



Hamburg local division

UPC_CFI_461/2024 and 718/2024

Decision
of the Court of First Instance of the Unified Patent Court
delivered on 5 November 2025
concerning EP 2 476 814 B1

HEADNOTE

1. The term "the same invention" in Article 87 EPC must be interpreted as meaning that a claimed invention is to be regarded as the same invention as the invention in an earlier application if the skilled person can derive the subject-matter of the claim directly and unambiguously from the earlier application as a whole using general technical knowledge. This standard corresponds to the disclosure standard for inadmissible extension (confirmation by the local division in Düsseldorf, UPC_CFI_115/2024, decision of 15 October 2025).
2. In accordance with the Rules of Procedure, all attacks against the legal validity of the patent at issue must, in principle, be introduced into the proceedings with the counterclaim for revocation. It is not permissible to assert a lack of inventive step on the basis of documents already in the proceedings only during the oral proceedings.
3. A term that is only mentioned in general terms in the claim cannot be limited to a design as described in the prior art cited in the patent at issue without further details.

KEYWORDS

Priority; delay; interpretation

HEADNOTES

1. The term 'the same invention' in Article 87 EPC is to be interpreted as meaning that a claimed invention is to be regarded as the same invention as the invention in an earlier application if the skilled person can derive the subject-matter of the claim directly and unambiguously from the earlier application as a whole using common general

knowledge. This standard corresponds to the disclosure standard for added matter (confirmation of Local Division Düsseldorf, UPC_CFI_115/2024, decision of 15 October 2025).

2. Any attacks against the validity of the patent in suit must, in accordance with the Rules of Procedure, be introduced into the proceedings at the same time as the counterclaim for revocation. It is not permissible to assert a lack of inventive step on the basis of documents already in the proceedings during the oral hearing.
3. A term that is only referred to in general terms in the claim cannot, without further specification, be limited to a configuration as described in the prior art cited in the patent in suit.

PARTIES

Dolle A/S, represented by Managing Director Francois Grimal, Vestergade 47, 7741 Frostrup, Denmark,

Claimant and counter-defendant,

Legal representatives:

The solicitors and patent attorneys of the law firm Eisenführ Speiser, authorised to represent clients before the Unified Patent Court, led by solicitor Sönke Scheltz and patent attorney Stefan Wiethoff, Johannes-Brahms-Platz 1, 20335 Hamburg,

against

1. **FAKRO Dachflächenfenster GmbH**, represented by managing director Carsten Nentwig, Hirschmillerstraße 38/3, 2115 Ernstbrunn, Austria,

Defendant 1) and Counterclaimant 1),

2. **FAKRO Dachfenster GmbH**, represented by managing directors Paul Leitgeber and Piotr Bieniek, Plathnerstraße 5A, 30175 Hanover, Germany,

Defendant 2) and Counterclaimant 2),

3. **FAKRO Danmark A/S**, represented by director Jon Tougaard, Bredgade 45, 7400 Herning, Denmark,

Defendant 3) and counterclaimant 3),

4. **FAKRO Sp. z o.o.**, represented by its president, Ryszard Florek, ul. Wegierska 144, 33-330 Nowy Sacz, Poland,

Defendant 4) and Counterclaimant 4),

Legal representatives:

The solicitors and patent attorneys of the law firm rwzh, Rechtsanwälte Wachinger Zoebisch Partnerschaft mbB, authorised to represent clients before the Unified Patent Court,

led by attorneys Dr Eckart Warnke and Julian Wachinger, Barthstraße 4, 80339 Munich.

PATENT AT ISSUE

European Patent 2 476 814

JUDICIAL PANEL/CHAMBER

Panel of the Local Division Hamburg

PARTICIPATING JUDGES

The decision was issued with the participation of presiding judge Klepsch (rapporteur), legally qualified judge Dr. Schilling, legally qualified judge Kupecz and technically qualified judge Ausfelder.

LANGUAGE OF THE PROCEEDINGS

German

SUBJECT

Patent infringement action and counterclaim for annulment

ORAL HEARING

23 September 2025

FACTS

- 1 The claimant is suing the defendant for infringement of the German, Austrian, Danish and Swedish parts of European patent EP 2 476 814 B1 (hereinafter referred to as the patent at issue, Annex ES 3), which protects an attic staircase. The parties are disputing the legal validity of the patent, which the claimant is defending on a limited basis as a precautionary measure.
- 2 The application for the patent at issue was filed on 21 September 2011 and published on 18 July 2012. The patent at issue cites utility model DE 20 2011 001 576 U1 of 14 January 2011 (Exhibit A 3) as its priority. The notice of patent grant was published on 5 May 2021. It is in German.

and the claimant is the registered owner. The patent at issue is in force in Germany, Austria, Denmark, Sweden (Annexes ES 4 to ES 7) and Poland.

- 3 The teaching of the patent at issue relates to an attic staircase for ordering or closing an opening formed in a ceiling or floor, with a frame, a fastening section, a hatch cover and a hinge, as well as a multi-part folding staircase.

- 4 Claim 1 of the patent at issue reads as follows in its granted version:

Attic staircase (1) designed to be arranged in an opening in a room ceiling and to close it as a floor closure device, with

a frame (10) for insertion into the opening, which is designed to be arranged in the opening,

a fastening section (4), a hatch cover

(6), and

a multi-part folding staircase (2) pivotally attached at its upper end to the inside of the frame (10),

wherein the frame is designed to be load-bearing, and wherein the hatch cover (6) is not a load-bearing element,

characterised in that

the fastening section (4) is arranged in the order on the frame (10), and the hatch cover is pivotally connected to the fastening section by means of a hinge (8),

and that the hatch cover (6) is essentially formed from a heat-insulating material (24) and is essentially one-piece,

wherein the hatch cover (6) is formed from a foam core which has an insulating foam or is formed from an insulating foam and has a cladding or lamination on its outer surface.

- 5 With regard to the wording of subclaims 5 to 8, which are only asserted in the context of "in particular" applications, and all other subclaims, reference is made to the contested patent specification.

- 6 Figures 1 to 3 and Figure 17, which are shown below, explain the technical teaching of the patent at issue on the basis of selected embodiments. Figure 1 shows a perspective view of a floor closure device designed as an attic staircase with a staircase arranged on it, Figure 2 shows a sectional view of the floor closure device designed as an attic staircase with staircase from Figure 1, and Figure 3 shows a detailed view of a section through a hinge according to the invention. Figure 17 shows a further representation of the

invention, which is designed as an attic staircase with a double seal.

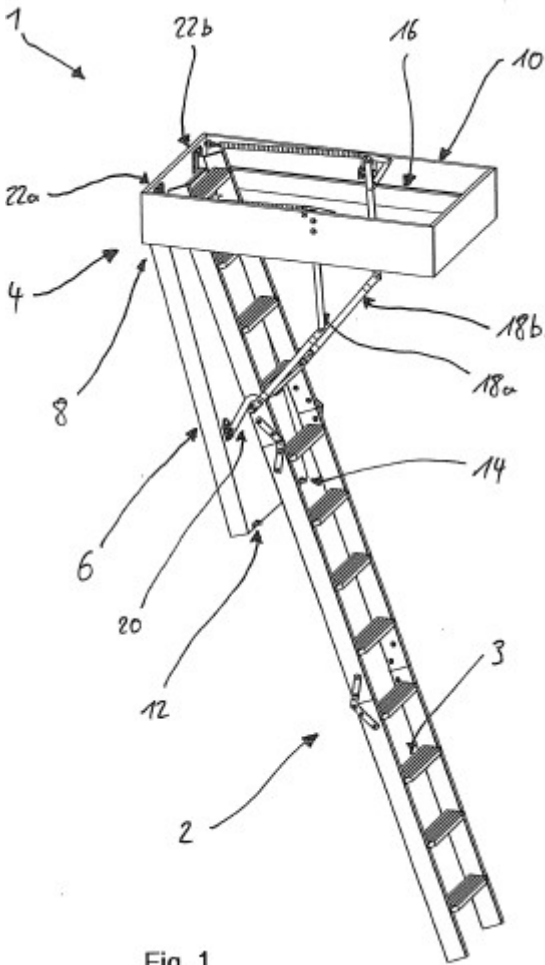


Fig. 1

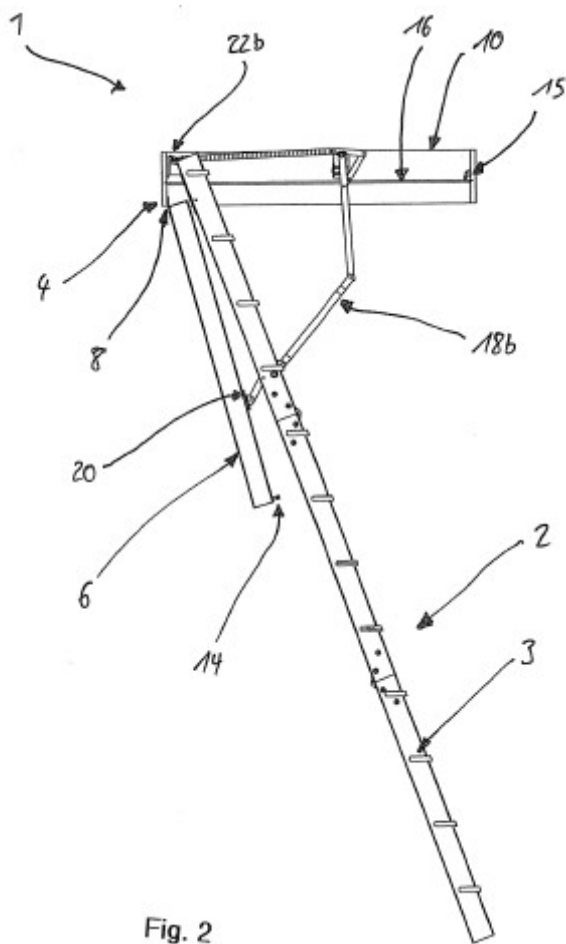
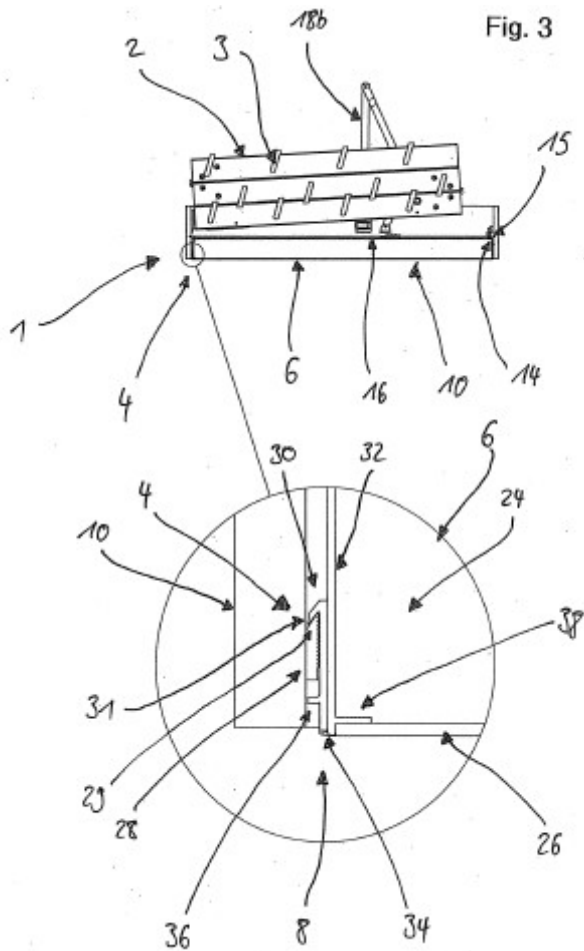
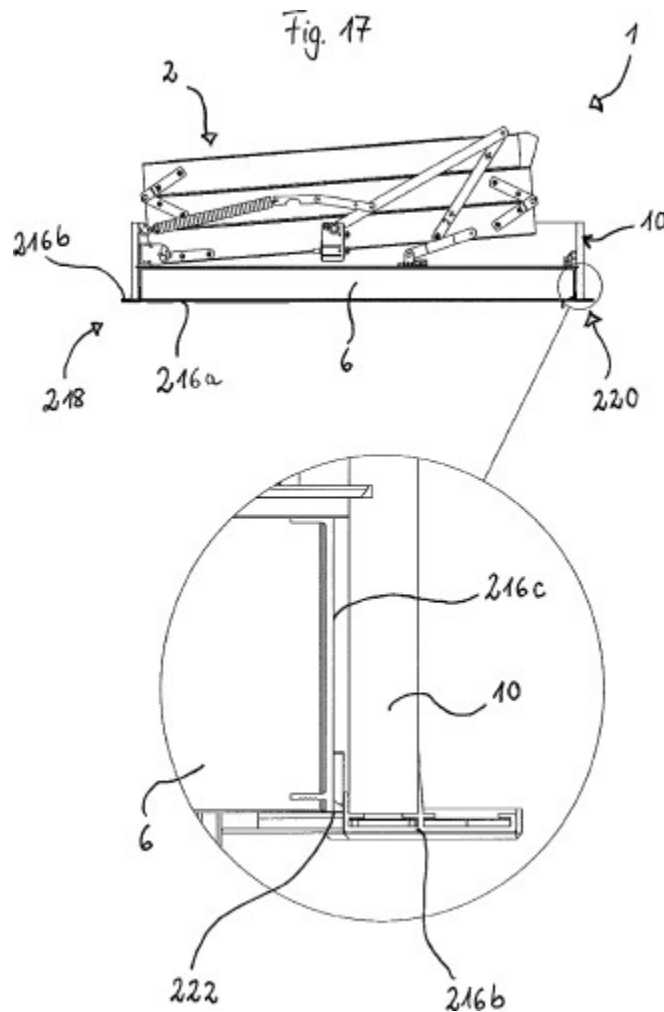


Fig. 2





- 7 The claimant is a company based in Denmark that manufactures and supplies loft ladders. Its product range also includes space-saving stairs, modular stairs, roof access systems, railing systems, façade cladding and terrace cladding. In addition to the claimant (www.dolle.dk), the Dolle Group (www.dolle.com) includes, among others, the German company Gebr. Dolle GmbH (www.dolle.de), the Polish company Dolle Sp.z.o.o (www.dolle.pl) and Dolle Nordic AB in Sweden (www.dolle.se).
- 8 The first defendant (www.fakro.at) is the Austrian company of the FAKRO Group, responsible in particular for sales in Austria. Defendant 2) (www.fakro.de) is the German company, responsible in particular for sales in Germany. Defendant 3) (www.fakro.dk) is the Danish company of the FAKRO Group, responsible in particular for sales in Denmark. Defendant 4) (www.fakro.pl) is, which is disputed between the parties, the parent company based in Poland, which is responsible for manufacturing and sales in Poland and supplies the other companies in the FAKRO Group, in particular in Germany

Germany, Austria, Denmark and Sweden, with products manufactured in Poland.

