validity on the basis of the parties' submissions and, in particular, to examine whether, taking into account all the circumstances, it is more likely than not that the patent in suit is invalid (UPC_CoA_335/2023, Order v. 26 February 2024 - NanoString v. 10x Genomics; UPC_CoA_182/2024, Order of 25 September 2024 - Mammut v. Ortovox; UPC_CFI_347/2024 (LD Düs- seldorf), Order of 31 October 2024 - Valeo v. Magna).

Although the involvement of a technically qualified judge ex officio is only mentioned in the Rules of Procedure in R. 34 RoP and thus in the provisions on the main proceedings, Art. 8 para. 5 sentence 2 UPCA grants the panel the right to involve such a judge in general and thus also in summary proceedings. 2 PANEL the panel in general, and thus also in summary proceedings, the right to call in such a judge on its own initiative after hearing the parties if it deems this appropriate (see also UPC_CFI_463/2023 (LD Düsseldorf), order of 29 January 2024 - 10x Genomics v. Curio Bioscience).

This is the case here.

The defendant has filed an opposition against the application for an Order for interim measures. In its grounds of opposition, it questions the legal validity of the patent at issue from the point of view of both lack of novelty and lack of inventive step. In addition, a technically qualified judge will have to be involved in the main action already pending, at least if the defendants there the legal validity of the patent at issue in the context of an action for revocation. Against this background, it seems sensible and necessary to add a technically qualified judge to the panel of judges already in the summary proceedings.

The involvement of a technically qualified judge is also sensible and advisable at this stage. Such an addition of a technically qualified judge to the bench ensures that this judge can familiarise himself with the case at an early stage and can therefore advise the judge-rapporteur at any time if necessary.

The parties were given the opportunity to comment. None of the parties objected to the involvement of a technically qualified judge within the deadline set.

ORDER:

The President of the Court of First Instance is requested to allocate an additional technically qualified judge with appropriate qualifications and experience in the field of technology relating to the patent at issue (classification IPC: A61B and B23B) to the panel in accordance with Article 18(3) PANEL.

DETAILS:

ORD_20781/2025 related to Order ORD_19651/2025 on the main file reference ACT_12013/2025 UPC number:
UPC_CFI_213/2025

Type of proceedings: Application for an Order for interim measures

Issued in Düsseldorf on 1 May 2025 NAMES
AND SIGNATURES
Presiding judge Thomas