- 9 The claimant objects to the distribution of loft ladders, in particular those offered under the names "GREENSTEP LME Energy Efficient" and "GREENSTEP LMT Super Thermo" (hereinafter: contested embodiments). An illustration from the German product catalogue is reproduced below (see Annex ES 9):

A technical diagram of a scissor lift. The diagram shows the lift in its extended position. Dimensions are labeled as follows: A is the width of the platform; B is the depth of the platform; C is the horizontal distance from the base to the platform; D is the horizontal distance from the base to the scissor mechanism; E is the height of the scissor mechanism; H is the total height of the lift; and K is a detail view of the scissor mechanism.

TECHNISCHE DATEN	LME	LMT
Antriebsleistung[kg]	200	
Wärmekapazitätsgewichtsfaktor des Trägers γ [W/m ²]	0,65	0,48
Luftdurchfluß-Wasser nach EN 12207	4 th	
Stärke der Dämmung[cm]	5	7,4
Klappenstärke[cm]	5,6	8
Kantenabstärken[cm]	16	22
Stärke der Stützbohle [cm]	8	
Max. Raumhöhe bei Verankerung der Leiter an 1/2 Stütze	280/305	

- 10 The claimant considers the offering and distribution of the contested embodiments to be a direct infringement of the claim of the patent at issue (ACT_44866/2024, UPC_CFI_461/2024). The defendants have jointly filed a counterclaim for annulment of the patent at issue (CC_62068/2024, UPC_CFI_718/2024). The claimant has filed auxiliary applications for amendment of the patent (App_4928/2025) and a request for admission of subsequent applications for amendment of the patent (App_22507/2025).

APPLICATIONS OF THE PARTIES

ACTION

- 11 After initially announcing that it would file the applications set out on pages 2 to 6 of the statement of claim dated 1 August 2024, the claimant now requests that

I. The defendant is ordered to refrain from

1. attic stairs, which are designed to be placed in an opening in a room ceiling and to close it as a floor closure device, with a frame for insertion into the opening, which is designed to be placed in the opening, a fastening section, a hatch cover, and a multi-part folding staircase pivotably attached at its upper end to the inside of the frame, wherein the frame is designed to be load-bearing and wherein the hatch cover is not a load-bearing element, characterised in that the fastening section is arranged on the frame, and the hatch cover is pivotably connected to the fastening section by means of a hinge, and that the hatch cover is essentially formed from a heat-insulating material and is essentially one-piece, wherein the hatch cover is formed from a foam core which has an insulating foam or is formed from an insulating foam and has a casing or lamination on its outer surface,

in Denmark (DK), Germany (DE), Austria (AT) and Sweden (SE) (direct infringement of claim 1 EP 2 476 814 B1),

in particular, if a retaining device is ordered on a side of the hatch cover opposite the hinge, which is designed to hold the hatch cover in a closed position (subclaim 5 EP 2 476 814 B1),

in particular if the retaining device has at least one form-fitting locking element (subclaim 6 EP 2 476 814 B1),

in particular if the fastening section and/or the retaining device is/are arranged on the frame (subclaim 7 EP 2 476 814 B1),

in particular if seals are arranged on at least three inner sides of the frame;
(subclaim 8 EP 2 476 814 B1);

2. recall the infringing products mentioned in section I.1. by informing the third parties from whom the infringing products are to be recalled that this court has determined that the products infringe European Patent EP 2 476 814 B1, whereby the defendants must make a binding commitment to the third parties 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. to permanently remove the infringing products referred to in section I.1 from the distribution channels by requesting the defendants, under the premise that this court has found that the products infringe European patent EP 2 476 814 B1, third parties who are commercial customers but not end users to cancel all orders relating to the products referred to in section I.1 and to submit to the court and the Claimant, within 30 days of delivery of the notification within the meaning of R. 118 (8) S. 1 RoP and, if applicable, the certified translation.
4. to provide the claimant with information on the extent to which it has committed the acts referred to in point I.1 since 5 June 2021, in the form of a structured list of the following information for each month of a calendar year and the 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 media, 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 achieved , whereby as proof of the information the

corresponding purchase receipts (namely invoices, alternatively delivery notes) must be submitted in copy form, whereby details requiring confidentiality may be blacked out outside the data subject to disclosure;

5. to pay the claimant an amount of EUR 120,000 as provisional damages.
6. It is hereby determined that the defendants are obliged to compensate the claimant for any further damages incurred or to be incurred in the future for all past and future actions pursuant to Section I.1 since 5 June 2021.
7. In the event of any violation of
 - a) the orders under Section I.1, the defendants shall pay a repeated penalty of at least EUR 10,000.00 per infringing product;
 - b) in the event of any violation of the order pursuant to the application under I.2 and I.3, a recurring penalty payment of at least EUR 500.00 per day for each day of the violation;
 - c) in the event of any infringement of the order pursuant to the application under Section I.4, a repeated penalty payment of at least EUR 250.00 per day for each day of the infringement to be paid to the court.

II. The defendants shall bear the costs of the legal proceedings.

III. The judgment is provisionally enforceable. In the event that a security order is made, the claimant is permitted to provide this in the form of a bank or savings bank guarantee, and the amount of the security shall be determined separately for the individual enforceable parts of the judgment, with the following individual amounts being proposed:

Cessation: EUR 600,000 Recall &
removal: EUR 200,000 Information:
EUR 80,000
Provisional damages: EUR 120,000

12 The defendants request:

1. The action be dismissed in its entirety.
2. In the alternative:

- a. The action is dismissed insofar as it is directed against the defendant and counterclaimant 3).
- b. The defendant and counterclaimants 1) to 4) reserve the right to recall, permanently remove from distribution channels and provide information within a period of 30 days after delivery of the notification within the meaning of R. 118.8 sentence 1 UPC Agreement-RoP and, if necessary, the certified translation.
- c. The defendant and counterclaimants 1) to 4) reserve the right to bring the contested embodiments into a state that does not infringe European Patent EP 2 476 814, instead of recalling them.
- d. The defendant and counterclaimants 1) to 4) reserve the right to disclose information on costs, broken down by individual cost factors and profits generated, and copies of purchase receipts, namely invoices or delivery notes, only to the plaintiff's representative, Mr Sönke Scheltz, and the plaintiff's representative is subject to an appropriate duty of confidentiality.
- e. The decision or order awarding the plaintiff and counter-defendant provisional damages is made conditional upon the plaintiff and counter-defendant providing the defendants and counter-plaintiffs 1) to 4) with security in the amount of 120% of the respective amount to be enforced.
- f. In the event of a breach of a court decision or order, the defendants and counterclaimants 1) to 4) shall not be subject to a minimum penalty payment, but rather a penalty payment without a minimum amount, or alternatively a minimum penalty payment of EUR 500.00 per day with regard to recall and removal and a minimum penalty payment of EUR 250.00 per day with regard to information.
- g. Decisions and orders are only enforceable against the defendants and counterclaimants 1) to 4) after the claimant and counter-defendant has notified the court of which part of the decisions or orders it intends to enforce and, if applicable, has submitted a certified translation of the orders into the official language of the Member State of the contract in which enforcement is to take place, and after the notification and, if applicable, the

(respective) certified translation has been served on the respective defendant and counterclaimant.

- h. Decisions and orders are made conditional upon the claimant and defendant providing security in the amount of EUR 1,100,000.00 to the defendants and counter-plaintiffs 1) to 4).

COUNTERCLAIM

- 13 The defendants request that

that European patent EP 2 476 814 be declared invalid in its entirety with effect for the territories of the contracting parties to the Agreement on a Unified Patent Court in which it enjoys protection, namely with effect for Denmark, Germany, Austria and Sweden.

- 14 The claimant requests, in accordance with its document of 29 January 2025,

that the counterclaims for revocation of EP 2 476 814 be dismissed with costs.

APPLICATIONS FOR AMENDMENT OF THE PATENT

- 15 The claimant requests, in the alternative

1a. that the counterclaim for revocation of EP 2 476 814 be dismissed with costs insofar as it goes beyond the amended version of the patent in suit in accordance with auxiliary requests I to V, 0a and Ia to Va, whereby the applications for amendment of the patent at issue are to be considered in the order 0a, I, Ia, II, IIa, III, IIIa, IV, Iva, V and Va, and are to be made in the form of closed sets of claims.

1b. to grant the applications announced in the statement of claim for infringement of the patent at issue against defendants 1) to 4), with the proviso that the wording of the claim reproduced on page 2f. in the application under item I.1. is drafted in accordance with the auxiliary application deemed legally valid by the Chamber.

- 16 Furthermore, the claimant requests, in accordance with the document of 13 May 2025 and Rule 30.2 of the RoP, that the auxiliary requests I.1. and I.1.a. for amendment of the patent be admitted.

- 17 The defendants oppose the Claimant's application of 13 May 2025 to amend the patent.

KEY POINTS OF DISPUTE AND SUMMARY OF THE PARTIES' SUBMISSIONS

A. Scope of protection

Subject matter of claim 1

- 18 The claimant is of the opinion that claim 1 protects an attic staircase which is characterised in particular by the fact that the hatch cover is not a load-bearing element. The load-bearing function is performed by the frame to which the multi-part folding staircase is attached. The load-bearing function of the frame within the meaning of the patent at issue means that the load of the multi-part folding staircase, the associated hinge, and the hatch cover is borne by the frame. Conversely, the lack of a load-bearing function of the hatch cover means that the staircase is not anchored to the hatch cover. Since the hatch cover is not a load-bearing element, it can be easily replaced without having to dismantle the entire ladder or change the load-bearing structure of the ladder.
- 19 In addition, the hatch cover could thus be made of a heat-insulating material that did not have to perform a load-bearing function. This ensured a low weight, so that a suitably designed hatch cover could be easily lifted and installed by one person. The hatch cover must therefore be formed by the insulating foam core without relying on a wooden or metal structure to ensure the stability of the hatch cover. The cladding or lamination is designed as a thin layer for a better appearance and to protect against moisture.
- 20 A multi-part folding staircase is understood to be one in which the individual stair elements can be folded together, but not shifted relative to each other. The patent at issue does not provide any indication of a different understanding, which is also clarified by the drawings of preferred embodiments. With regard to the design of the hinge, the patent at issue does not provide any specific specifications in its claim 1. This is attached to the fastening section of the frame and the hatch cover is in turn attached to the hinge.
- 21 The defendant is of the opinion that the hatch cover, which is pivotably connected to the fastening section by means of a hinge, is of central importance for solving the technical problem of improving thermal insulation. This hinge is of essential importance. In order to ensure the sealing function, the hinge must be a joint with two legs and an axle section between them, whereby the two legs rotate around a fixed axis located in the axle section and the hatch cover and fastening section rest on one leg of the joint respectively

joint, and the axle section of the joint closes the remaining gap between the hatch cover and the fastening section. As a result, according to the invention, the hatch cover performs a pure rotational movement around the fixed axis of rotation of the hinge when opening and closing. The same follows from the prior art referred to in the patent at issue, JP H09 328982 A, as well as claims 2, 3 and 11 and the associated description. Furthermore, the hatch cover is essentially made of heat-insulating material if the weight of the heat-insulating material is significantly greater than half the weight of the hatch cover. Therefore, only cladding or lamination that is significantly lighter than the heat-insulating material can be considered.

B. Infringement action

Realisation of claim 1 of the patent at issue

- 22 In the claimant's view, the contested embodiments directly and literally implemented claim 1 of the patent at issue. In the contested embodiments, the hatch cover is not a load-bearing element and is essentially formed from heat-insulating foam. Since the patent at issue does not protect any particular design of the hinge, the multi-joint hinge present in the contested embodiments also makes use of the teaching of the patent at issue. The covering of a gap by a section of the hinge is just as irrelevant as whether the hatch cover performs a translational movement in addition to the rotational movement characteristic of a swing. Furthermore, the design of the hinge in the contested embodiments means that the gap between the hatch cover and the frame is as small as possible.
- 23 In the defendant's view, there is no direct infringement of claim 1 because the hatch cover of the contested embodiments is a load-bearing element and does not have a hinge as provided for in the patent at issue. Furthermore, depending on the interpretation given in the context of the design, the hatch cover is not essentially made of heat-insulating material. Depending on the model and size, the weight of the polystyrene panel of the contested embodiments is between around a quarter (LME) and around a third (LMT) of the total weight of the respective floor access panel, while the HDF panels and ABS edges together account for between around three quarters (LME) and around two thirds (LMT) of the total weight.

Passive legitimacy

- 24 The claimant is of the opinion that the defendants offer the contested embodiments and market them in Germany, Austria, Denmark and Sweden in accordance with Art. 25(a) UPCA. The fourth defendant is possibly the manufacturer that supplies the contested embodiments to its respective subsidiaries. The defendants are knowingly and willingly cooperating in the offering and placing on the market.
- 25 The claimant argues that the first defendant offers and markets the contested embodiments in Austria in accordance with Art. 25(a) UPCA. The offering is evident from the first defendant's website, where the LME Energy Efficient and LMT Super Thermo models can be ordered for delivery in Austria.
- 26 The second defendant offers and markets the contested embodiments in Germany in accordance with Art. 25(a) UPCA. The contested embodiments are offered in its official product catalogue for loft ladders in Germany (Exhibit ES 9). This catalogue is aimed directly at German customers, as it can be downloaded in German from the German website of the second defendant and accessed online.
- 27 With regard to the third defendant, there is at least a risk of first infringement for offering and placing the contested embodiments on the market in Denmark by the third defendant pursuant to Art. 25(a) UPCA. The third defendant already offers loft ladders in Denmark, as can be seen from the price list for loft ladders for February 2024 (Danish: "Prisliste February 2024 Lofttrapper, Hemsestiger & Skunklemme"), available on its website (Exhibit ES 14), and the product overview for loft ladders on the website of defendant 3 (Exhibit ES 15). According to this, metal loft ladders with special insulation properties ("Thermo") are also sold in Denmark. The contested embodiments would therefore fit seamlessly into the product range of the defendant 3) , and the third defendant could at any time offer and sell the contested embodiments manufactured and supplied by the fourth defendant manufactured and supplied by the fourth defendant in Denmark. In addition, the third defendant's website is linked to the fourth defendant's website fakro.com via the country selection menu, meaning that the products offered on this website – fakro.com – are also aimed at Danish customers. In this respect, defendants 3) and 4) are acting jointly within the meaning of Art. 25(a) UPC Agreement. The fact that defendant 3) does not (yet) reproduce the contested embodiments on its own country-specific website does not preclude this. This is because, by linking to the website of the fourth defendant, it adopts the offer made by the fourth defendant on the website fakro.com as its own.

- 28 The fourth defendant offers the contested embodiments, at least jointly with the first to third defendants, in Germany, Austria, Denmark and Sweden and places them on the market and/or imports them into these countries for the purpose of placing them on the market, Art. 25(a) UPCA. This is done by the fourth defendant manufacturing the contested embodiments in Poland and then delivering them (or being able to deliver them at any time) to the companies of the FAKRO Group, including in Germany, Austria, Denmark and Sweden, from where the products are further distributed. The products are manufactured, among other places, at the defendant's factory in Nowy Sacz, Poland. This is evident from a video documentary about the defendant, which is available on YouTube. Following manufacture in Poland, the products are delivered by the defendant to the individual countries. There is also a risk of first-time infringement for the placing on the market and/or importation by the fourth defendant into Sweden. The company Nordiska Fönster, Lagegatan 24, 262 71 Ängelholm (hereinafter: FAKRO Sweden), already sells windows and accessories from defendant 4 in Sweden on the website www.fakrosverige.se (see screenshot of the website as Annex ES 19). This shows that the marketing and product portfolio of FAKRO Sweden corresponds to that of the FAKRO Group, in particular defendants 1), 2) and 4). On the FAKRO Group's website, www.fakro.com, FAKRO Sweden is listed as the official distribution partner for FAKRO products in Sweden (Exhibit ES 20). The contested embodiments can therefore be seamlessly integrated into the existing product portfolios of both FAKRO Sweden. It can therefore be assumed and is to be expected that the fourth defendant can supply the contested embodiments to FAKRO Sweden at any time in order to offer and further distribute the products through the companies there in Sweden.
- 29 The defendants argue that the fourth defendant is not the parent company of FAKRO Sp. z o.o. and does not manufacture the contested embodiments itself. It is purely a distribution company. Nothing else can be inferred from the video referred to by the claimant in Annex ES 18. As the claimant itself argues, the video only mentions "FAKRO" or a "FAKRO factory", not the fourth defendant. The fourth defendant also did not supply the contested embodiments to the third defendant in Denmark, to Nordiska Fönster in Sweden or to any other companies in Denmark or Sweden. Nor does the defendant
- 4) in Nordiska Fönster, an independent distribution company that does not belong to the FAKRO Group.
- 30 Defendant 1) sells loft ladders exclusively in Austria, Defendant 2) exclusively in Germany and Defendant 3) exclusively in Denmark. In particular, their respective websites do not provide for the possibility of ordering to other countries.

- 31 While defendant 1 does in fact offer the attic stairs in question on its website and has sold a single unit – apparently to a straw man acting on behalf of the Claimant (see Exhibit ES 12) Defendant 2) only advertised them temporarily in a product brochure that was available on its website until 21 August 2024. At that point in time, the relevant product brochure was removed from its website as a result of the service of the statement of claim. The statement by an employee documented in Exhibit ES 13 does not correspond to the facts. In particular, the contested embodiments were not delivered to the DIY store mentioned. It is undisputed that defendant 3) never distributed the loft ladders in question, in particular did not offer, sell or even advertise them. The same applies to Nordiska Fönster. In particular, it is undisputed that the Danish-language price list submitted as Exhibit ES 14 refers exclusively to other loft ladders. The same applies indisputably to the Danish-language internet extract submitted as Annex ES 15. The Swedish-language internet extract submitted as Annex ES 19 does not, as far as can be seen, contain any content relating to loft ladders at all.

Claims and legal consequences Specificity

- 32 The defendant complain that the statement of claim suffers from significant deficiencies and violates fundamental principles of procedural law. The applications are not sufficiently specific, as according to the claimant's submission, the action is also directed against "other models or variants that are identical or essentially the same in design as those mentioned". This means that it is not clear which structure is meant and what is meant by core similarity. The term "third party" in the context of the recall is also not defined in more detail, nor is the wording of the costs and products to be reimbursed. The same applies to the specification of the "data of the products offered", as the term "data" is incomprehensible without further explanation of the content. Furthermore, the statement of claim lacks the date and place of alleged or threatened infringements, and the claimant's submission is limited, insofar as it concerns the contested embodiments, exclusively to legal assertions.

Recall

- 33 In the defendants' view, the application for recall is too broad, as an unrestricted order to recall is disproportionate. The defendants could render the allegedly patent-infringing embodiments non-infringing by replacing their bottom closure flaps. Subsequent replacement of the hatch cover was readily possible. They also took the view that, under Article 64(2)(b) of the UPC Agreement, the recall could not be directed at any third parties, but only at commercial customers, as it expressly referred to their recall from the

distribution channels. Furthermore, there is no time limit and no deadline for carrying out the recall.

Removal

- 34 The defendant argues that removal from the distribution channels on the day of delivery of the notification pursuant to R. 188.8 sentence 1 RoP is impossible or, in any case, unreasonable.

Information

- 35 Apart from its vagueness, the claim for information is also too broad. The right to information pursuant to Art. 67(1)(a) to (c) of the UPC Agreement extends only to the information requested in claim I. 4. a) to c). The claim under I. 4. d) to f) and the subsequent application for the submission of evidence lack a legal basis and, if such a basis were to be mistakenly found in R. 191 RoP, the requirements for such a basis are not met. The information sought under claim I. 4.

d) to f) and the requested evidence are not covered by Art. 67(1)(a) to (c) UPC Agreement, even according to the decision of the Düsseldorf local division (see UPC Agreement, GRUR-RS 2024, 17732) cited by the claimant itself as a reference for its claim.

- 36 If the claim under I. 4. f) or the subsequent application for the submission of evidence were to be upheld – as is not the case (see above) – in accordance with R. 191(1) Alt. 2 RoP, the defendants would have to disclose highly sensitive information and evidence without the claimant having fulfilled the stricter requirements of R. 141 RoP in conjunction with R. 131 RoP. This information and evidence concerns the defendants' internal affairs and their customer data and thus sensitive economic data of both the defendants and third parties. Disclosure to the claimant could lead to the claimant, as a direct competitor, exploiting this information for its own economic purposes in order to analyse the defendant's business activities and customer orders. It would then be easy for the claimant to submit offers on more favourable terms, for example, i.e. to specifically poach the defendant's customers by exploiting its information advantage.

- 37 Furthermore, the claim under I. 4. again does not specify a deadline for providing the information. Providing the information on the day of delivery of the notification in accordance with R. 118.8 sentence
RoP is likely to be impossible or at least unreasonable. The Düsseldorf local division has granted a subsequent period of 30 days for this purpose.

Provisional damages

- 38 Insofar as the claimant seeks the award of provisional damages pursuant to R. 119 RoP for the anticipated court and solicitor's fees for determining the amount of damages, there are already insufficient grounds in favour of the claimant for a discretionary decision. Furthermore

, the provisional damages sought in the amount of EUR 120,000.00 are completely excessive. Furthermore, even lower provisional damages would only be awarded under certain conditions and, alternatively, a security deposit.

Determination of liability for damages

- 39 The claim for a declaration of liability for damages under I.6. goes too far, at least because it does not contain any time limit. It would therefore also cover any products offered, placed on the market or imported or possessed for these purposes prior to the granting of the patent at issue. There is no entitlement to this.

Setting of penalty payments

- 40 There is no claim for the (minimum) setting of penalty payments in accordance with claim I. 7. Penalty payments may only be threatened as such in the decision on the merits. Furthermore, the minimum penalty payments requested would also be unreasonably high.

C. Counterclaim for annulment

Main claim

- 41 The defendant are of the opinion that the patent at issue is invalid to the extent of the relevant main claim.
- 42 In the defendant's view, the subject matter of claim 1 of the patent at issue goes beyond the content of the application as originally filed (Annex A 2) within the meaning of Article 123(2) EPC (Art. 138(1)(c) EPC). Claim 1 goes beyond the content of the original disclosure, as the claim does not stipulate that the hatch cover has no frame. This is an essential feature in the context of the description of the hatch cover according to the invention. Furthermore, there is an intermediate generalisation, as the specific design of the order of the fastening section "on an inner section" of the frame has not been included in the claim. This is described in the original application. Similarly, there was an inadmissible extension in addition to a lack of comprehensibility and feasibility, since features that are specifically related to the supporting frame and the hatch cover as a non-supporting element had not been included in the claim. In addition to its load-bearing function, the frame should also be entirely responsible for connecting the fastening section and the stairs to the opening, which was not part of the claim. The defendant also complained that features related to the design of the stairs, such as rungs,

the ability to pivot through the frame and the ability to close the hatch cover, were not included in claim 1.

- 43 The patent at issue should also be declared invalid due to lack of feasibility in accordance with Art. 138(1)(b) EPC and Art. 65(2) UPC Agreement. Claim 1 is not sufficiently disclosed to enable a person skilled in the art to put its subject matter into practice. There is a lack of feasibility with regard to the one-piece design of the hatch cover and the load-bearing and non-load-bearing properties of the frame and the hatch cover.
- 44 Furthermore, the subject matter of the patent is not new (Article 54 EPC in conjunction with Article 138(1)(a) EPC). Since the patent at issue does not effectively claim the priority of the earlier utility model application DE 20 2011 001 576 (Annex A 3), this precludes the novelty of the teaching according to the patent at issue. The priority was not effectively claimed because the load-bearing property of the frame and the hatch cover as a non-load-bearing element were not disclosed anywhere in the priority document. Furthermore, the teaching lacked novelty due to the obvious prior use of "Columbus" (Annexes NK 4 and NK 5). Columbus-Treppen GmbH had already published loft ladders, in particular the "Exklusiv" loft ladder, before the priority date of the patent at issue. This anticipates all the features of claim 1 in a manner detrimental to novelty. The same applies with regard to the prior use of "Dolle alu-top" (Exhibit NK 6).
- 45 Furthermore, the patent at issue is not new with regard to German utility model 20 2011 001 575 U1 (Exhibit NK 22) and European patent application EP 2 476 813 A2 (Exhibit NK 23). Although both documents were submitted after the filing of the counterclaim for annulment, defendant No. 4 did not inform the patent attorneys involved of the two documents until 2 December 2024 and requested that they be examined. Two search agencies that had been commissioned were unable to locate the two documents. The two documents must be taken into account in accordance with Art. 41(3), Art. 42 UPC Agreement, R. 9.2 RoP. In any case, the requirements for admitting an extension of the action in accordance with R. 263 RoP are met.
- 46 Claim 1 is also not based on an inventive step, taking into account the prior art and specialist knowledge, and is therefore also invalid (Art. 56 in conjunction with Art. 138(1)(a) EPC). The same applies in view of Annexes NK 7 and NK 14 as well as NK 4 and NK 6. Claim 1 also lacks inventive step based on the prior use of "Wippro GM-4 Isotec" (Annex NK 1). Wipplinger GmbH & Co. KG had already launched very similar loft ladders on the market before the priority date of the patent at issue. For a person skilled in the art, it would have been obvious to replace the rock wool insulation used there with a foam core. The selection

of an alternative insulation material was not inventive for several reasons, namely taking into account the technical knowledge or NK 3 or also on the basis of further documents from the prior art. Furthermore, there was no inventive step based on JP 2000-336 920 A (Annex NK 7), taking into account NK 13 or further documents from the prior art. The same applies based on US 2009/0241434 A1 (Annex D 5), taking into account the technical knowledge or NK 14 or other documents from the prior art.

- 47 The claimant responds that there is no intermediate generalisation. Insofar as the defendants refer to a lack of specificity regarding the fastening section, this does not constitute an inadmissible intermediate generalisation, as the order on an inner section of the frame is merely an example of implementation. The reference to a lack of specificity of the stairs in the claim is equally unhelpful. This is because the type of stairs and their fastening are not inextricably linked to the order of a large number of rungs on the stairs. Rather, the type of stairs and their use are technically independent of the manner in which a tread is provided for the user. The load-bearing function of the frame and the hatch cover as a non-load-bearing element is also disclosed in the priority application. Ultimately, the failure to mention a frame that is not to be provided for the hatch cover in the claim does not constitute an inadmissible intermediate generalisation, since such a frame should not be present if the claim is interpreted correctly.
- 48 There are no indications that the subject matter of the patent in suit is not feasible.
- 49 The patent at issue would also prove to be new. The priority of A 3 was effectively claimed. The attachment of the hatch cover and the stairs to the frame was disclosed in A 3. Therefore, A 3 did not prejudice the novelty of the patent at issue. The defendant's attacks on the novelty of the patent at issue, based on Annexes NK 22 and NK 23, are belated and must therefore be rejected. Irrespective of this, the attacks are also unfounded, as they do not constitute prior art that can be taken into account due to the same priority date as the patent at issue. The patent at issue is also new in relation to the alleged prior public use of "Columbus 'Exklusiv'". The public nature of the prior use has not been sufficiently proven. In any case, the disclosure of a scissor staircase does not disclose the feature of a multi-part folding staircase. Furthermore, there is no disclosure of a non-load-bearing hatch cover and the formation thereof essentially from a heat-insulating material. This is because the design of the hatch cover with two solid blockboard panels adjacent to a PU foam core results in a significantly higher total weight of the hatch cover. The same applies to the

claim of obvious prior use "Dolle alu-top". Here, too, it is a scissor staircase with a support arm connecting the hatch cover to the frame, so that it is load-bearing. Furthermore, here too, the hatch cover is made of blockboard with PU foam.

- 50 Claim 1 is also inventive in relation to the cited prior art. There is no reason for a person skilled in the art to combine the documents cited by the defendant.

LEGAL ASSESSMENT

A. Admissibility

- 51 The infringement action is admissible. The international jurisdiction of the Hamburg local division is based on Article 31 of the UPC Agreement in conjunction with Article 71b(1) in conjunction with Article 4, Article 7(2) of Regulation (EU) No 1215/2012 (hereinafter: Brussels Ia Regulation). Pursuant to Article 32(1)(a) of the EPC, the Unified Patent Court (UPC) also has exclusive jurisdiction over actions for actual or threatened infringement of European patents. The jurisdiction of the UPC is not excluded in the present case pursuant to Article 83(3) of the UPC Agreement. The claimant has not made any declaration to the effect that the exclusive jurisdiction of the court is excluded. Since the defendants did not file any preliminary objection within the opposition period, both the jurisdiction of the UPC pursuant to Rule 19.1(a) of the RoP and the jurisdiction of the local division in Hamburg pursuant to Rule 19.1(b) of the RoP are deemed to have been accepted, Rule 19.7 of the RoP.
- 52 The statement of claim does not violate Rule 13.1 (k) of the RoP in conjunction with Article 76(1) of the UPC Agreement. According to the aforementioned provisions, the applications contained in the statement of claim must satisfy the requirement of specificity. The defendant argue that this is not the case insofar as, according to the claimant's submission, the action is also directed against "further models or variants which are identical or essentially identical in structure to those mentioned". This is because it is neither clear what structure is meant nor how the defendant wishes the term "essentially identical" to be understood.
- 53 In this regard, it is questionable how the defendants want the contested embodiments to be specified in more detail. Two contested embodiments were highlighted as examples, and it is common practice that this also includes embodiments whose modification takes place outside the characteristics of claim 1 (Court of Appeal, UPC_CoA_382/2024, decision of 14 February 2025). If an injunction is not limited to specific products, it can also be requested accordingly.
- 54 Equally unfounded is the complaint of a violation of the requirement of specificity, as the term "third party" was not defined in more detail, as well as

the further complaints that costs to be reimbursed must have been "incurred" and packaging and transport costs to be borne must have been "incurred". In the defendant's view, it is also unclear whether "products" means the same thing as "infringing products". The wording of the applications is in line with current case law at the UPC (see local division Düsseldorf, decision of 3 July 2024, UPC_CFI_7/2023). Furthermore, the term "third parties" is not unclear, as it refers to the parties in possession of the infringing products. Nor is there any apparent ambiguity with regard to the costs. This is because the costs incurred by the recall are at issue. The question of the data on the products offered under point I.4.d) is also not vague. This is because it is clear from the overall context that this refers to the date of the respective offer.

- 55 With regard to the defendant's further criticism that there is no indication of the date and place of the infringement and no submission of facts that could constitute an infringement of the patent claims, the claimant has indeed not explicitly highlighted this. However, its submission clearly indicates both the time and place of the alleged infringement. Furthermore, facts were presented to substantiate an act of infringement by referring to the defendant's website and sales brochures, thus not merely making legal assertions.
- 56 The counterclaim for revocation of the patent at issue is also admissible. Pursuant to Art. 32(1)(e) UPC Agreement, the UPC Agreement has exclusive jurisdiction over counterclaims for revocation of (European) patents for which – as in this case – the exception provided for in Art. 83(3) UPC Agreement does not apply. The international jurisdiction of the UPC follows from Art. 31 UPC Agreement in conjunction with Art. 24(4), 71a(2a) and 71b(1) of the Brussels Ia Regulation.

B. Scope of protection of the patent at issue

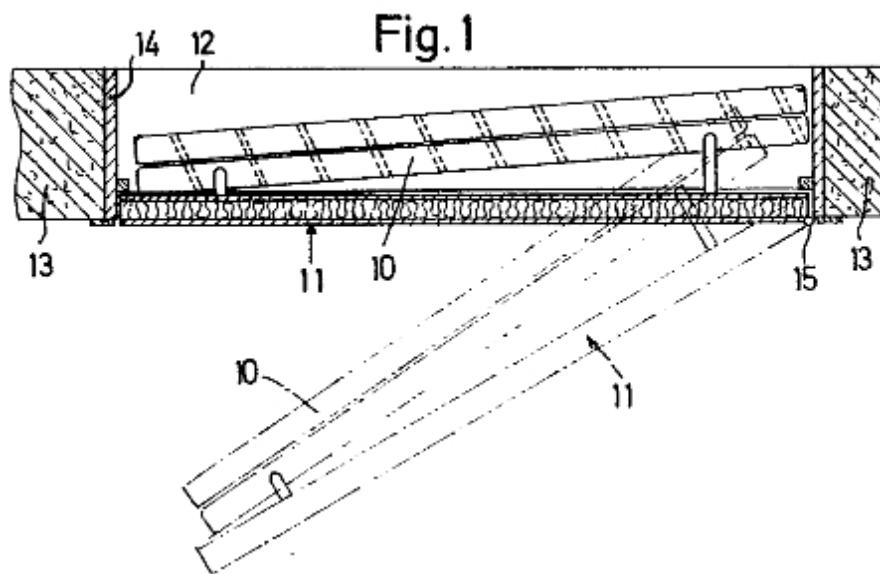
I.

- 57 According to paragraph [0001], the patent at issue relates to an attic staircase for ordering or closing an opening formed in a ceiling or floor, with a frame, a fastening section, a hatch cover and a hinge, as well as a multi-part folding staircase.
- 58 Regarding the background of the invention, the patent at issue explains in paragraph [0002] that loft ladders of the above-mentioned type are often used as closing devices to close an opening formed in a ceiling or floor. The opening is formed in a ceiling or floor of a building and the floor closing device and loft ladder used there

. In such cases, the loft ladders are usually designed to be foldable and are typically used in houses where space is limited. These foldable loft ladders can usually be swung through an opening in the ceiling or loft and are ordered above the opening when folded.

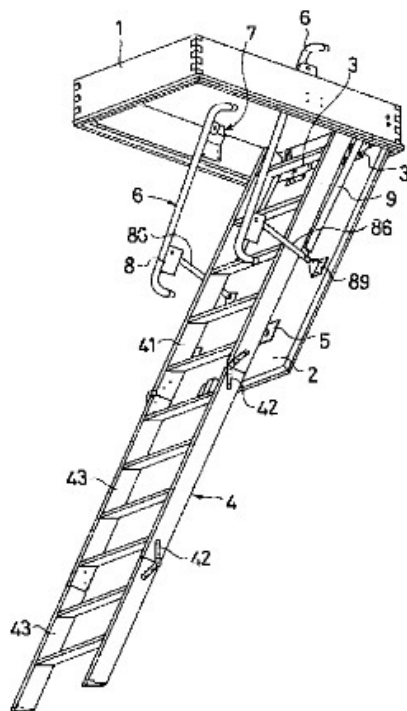
- 59 As explained in paragraph [0003] of the patent at issue, these well-known loft ladders are usually attached to the opening in a manner that allows them to be swung open using conventional hinges, as are known from conventional loft hatches.
- 60 The patent at issue explains that floor closure devices known from the prior art can be installed in one of two ways: According to a first alternative, the floor closure device is completely pre-assembled and then mounted as a whole on the ceiling, in particular screwed to a section of the opening. With regard to this type of installation, the patent at issue considers it disadvantageous that the weight of the floor closure device is rather high and cannot be carried out by a single person without considerable effort. In addition, occupational safety regulations in many countries prevent this type of installation. A second option is described in which the closure device is not pre-assembled, but instead the fastening section is prepared first, then the hinge and the hatch cover are attached, and only finally are the stairs that move up and down with the floor closure device installed. The patent at issue considers the number of work steps and the associated time required for installation to be a disadvantage (para. [0004]).
- 61 The patent at issue also considers it a disadvantage of conventional floor closure devices with conventional hinges and conventional hatch covers that such hinges are usually made of metal and often have gaps, albeit small ones, which negatively affect the thermal insulation capacity of a conventional hatch cover (para. [0005]).
- 62 The patent at issue refers to DE 28 30 317 A1, which discloses a swing-out loft ladder that is attached to a stair plate in such a way that it can be pulled out and pushed in. The staircase panel is hinged with one edge to a frame built into the opening in a room ceiling. The staircase panel is constructed from two outer, load-bearing, flat layers in the form of chipboard and an inner, heat-insulating layer (para. [0006]). Figure 1 of DE 28 30 317 A1 (D3) is reproduced below, showing a longitudinal section through the loft ladder with staircase panel installed in the opening of a room ceiling.

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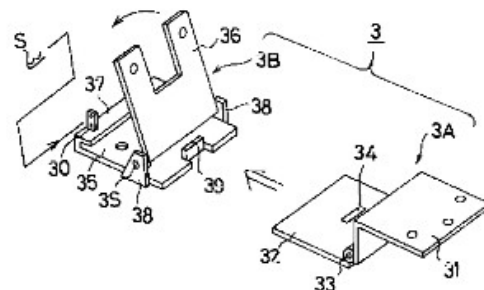


- 63 JP H09 328982 A, to which the patent at issue also refers for clarification of the prior art, discloses an attic staircase in which the staircase is attached to the load-bearing hatch cover. The hatch cover is attached to a frame via a hinge and a fastening section (para. [0007]). A design of the loft ladder together with the hinge is shown in Figures 1 and 2 below.

【図1】



【図2】



- 64 DE 26 05 596 A1 shows a device for folding and unfolding a retractable staircase in conjunction with a tilting flap as access to a higher

living space, such as a roof truss or attic. Furthermore, devices for folding and unfolding are provided (para. [0008]). AT 004 864 U1, to which the patent at issue also refers, discloses an attic staircase with a load-bearing hatch frame to which both a hatch cover and a folding ladder are hinged. An actuator for the folding movement is also provided.

- 65 The patent at issue describes the task of the invention as specifying an attic staircase which is improved with regard to at least one of the aforementioned problems (para. [0010]).
- 66 To solve this problem, the patent at issue proposes in claim 1 an attic staircase with the following features (para. [0011]):

1.1	Attic staircase (1) which is designed to be installed in an opening in a room ceiling arranged to and and this as as a floor closure device,
1.2	with a frame (10) for insertion into the opening, which designed to be placed in the opening,
1.3	a fastening section (4),
1.4	a hatch cover (6),
1.5	and a multi-part folding staircase (2) pivotally attached with its upper end to the inside of the frame (10),
1.6	wherein the frame (10) is designed to be load-bearing,
1.7	and wherein the hatch cover (6) is not a load-bearing element,
	characterised in that
1.8	the fastening section (4) is arranged on the frame (10),
1.9	and the hatch cover is pivotably connected to the fastening section by means of a hinge (8) fastening section by means of a hinge (8),
1.10	and that the hatch cover (6) is substantially made a heat-insulating insulation material (24)
1.11	and is essentially one-piece,
1.12	wherein the hatch cover (6) is formed from a foam core,
1.13a	which has an insulating foam or
1.13b	is formed from an insulating foam
1.14	and has a casing or lamination on its outer surface
	.

II.

1. Interpretation principles

- 67 According to Article 69 EPC in conjunction with Article 1 of the Protocol on its interpretation, the patent claim is not only the starting point but also the decisive basis for determining the scope of protection of a European patent. The interpretation

a patent claim, it is not only its precise wording in the linguistic sense that is decisive. Rather, the description and drawings must always be taken into account as aids to interpreting the patent claim and not only to resolve any ambiguities in the patent claim. However, this does not mean that the patent claim serves merely as a guideline and that its subject matter also extends to what, after examination of the description and drawings, represents the patent holder's claim for protection (Court of Appeal, UPC_CoA_335/2023, order of 23 February 2024; UPC_CoA_1/2024, order of 13 May 2024; UPC_CoA_182/2024, order of 25 September 2024; UPC_CoA_382/2024, order of 14 February 2025; Central Chamber Munich, UPC_CFI_1/2023, decision of 16 July 2024; Local Division Paris, UPC_CFI_230/2023, decision of 4 July 2024; Local division Munich, UPC_CFI_233/2023, decision of 31 July 2024; Local division Hamburg, UPC_CFI_54/2023, decision of 26 August 2024; Local division Düsseldorf, UPC_CFI_363/2023, decision of 10 October 2024; Central Chamber Paris, decision of 5 November 2024, UPC_CFI_309/2023; local division Mannheim, UPC_CFI_340/2023, decision of 31 January 2025; local division Hamburg, UPC_CFI_58/2024, decision of 19 February 2025). Patent claims and the description explaining them, as well as drawings, are to be interpreted as a meaningful whole.

- 68 The patent claim must be interpreted from the perspective of a person skilled in the art. When applying these principles, adequate protection for the patent proprietor should be combined with sufficient legal certainty for third parties. These principles for interpreting a patent claim apply equally to the assessment of infringement and the legal validity of a European patent. This follows from the function of patent claims, which, according to the European Patent Convention, serve to define the scope of protection of the patent under Article 69 EPC and thus the rights of the patent proprietor in the designated Contracting States under Article 64 EPC, taking into account the requirements for patentability under Articles 52 to 57 EPC (Court of Appeal, UPC_CoA_335/2023, order of 26 February 2024, UPC_CoA_1/2024, order of 13 May 2024; UPC_CoA_182/2024, order of 25 September 2024; UPC_CoA_382/2024, order of 14 February 2025; Munich local division, UPC_CFI_443/2024, decision of 25 November 2024).
- 69 The expert always interprets a feature of a patent claim in the light of the claim as a whole (Court of Appeal, UPC_CoA_335/2023, Order of 26 February 2024, UPC_CoA_1/2024, Order of 13 May 2024, UPC_CoA_297/2024 Order of 3 December 2024, UPC_CoA_768/2024, Order of 30 April 2025; Central Munich, UPC_CFI_1/2023, Decision of 16 July 2024; Chamber local division Munich, UPC_CFI_443/2024, Decision of 25 November 2024; Local division Düsseldorf, UPC_355/2023, decision of 28 January 2025). From the function of the individual feature in the context of the entire patent claim, the skilled person will deduce which technical function the feature has individually and as a whole

In view of the terminology used in a patent specification, this may lead the skilled person to attribute a meaning to a term that differs from its general usage. The patent specification may define terms independently and thus constitutes its own lexicon (Central Chamber Munich, UPC_CFI_1/2023, decision of 16 July 2024; Central Chamber Paris, UPC_CFI_309/2023, decision of 5 November 2024).

- 70 The meaning of a subclaim can in principle contribute to the correct interpretation of the main claim, whereby a subclaim usually only shows the possibility of a particularly advantageous configuration of the main claim (Local Division Munich, order of 25 November 2024, UPC_CFI_443/2024). Examples of embodiments do not, in principle, limit a more extensive claim (Court of Appeal, UPC_CoA_335/2023, order of 26 February 2024; UPC_CoA_8/2024, order of 13 May 2024; UPC_CoA_523/2024, order of 3 March 2025).
- 71 Based on the dispute between the parties, this means the following in the present case:

2. Feature interpretation

- 72 Feature 1.5 protects a multi-part folding staircase that is pivotally attached to the inside of the frame at its upper end. According to common usage, foldable means that something is designed in such a way that it can be unfolded, that it is foldable. Foldability requires that the object to be foldable consists of individual components that can be folded (relative to each other). The patent at issue is also subject to a corresponding understanding.
- 73 This understanding is reached by the skilled person – a mechanical engineer (with a diploma (FH) or bachelor's degree) with several years of experience in the design and development of loft ladders – in the absence of further details in the general description, based on the drawings of preferred embodiments in Figures 2 and 3, which were reproduced at the beginning. The hinges between the stair segments are arranged in such an order that the middle stair segment can be folded upwards onto the upper stair segment and the lower stair segment can be folded downwards onto the middle stair segment in order to fold up and stow the stairs (see Figure 3).
- 74 The expert will find confirmation of this in the introductory explanation of the prior art. Paragraph [0002] refers to "mostly foldable" in relation to loft ladders, while paragraph [0006] refers to a swing-out loft ladder that is attached to a stair plate in such a way that it can be pulled out and pushed in. Paragraph [0008] also refers to a "device for folding and unfolding a retractable staircase". In this respect, the prior art to which the

patent at issue refers to explain the background of the technical teaching, also refers to retractable stairs. The different choice of words "multi-part foldable" as opposed to "retractable" already makes it clear that the patent at issue understands this to mean different designs. Otherwise, there would be no need for linguistic differentiation, as reference could have been made solely to attic stairs. However, by referring to multi-part folding stairs in the claim and also in the preferred embodiments, the patent at issue makes it clear that only these are subject to the scope of protection of the patent at issue. From a technical and functional point of view, it may not make any difference whether a staircase is foldable or slideable. However, technical and functional considerations must not override spatially and physically defined features. Staircases in which joints can be folded together but staircase parts cannot are therefore not covered by the claim.

- 75 Features 1.6 and 1.7, which are also in dispute, stipulate that the frame is designed to be load-bearing, whereas the hatch cover is not a load-bearing element. These two features make it clear which component of the loft ladder is intended to bear the relevant load, namely the frame as opposed to the hatch cover. According to the claim, the frame thus supports a multi-part folding staircase, which is pivotably attached to the inside of the frame at its upper end (feature 1.5), as well as the hatch cover (features 1.8 and 1.9).
- 76 For the skilled person, this means that, in contrast to attic stairs from the prior art described in the patent at issue (see, inter alia, DE 28 30 317 A1 and JP H09 328982 A), it is not the hatch cover that is intended to bear the load when used, e.g. by a user, but the frame to which both the staircase and the hatch cover are connected to the fastening section by means of a hinge. The fastening section is in turn arranged in order on the frame.
- 77 However, the fact that the hatch cover is not a load-bearing element does not mean that it cannot bear any load at all. The hatch cover may bear loads that are lower than the main load, for example, a person climbing up. This is already made clear by the wording "not a load-bearing element". Accordingly, the hatch cover must not be the load-bearing element, but this does not exclude it from bearing certain minor loads. This is illustrated in Figures 1, 2, 11 (above) and 17, which show a component 20 hinged to the hatch cover and connected to the ladder. Accordingly, despite the spring-loaded mechanism shown in Figures 1, 2 and 17, with articulated levers (reference numerals 18 a/b) to

weight relief when lifting the stairs, further forces are exerted on the cover. The same is also described in paragraph [0014]:

"Although the dead weight of the loft ladder is not fully noticeable due to the support provided by a spring mechanism, the low weight nevertheless simplifies the handling and use of a loft ladder according to the invention."

- 78 The claimant's view that it is per se unclear whether the embodiment shown in Figure 17 is claimable within the meaning of feature 1.7 is not convincing. The claimant argues in this regard that Figure 17 serves only to illustrate the functioning of a double seal on the bottom closure device. However, there is no evidence for this interpretation in the descriptive paragraph [0059] accompanying the figure, nor in paragraph [0031], which states that Figure 17 shows a further representation of the floor closure device with double seal designed as an attic staircase according to the invention.
- 79 Thus, feature 1.7 limits the hatch cover specified there as non-load-bearing only within the scope of feature 1.5, namely that the upper end of the multi-part folding staircase must not be attached to the hatch flap (but to the frame, cf. feature 1.5). Since the other end of the staircase rests on the floor, the operating loads are borne there and at the upper end. Support forces due to operating loads (a person climbing up) must therefore not be absorbed by the hatch cover.
- 80 A hatch cover that meets the requirements can therefore absorb additional loads, such as the tensile and compressive loads when folding the cover down and up together with the hinged ladder, i.e. loads such as those required to operate the ladder for opening and closing. The hatch cover can therefore absorb the weight of other components in addition to its own weight, albeit to a significantly lesser extent than the frame. This is ensured precisely by the fact that the hatch cover is attached to the frame, as is the multi-part folding staircase. When operating loads are applied to the unfolded staircase, these are predominantly absorbed by the frame and not the hatch cover.
- 81 According to feature 1.9, the hatch cover is pivotably connected to the fastening section by means of a hinge. The claim does not provide any details on the specific design of the hinge; it is merely intended to connect the hatch cover pivotably to the fastening section. The patent at issue leaves it to the discretion of the skilled person to decide on the design of the hinge – single-jointed or multi-jointed. More detailed information is only provided in the subclaims. Accordingly, subclaim 3 stipulates that the hinge
(8) has a first (30) and a second (32) leg and a flexible section (34) arranged between the legs (30, 32) so that the first

leg (30) is pivotably connected to the second leg (32). The same is described in paragraph [0018]. Subclaims 2 and 11 and the corresponding passages in the description also explain the hinge and its function in more detail. However, these are specific embodiments that are the subject of subclaims; the broader main claim is not limited to such a design.

- 82 In this respect, the claim does not provide any indication for the defendant's understanding that the hinge is a joint with two legs and an intermediate axle section, whereby the two legs rotate around a fixed, axle-section-located axis and the hatch cover and fastening section rest against one leg of the joint, respectively, and the axle section of the joint closes the remaining gap between the hatch cover and the fastening section. The patent at issue does not make any corresponding specifications. The defendant believe that this can be substantiated by prior art cited in the patent at issue to explain the state of the art, namely JP H09 328982A, from which a drawing of the hinge was reproduced in the introduction. However, the understanding referred to in the prior art is not consistent with the broader wording of the claim and the description, which does not provide any specific details on the design of the hinge in its general description. There are no indications that the patent at issue merely considers a design of the hinge as described in the prior art to be covered by the subject matter of the invention. This is particularly true in light of the fact that the patent at issue does not refer to such a design in the drawings of preferred embodiments.
- 83 Insofar as the defendant asserts that the claim is limited to the hatch cover and fastening section resting against one leg of the joint and the axle section of the joint closing the remaining gap between the hatch cover and the fastening section, there is no support for this in the claim. From a technical and functional point of view, it may make sense to close the gap between the hatch cover and the fastening section in order to achieve sufficient insulation. However, since the claim does not provide any specific details on the design of the hinge, it is left to the discretion of the skilled person to decide how this can be achieved. Even the defendants do not claim that the gap can only be closed by the hinge design described by them.
- 84 Features 1.10 to 1.14 describe the design of the hatch cover in more detail. According to these features, the hatch cover is essentially made of a heat-insulating material and is essentially one-piece, whereby the hatch cover is made of a foam core which has an insulating foam or is made of an insulating foam and has a casing or lamination on its outer surface

The patent at issue thus protects a design in which the hatch cover is essentially formed from a foam core and has only a facing or a laminate on its outer surface. This means that, unlike designs that do not consist essentially of a heat-insulating foam core, the hatch cover has a lower weight, which makes installation considerably easier, especially by a single person. The cover is mainly made of insulating material and lamination or cladding is used only to protect it, either for aesthetic reasons or to prevent deformation. This eliminates the need for a weight-adding frame or panels.

85 This is described in paragraph [0012], which states:

"(...) Thus, according to the invention, a significantly improved thermal insulation property of an attic staircase according to the invention is achieved. Hatch covers, which are essentially made of a heat-insulating material [,] are very lightweight, which makes it much easier to install a floor closure device according to the invention. If the cover is lightweight, one person can align and attach the hatch cover to a mounting section. (...)"

86 Paragraph [0013] further states:

"According to the invention, the hatch cover is essentially designed as a single piece. This greatly simplifies the manufacture of such a hatch cover, and the hatch cover has uniform and good thermal insulation properties. According to the invention, no frame, such as a wooden or metal frame, is provided for such a hatch cover. However, the hatch cover has a cladding, lamination or similar on its outer surface. This further enhances the visual impression and the flushness of the surface. The hatch cover is formed from a foam core, which has an insulating foam or is formed from an insulating foam that has good thermal insulation properties. On its outer surface, this foam core has a thin plastic lamination or cladding that prevents moisture from entering the foam core, protects the foam core from damage and improves its appearance (...)."

87 The expert recognises that the absolute weight of the hatch cover is not decisive in determining whether the hatch cover is essentially made of heat-insulating material. This is because the use of heat-insulating material as a key component automatically reduces the weight of the hatch cover considerably. The lamination or cladding then only makes a minor contribution in terms of weight, in contrast to a frame made of wood or metal. Similarly, the absolute thickness of the insulation material is not decisive. As explained, the decisive factor is that the insulation material the essential component of the

hatch cover and and the lamination/cladding the a subordinate component.

- 88 According to common understanding, lamination is a thin covering layer bonded to the base material, in this case a foam core. This is not limited to plastic; wood, etc. is also possible. Casing of a "substantially one-piece" hatch cover (para. [0042]) is shown in the embodiments, e.g. in the embodiment according to Fig. 6 with two casing elements 26a and 26b on the upper and lower sides of the hatch cover 6.

C. Counterclaims for annulment

- 89 The counterclaim for annulment is unsuccessful. The patent at issue is legally valid in its registered form. The alternative applications for amendment of the patent at issue are therefore irrelevant.

I. Inadmissible extension

- 90 The objection raised by the defendant regarding inadmissible extension is unsuccessful.

1. Principles

- 91 Art. 138(1)(c) EPC provides that a European patent may be declared invalid with effect for a Contracting State if the subject-matter of the European patent extends beyond the content of the application as originally filed or, if the patent was granted on the basis of a divisional application, beyond the content of the earlier application as originally filed (Art. 123(2) EPC). In order to determine whether there has been an inadmissible extension, it must be ascertained what a person skilled in the art, using their general knowledge and objectively, would immediately and unambiguously derive from the entire application as filed at the time of filing, whereby an implicitly disclosed subject matter, i.e. a subject matter that is clearly and unambiguously derived from what is expressly stated, must also be considered part of the content. (Court of Appeal, UPC_CoA_764/2024, decision of 2 October 2025; UPC_CoA_382/2024, order of 14 February 2025; Local Division The Hague, UPC_CFI_131/2024, order of 19 June 2024; Local Division Düsseldorf, UPC_CFI_363/2023, decision of 10 October 2024; Central Chamber Paris, UPC_CFI_316/2023, decision of 17 January 2025; Local Division Mannheim, UPC_CFI_471/2023, decision of 6 June 2025; Local division Hamburg, UPC_CFI_173/2024 and 424/2024, decision of 10 July 2025; Local division Munich, UPC_CFI_248/2024, decision of 22 August 2025).

2. Application

92 On this basis, there is no inadmissible extension of claim 1 of the patent at issue. The subject matter of claim 1 does not go beyond the content of the originally filed version of patent application 11182176.5 (Annex A 2, hereinafter A 2 or Annex A 2).

93 The defendant is of the opinion that features disclosed in connection with the added features 1.12, 1.13 and 1.14 have not been included in the claim. The claim does not contain the wording that the hatch cover has no frame. In contrast, the original application expressly describes that the hatch cover has no frame. On page 9, lines 19 to 25 of A 2, it states as follows (emphasis added):

"According to the invention, no frame, such as a wooden or metal frame, is provided for such a hatch cover. However, the hatch cover may have a cladding, lamination or similar on its outer surface. This further enhances the visual impression and the flushness of the surface. This hatch cover can therefore be formed, for example, from a foam core which has an insulating foam or is formed from an insulating foam which has good thermal insulation properties."

94 The omission of the phrase "no frame" does not constitute an inadmissible extension. Features 1.12, 1.13 and 1.14 stipulate that the hatch cover is formed from a foam core which has an insulating foam or is formed from an insulating foam and has a facing or lamination on its outer surface.

95 However, feature 1.11 of the claim also requires that the hatch cover be essentially one-piece. There is no indication that the essentially one-piece design could also include a frame. This is because, apart from a shell or lamination, the hatch cover only has a foam core. In this respect, it is not apparent that the omission of the negative feature of a missing frame could constitute an inadmissible extension.

96 The defendant also incorrectly assumes that there is an intermediate generalisation due to the inadmissible omission of the features of the fastening section in combination with features 1.1 to 1.4. In the original application, the order of the fastening section in connection with the inner section is disclosed, which is not the case in the features. On page 13, lines 13-19 of A 2, it states as follows:

The floor closure device 1 shown in Figures 1 and 2 has a fastening section 4 which, according to this embodiment, is arranged on an inner section of a frame 10 which is designed to be ordered in an opening, also called a hatch, in a room ceiling or floor (room ceiling and opening not shown). In addition, the floor closure device 1 has a hatch cover 6 which is pivotably connected to the fastening section 4 of the floor closure device 1 by means of a hinge 8.

97 This passage explicitly states that the fastening section is ordered on an inner section of the frame. However, this is only an example of implementation, as is already clear from the reference to Figures 1 and 2.

98 In contrast, page 5, lines 24 ff. of A 2 provides a more general description:

According to a further preferred embodiment, the floor closure device has a frame for insertion into the opening, whereby the fastening section and/or the holding device are ordered on the frame.

99 Here, an order of the fastening section on the frame is disclosed in general terms, so that no inadmissible extension can be identified in the general wording of features 1.1 to 1.4. This is not contradicted by the line of text on page 13 cited by the defendant, together with the description of the figure, as this is merely an example of an embodiment, i.e. an example of the technical solution described more generally on page 5.

100 The defendant are of the opinion that features 1.6 and 1.7 have been included in claim 1 in a vague and unspecific form. This is not the case.

101 Features 1.6 and 1.7 stipulate that the frame is designed to be load-bearing and that the hatch cover is not a load-bearing element. This is disclosed on page 6, lines 3 to 11 of A 2:

"It is also advantageous that, according to this embodiment, the hatch cover can actually perform the sole function of a cover element. The frame completely takes over the load-bearing function and connection of the fastening section and the stairs to the opening. This is particularly advantageous because the cover can be easily replaced at a later date without having to dismantle the entire staircase. This allows insulation elements to be retrofitted or repaired. Alternatively, the hatch cover is made of an insulating material. This is only possible because the cover no longer has to be a load-bearing element."

102 According to this, only the frame is the load-bearing element; the hatch cover has no load-bearing function. The defendants now argue that further features should be included in the claim

: the hatch cover has the sole function of a cover element and the frame completely takes over the load-bearing and connecting function.

- 103 However, this already follows from the interpretation of the features (see above). According to this, the hatch cover does not play a significant role in absorbing loads during use and serves to provide thermal insulation and facilitate installation. No further specification is required, as these are only advantages or effects of the invention, which are not normally included in the claim.
- 104 Nor is there any evidence of an inadmissible extension in connection with feature 1.5, which provides for a multi-part folding staircase pivotally attached to the inside of the frame at its upper end. In this context, the defendant is of the opinion that there is an inadmissible intermediate generalisation due to the omission of features of the staircase. This is explained at the top of page 14 of A 2.

Furthermore, according to Figures 1 and 2, a staircase 2, which has a plurality of rungs 3, is ordered on the floor closure device 1. The staircase 2 is designed to be foldable in several parts and is pivotally attached to the inside of the frame 10 at its upper end. In a folded state (Figures 3, 6), the staircase 2 can be pivoted through the frame 10, and the hatch cover 6 can then be closed."

- 105 In the defendant's opinion, the features of the staircase mentioned there should have been included in the claim, namely the following:
- the staircase has a large number of rungs
 - the staircase can be pivoted through the frame
 - the hatch cover can then be closed.
- 106 In doing so, the defendants overlook the fact that the passage referred to is merely an example of implementation. In principle, not all of the features shown there have to be included in the claim. This only applies if they are essential for the design of the staircase, which is not the case with regard to the rungs and the ability to swing through the frame and the closability, as these are self-evident and therefore not essential to the invention.

II. Lack of feasibility

- 107 There is no doubt that the invention according to patent claim 1 is disclosed so clearly and completely that a person skilled in the art can carry it out and thus the requirements of Art. 83 EPC are met. In order to satisfy the requirements set out therein, the subject-matter of a patent must be based on

the patent specification as a whole, including the examples, must be sufficiently disclosed, taking into account the general knowledge of the skilled person. Even if the invention must be disclosed in the patent specification in a manner that is capable of being carried out, general technical knowledge must also be taken into account when assessing whether the disclosure is sufficient (LD Düsseldorf, UPC_CFI_355/2023, decision of 28 January 2025; UPC_CFI_11/2024, decision of 8 May 2025). On this basis, the defendant's submission does not call into question the feasibility of the invention.

1.

108 The defendant argues that the fact that feature 1.11 states that the hatch cover is essentially one-piece constitutes an obvious contradiction to feature 1.14, according to which the hatch cover has a casing or lamination on its outer surface, i.e. it contains another component and is therefore not one-piece.

109 Contrary to the statements of the defendant, the features do not contain any contradictions. The accusation that a hatch cover formed from a foam core, which according to feature 1.13 only needs to have insulating foam (i.e. it can contain other components), is not single-piece (feature 1.11) does not hold water. This is because feature 1.11 merely requires a "substantially single-piece" hatch cover. In this case, the single-piece nature of the hatch cover means that it constitutes a single assembly unit (see above for interpretation). Components foamed into the hatch cover do not affect its single-piece nature in accordance with feature 1.11.

2.

110 The further objection that there is a lack of feasibility with regard to features 1.6 (load-bearing) and 1.7 (no load-bearing element) is also unfounded.

111 The defendant argue in this regard that the patent at issue does not contain any instructions as to the conditions under which a component is to be classified as load-bearing or non-load-bearing, let alone how this could be achieved in practice. Paragraph [0024] referred to by the claimant on page 18 of the statement of claim is of no help in this respect, as it merely lists advantages without specifying the structural features by which the respective advantage or effect is achieved. In the claimant's opinion, the lack of a load-bearing function of the hatch cover means "that the load of the multi-part staircase is not carried by the hatch cover, i.e. the staircase is not anchored to the hatch cover." However, the preferred embodiments according to Figures 2, 3 and 11 show a mechanical coupling of the staircase to the hatch cover, achieved by means of the articulated arm connection 18a, 18b and the connecting arm anchored in the staircase.

20. It is indicative of the lack of a technically reproducible teaching that the components that are crucial for understanding the "supporting" feature are not mentioned at all in the patent at issue. Reference signs 18a, 18b and 20 are found exclusively in the figures.

- 112 As explained in the interpretation, contrary to the defendant's view, feature 1.7 only states that it is not the hatch cover that is intended to bear the operating load, but the frame to which the stairs are attached. However, the distinction between load-bearing and non-load-bearing does not mean that the hatch cover cannot also support the folded staircase when not in use, as shown in Fig. 17. In this respect, there is no apparent contradiction.

III. Ineffective priority claim

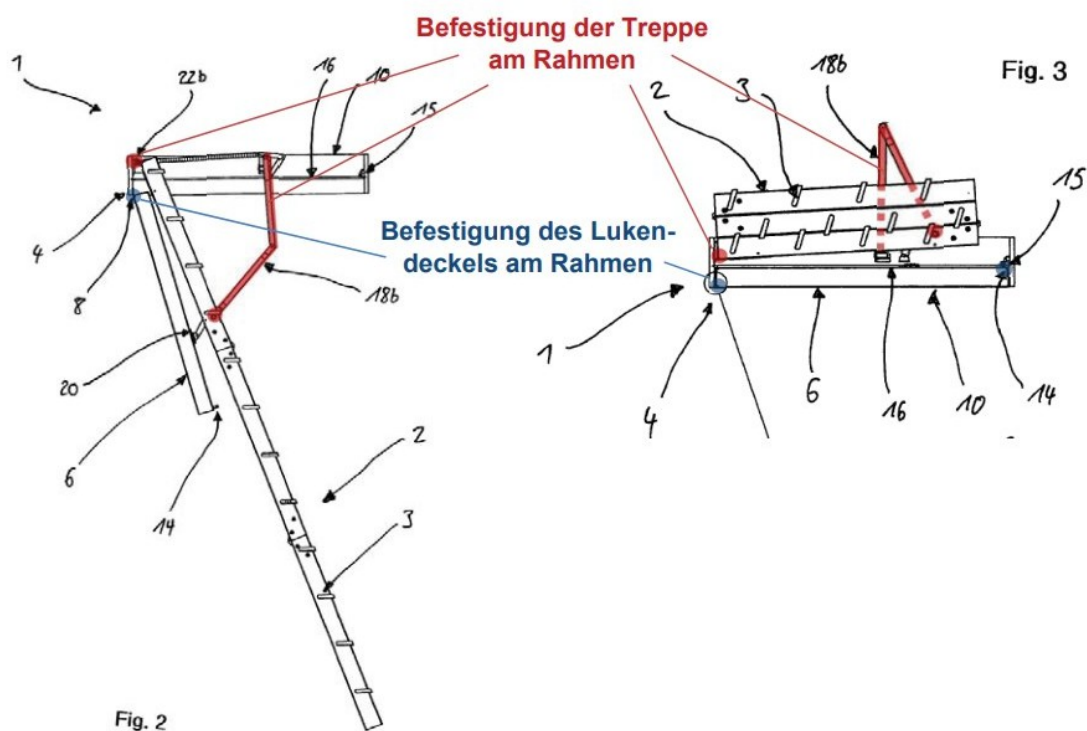
- 113 It cannot be established that the patent at issue does not effectively claim the priority of the first application DE 20 2011 001 576 (Annex A 3, hereinafter A 3 or Annex A 3).

1. Principle

- 114 According to Article 87 EPC, any person who has duly filed an application for a patent, a utility model or a utility model certificate, or their successor in title, shall enjoy a right of priority for the application of the same invention for a European patent during a period of twelve months from the filing date of the first application. This right may be claimed in accordance with Article 88 EPC. The effect of the right of priority is that the priority date is deemed to be the filing date of the European patent application for the purposes of determining the state of the art (Art. 89 in conjunction with 54(2) and (3) EPC). The term "the same invention" in Article 87 EPC must be interpreted as meaning that a claimed invention is to be regarded as the same invention as the invention in an earlier application if the skilled person can derive the subject-matter of the claim directly and unambiguously from the earlier application as a whole using general technical knowledge (see Central Chamber Munich, UPC_CFI_1/2023, decision of 16 July 2024). This standard corresponds to the disclosure standard for inadmissible extension as formulated by the Court of Appeal in its order of 14 February 2025 (UPC_CoA_382/2024). The decisive factor is what the skilled person, using their general technical knowledge and viewed objectively, can directly and unambiguously derive from the entire application filed at the time of filing, whereby an implicitly disclosed subject matter, i.e. a subject matter that can be clearly and unambiguously derived from what is expressly stated, is also to be regarded as part of the content (local division Düsseldorf, UPC_CFI_115/2024, decision of 15 October 2025)

2. Application

- 115 The court does not share the defendant's view that the subject matter of the invention according to the patent at issue cannot be directly and unambiguously derived from the earlier application A 3 as a whole.
- 116 Contrary to the defendant's opinion, features 1.6 and 1.7 are disclosed in the priority document. Although the features are not literally present anywhere in A 3, they can be directly and unambiguously inferred from the description. Paragraph [0036] states that the staircase is attached to the inside of the frame. This directly implies that it is designed to be load-bearing. Figures 1 and 2 also show that the staircase is formed on the frame. Figure 1 in particular shows that the staircase bears the operating load when unfolded and that the frame is load-bearing in this respect, as the staircase is attached to it. The fact that the frame bears the operating load also means that the hatch cover is not a load-bearing element. This is because it is also attached to the frame via a fastening section which is in turn attached to the frame (see paragraphs [0035], [0037]). The claimant has highlighted this in colour in Figures 1 and 2 of A 3, which correspond to the figures in the contested patent specification.



- 117 This shows that the staircase is attached to the frame via movable lever arms 18b, which are attached to the upper staircase segment, via a further attachment point. The hatch cover is pivotably attached to the frame by means of the hinge 8 and is additionally fixed to the frame in the closed position by the retaining devices 14, 15. By attaching the staircase and the hatch cover to the frame, the loads taken up by the staircase and the

hatch cover are transferred to the frame. However, since the hatch cover – like the stairs – is attached to the frame, the frame does not absorb any significant operating loads when the stairs are in use and is therefore not a load-bearing element.

118 Consequently, the skilled person can directly and unambiguously derive features 1.6 and 1.7 from the priority document, even if the features are not explicitly stated in the priority document.

119 The defendants ultimately take the same view when they state on page 79 of their statement of defence:

"In addition, however, the skilled person can also recognise features M1.6 and M1.7 from the overall content of A3. The figures show that the stairs are attached to the frame and that no other components are suspended from the hatch cover, which is in turn attached to the frame."

IV. Novelty

1. Principle

120 According to Art. 54(1) EPC, an invention is considered new if it does not form part of the state of the art. A technical teaching does not form part of the state of the art if it differs in at least one of the known features from what is available in the state of the art. Only that which is immediately and unambiguously apparent to a person skilled in the art from the respective publication or prior use is considered to be anticipated by the prior art (Court of Appeal, UPC_CoA_182/2024, order of 25 September 2024; UPC_CoA_382/2024, order of 14 February 2025; Central Chamber Munich, UPC_CFI_252/2023, decision of 17 October 2024; Local Division Hamburg, UPC_CFI_278/2023, decision of 30 April 2025). Findings that an expert only obtains on the basis of further considerations or the use of additional documents or uses are not prior art (local division The Hague, UPC_CFI_239/2024, decision of 22 November 2024; Local division Düsseldorf, UPC_CFI_16/2024, decision of 14 January 2025). The burden of proof and presentation for facts concerning the invalidity of a patent lies with the plaintiff in nullity proceedings (Court of Appeal, UPC_CoA_335/2023 order of 26 February 2024), in this case the defendants in the infringement proceedings and plaintiffs in the counterclaim for nullity.

2. Document A3

121 The patent at issue is new and inventive in relation to Annex A 3, the priority document. Since claim 1 of the patent at issue effectively claims the priority of A 3

, A 3 cannot at the same time be detrimental to novelty because the priority document does not therefore belong to the prior art.

3. Documents NK 22/NK 23

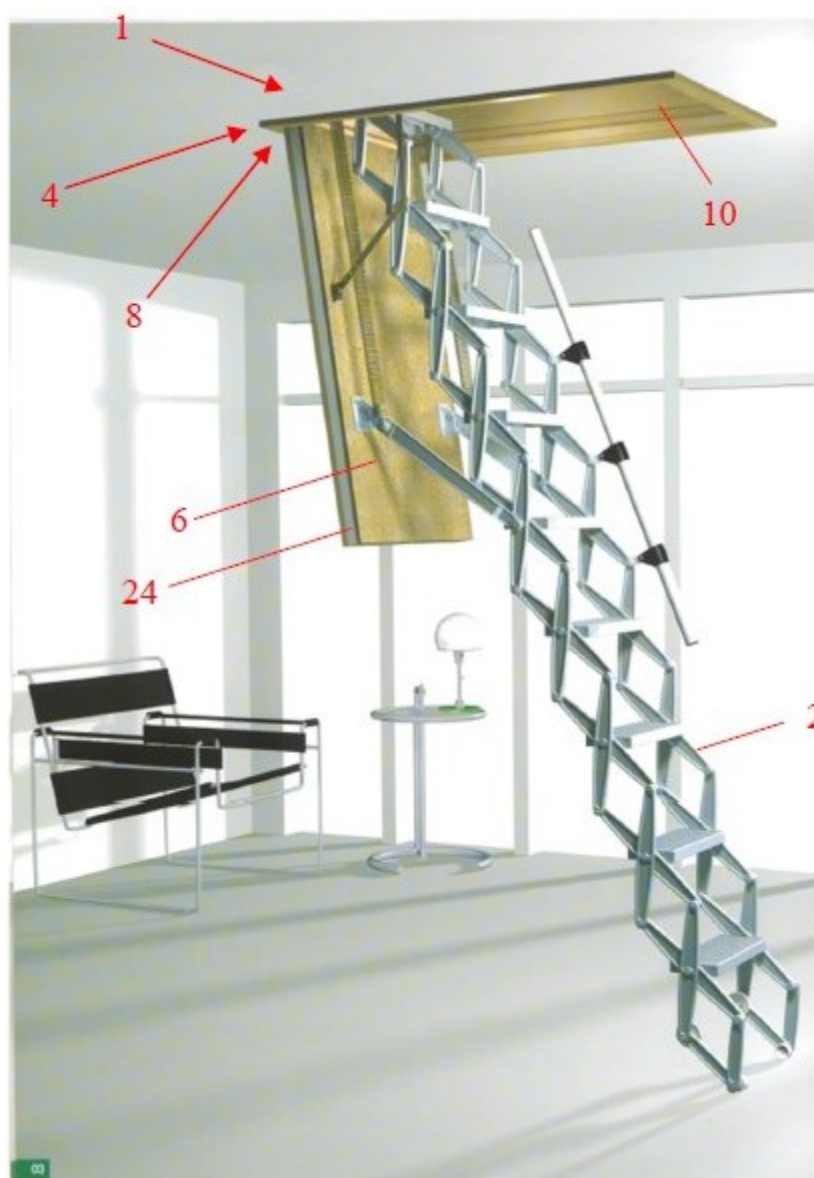
- 122 The patent at issue is also new in relation to DE 20 2011 001 575 U1 (hereinafter Exhibit NK 22) and EP 2 476 813 A2 (hereinafter Exhibit NK 23), which the defendant submitted after the expiry of the deadline for responding to the action and filing a counterclaim for revocation in a separate document dated 20 December 2024.
- 123 The extension of the defendant's action for annulment to include Annexes NK 22 and 23 constitutes an extension of the action within the meaning of Rule 263 of the RoP. According to this provision, a party may, at any stage of the proceedings, apply to the court for leave to amend or extend the action, including a counterclaim for annulment. The application must state the reasons why the amendment or addition was not already included in the original document. Subject to paragraph 3, the amendment shall be refused if the party requesting the amendment cannot convince the court, taking all circumstances into account, that (a) the amendment in question could not have been made earlier with due care and (b) the amendment does not unreasonably prejudice the other party in its conduct of the proceedings. Both conditions must be fulfilled independently of each other. The burden of proving that both the requirements of R. 263(1) RoP and the grounds for exclusion under R. 263(2) RoP are not met lies with the applicant. The applicant must therefore explain why the amendment was not included in the original documents. Similarly, the court must be able to decide on the basis of the applicant's explanation regarding the exclusion criteria contained in R. 263(2) RoP (Local Division Munich, UPC_CFI_114/2024, order of 25 September 2024; UPC_CFI_483/2024, order of 28 February 2025).
- 124 Based on these principles, there are doubts as to whether the defendant's submission justifies the admission of this extension of the counterclaim for annulment despite the delay. The defendants argue in this regard that on 2 December 2024, the defendant and counterclaimant 4) referred the patent attorneys involved to German utility model DE 20 2011 001 575 U1 as the priority document for European patent EP 2 476 813 B1 and requested that it be examined. This revealed the high relevance of the German utility model, as well as the European patent application EP 2 476 813 A2 on which the European patent was based, for the legal validity of the patent at issue. This utility model and the patent specification had previously been overlooked. After the infringement action was served on the counterclaimants, the patent attorneys involved commissioned two search agencies to conduct extensive searches of the usual databases for relevant prior art. Of the more than 2,000

potentially relevant documents, the researchers classified over 100 as relevant, which were listed in lists of relevant hits according to their technical focus. The utility model and the patent specification were not found by one search agency. The other search agency did not include the utility model and the patent specification in the lists of relevant hits, including PDF documents, but mentioned them in an accompanying letter as technical background information concerning the partial aspect of the choice of material for the hatch cover. The patent engineer responsible for the preliminary evaluation of the search results understood the omission from the lists of relevant hits and the classification as technical background information to mean a lack of relevance. These documents were not submitted to the patent attorneys themselves for further analysis. It was only through the aforementioned note from the fourth counterclaimant dated 2 December 2024 that they were made aware of these documents and their high relevance.

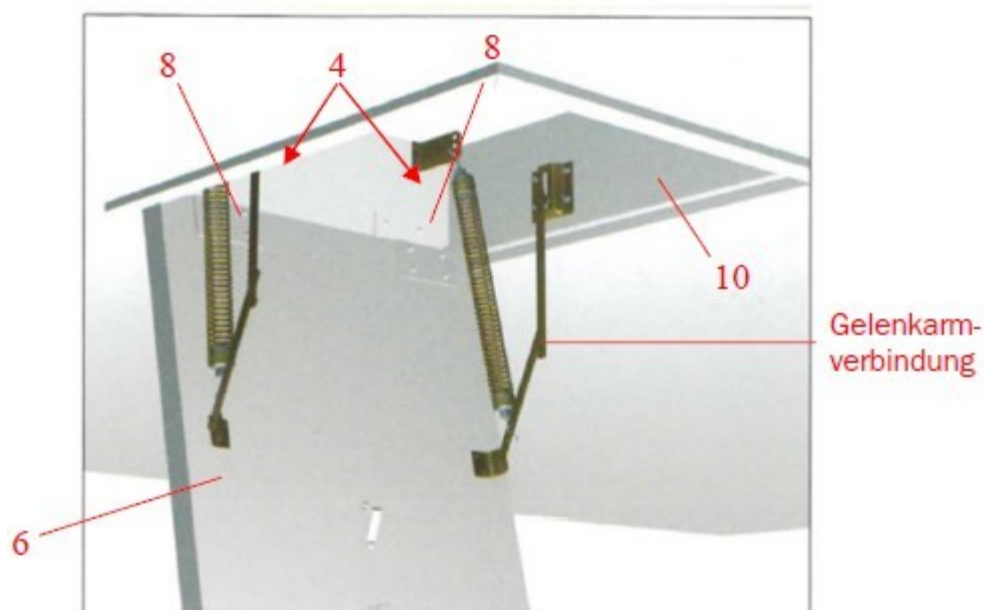
- 125 Irrespective of whether the defendant's corresponding submission justifies the late admission, the late discovery of the two publications is surprising, as they originate from the claimant's company. In this respect, it would have been obvious to subject documents originating from the claimant to closer examination. Negligent conduct on the part of the party's representative or its agents is attributable to the party as its own conduct, because the parties are in any case required to be represented before the UPC Agreement by an authorised representative, R. 8.1 RoP (local division Hamburg, UPC_CFI_58/2024, order of 02.06.2025, re R. 320 RoP).
- 126 Ultimately, however, a decision on the question of admissibility can be left open. This is because the printed documents in Annexes NK 22 and NK 23 are not taken into account in the matter. Annex NK 22 was filed by the Claimant with the DPMA on 14 January 2011, as was A 3. It was registered on 12 May 2011 and published in the Patent Gazette on 16 June 2011. NK 23 was filed by the Claimant with the European Patent Office on 21 September 2011, claiming priority from NK 22. The relevant date of priority for NK 23 is its priority date, i.e. the filing date of NK 22, 14 January 2011.
- 127 Since the patent at issue effectively claims priority from A 3 dated 14 January 2011, Annexes NK 22 and NK 23, each with the same priority date, do not constitute prior art. This is because Annexes NK 22 and NK 23 were not made available to the public before the relevant date, in this case the priority date of the patent at issue, nor do they have an earlier priority date than the patent. Irrespective of the question of a possible delay in submission by the defendants, NK 22 and NK 23 therefore do not constitute relevant prior art.

4. Obvious prior use "Columbus" (NK 4 and NK 5)

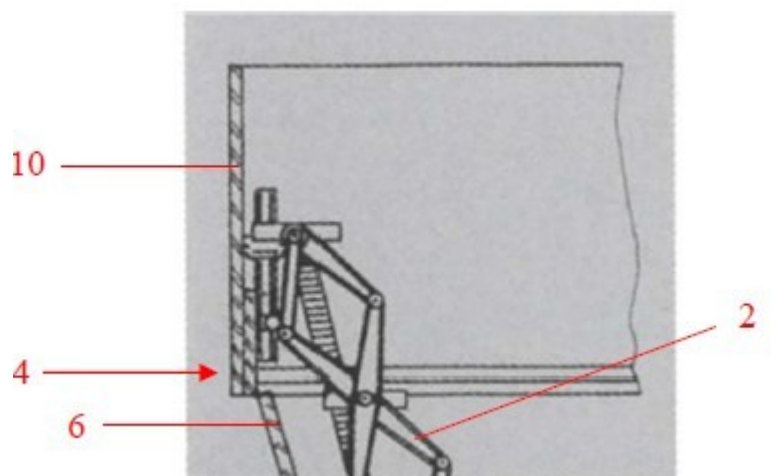
- 128 The subject matter of the patent at issue is new in relation to "Columbus".
- 129 The subject matter of the alleged prior use is stairs manufactured by Columbus-GmbH. As Annexes NK 4 and NK 5, the defendant have submitted catalogues entitled "COLUMBUS STAIRS; Floor Scissor Stairs" and "COLUMBUS STAIRS; Scissor Stairs", dated May 2004 and April 2007, respectively. The defendant refers in particular to the "Exklusiv" loft ladder (NK 4, pages 3, 4; NK 5, page 1) and another loft ladder from NK 5 "flat roof exit" (NK 5, page 7).
- 130 The "Columbus Exklusiv" loft ladder is reproduced in the catalogue (page 3 of NK 4) as follows (numbering added by the defendant):



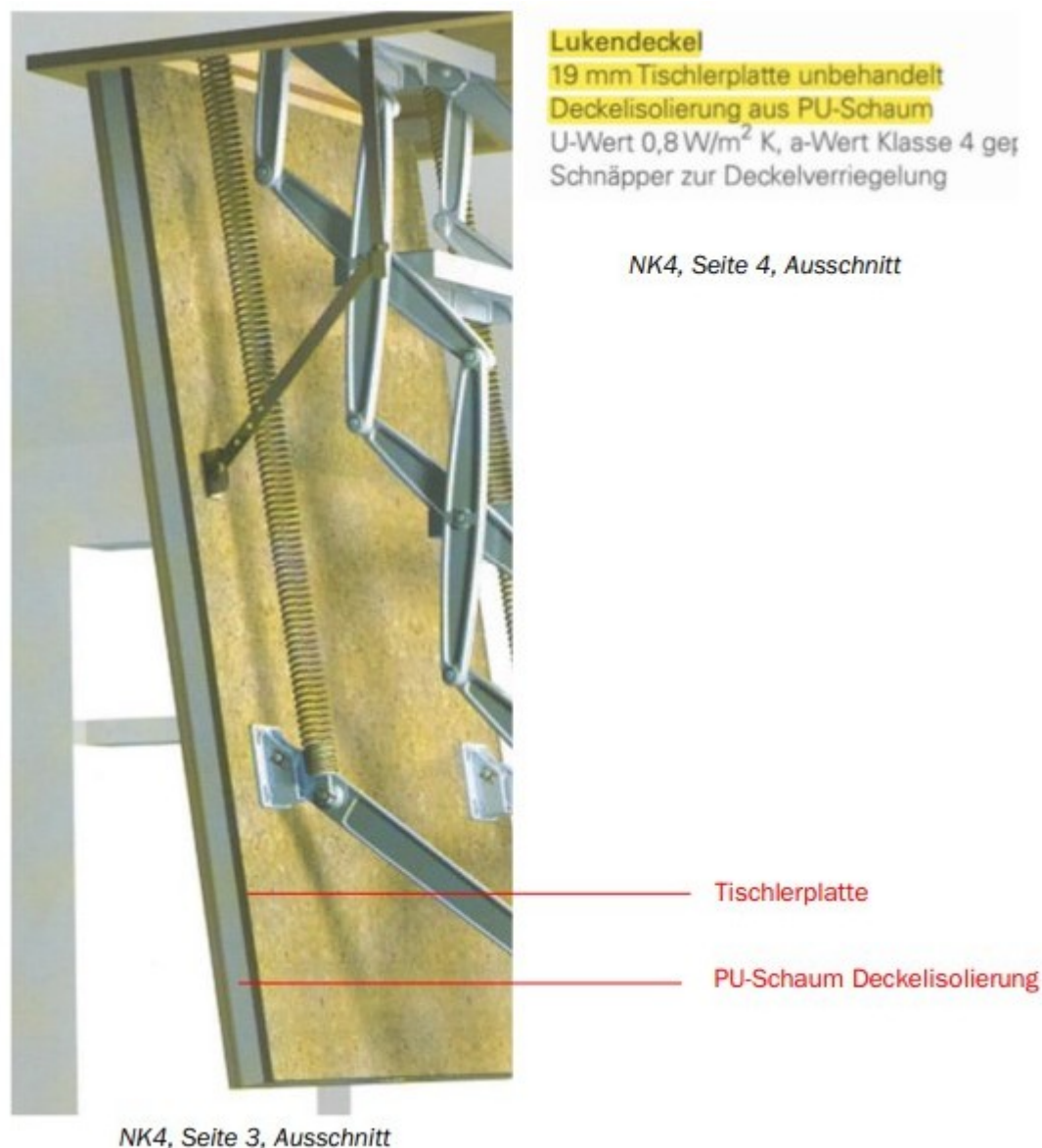
- 131 The installation of the hatch cover is shown on page 10 of NK 5 (numbering and designation by the defendant).



- 132 An example of how to attach the stairs to the frame is shown on page 7 of NK5 under "Flat roof exit".



- 133 According to Annex NK 4, pages 3 and 4, the hatch cover is characterised as follows:



- 134 Irrespective of the question disputed between the parties as to whether the brochures were actually accessible to the public before the priority date, feature 1.5, which provides for a multi-part folding staircase, is in any case not directly and unambiguously disclosed. The Columbus staircase is a scissor staircase. As explained in the interpretation, this is not a multi-part folding staircase within the meaning of the patent at issue.
- 135 Furthermore, there are doubts as to the disclosure of feature 1.10, according to which the hatch cover is essentially made of a heat-insulating material. As explained above in the context of the interpretation, this means that the relevant component of the hatch cover consists of an insulating material and otherwise only has a cladding or lamination on its outer surface, which does not interfere with weight or easy installation. This is unlikely to be the case with a 19 mm thick blockboard on one side

and a chipboard panel of almost the same thickness on the other side. The cut-out section of the hatch cover also shows that, from the point of view of the spatial distribution of the insulating material, this does not essentially form the hatch cover in the alleged prior use.

- 136 Insofar as the defendants claimed in the oral hearing that the legal status of the patent at issue was based on from of claimed obvious prior use "Columbus" was challenged for the first time on the grounds of lack of inventive step, arguing that a skilled person faced with the task of developing a lighter staircase would remove wood from the hatch cover and add insulation material, this objection was unsuccessful. Irrespective of whether such an argument satisfies the requirements for a conclusive submission, the raising of a new legal objection for the first time in the oral proceedings in this case, even if it is based on a document already in the proceedings, is inadmissible.
- 137 R. 25 RoP states that a counterclaim for nullity must include, among other things: (b) one or more grounds for revocation, which should be supported as far as possible by legal arguments, and, where appropriate, an explanation of the interpretation of the claim proposed by the defendant; (c) a statement of the underlying facts; (d) the evidence relied upon, if available, and an indication of further evidence to be submitted in support. This legal framework establishes the "front-loaded" procedural system, in which a party is required to set out its arguments and evidence in detail in its first document. The reason for these provisions is to ensure that the other party is aware of the facts and grounds on which the action brought against it is based, as well as the evidence available, so that the other party can prepare an adequate defence and, at the same time, the proceedings are expedited. This would be undermined if a counterclaimant were allowed to gradually introduce new facts, new legal arguments or new evidence into the proceedings (Central Chamber Paris, UPC_CFI_311/2023, order of 21 January 2025).
- 138 Consequently, a counterclaimant cannot, in principle, present new grounds for the invalidity of the contested patent at the oral hearing or introduce new documents that are considered to be prejudicial to novelty or to provide convincing starting points for assessing the lack of inventive step (Local Division Hamburg, UPC_CFI_278/2023, decision of 30 April 2025; local division Düsseldorf, UPC_CFI_459/2023, order of 7 March 2025; even stricter: Central Chamber Paris, UPC_CFI_308/2023, order of 27 November 2024). The formulation of a new attack on the inventive step in the oral proceedings is to be regarded as an amendment to the counterclaim pursuant to Rule 263 of the RoP, which would require the court's approval. This amendment is rejected in the present case pursuant to Rule 263(2)(a), (b)

RoP vorliegend zurückgewiesen, da die defendant diesen Angriff spätestens in der Widerklageerwiderung mit der gebotenen Sorgfalt hätten vorbringen müssen (vgl. local division Düsseldorf, UPC_CFI_459/2023, Order v. 07.03).

- 139 Furthermore, taking into account the circumstances of the present proceedings, there is no reason to wait until the oral hearing to challenge the inventive step of claim 1 on the basis of NK 4 and NK 5, which made it impossible for the other party (and the court) to prepare.

5. Obvious prior use "Dolle alu-top" (NK 6)

- 140 The subject matter of the patent at issue is also new in relation to the obvious prior use "Dolle alu-top".
- 141 Gebr. DOLLE GmbH had already published attic stairs prior to the priority date of the patent at issue. As evidence of public disclosure and to describe the technical features of such attic stairs, the defendants submitted the catalogue "Floor and scissor stairs; Kniestocktüren und Zubehör" (Floor and folding stairs; loft doors and accessories), dated 30 October 2006, as Annex NK 6 to the court file. A design of the staircase is reproduced on page 4 of NK 6 as follows. The reference marks were added by the defendant:



- 142 Here, too, only a scissor staircase is disclosed, so that feature 1.5 is not disclosed.
- 143 Similarly, there are considerable doubts as to the disclosure of feature 1.10. The hatch cover is described as follows (Exhibit NK 6, page 4 and in the extract from the website of Gebr. DOLLE GmbH dated 7 August 2007, Exhibit E6):

DOLLE alu-top Hochwertige Scherentreppe aus Aluminium-Druckguss; per Hand bedienbar oder in elektrischer Ausführung; bei Stromausfall manuelle Öffnung von unten möglich.	
elektrisch	manuell
Tischlerplatte, 24 cm hoch	
Scherenpaket - Auftritt 14 cm - LH bis 279 cm	
Tischlerplatte mit PU-Schaum - 0.80 W/m²C°	
120/130/140x70	110/120/130/140 x 60/70
Bekleidungsleisten Holz	
incl. Handlauf	Handlauf als Zubehör
ab L 120 cm, B 63 cm, LH 279 cm	ab L 75 cm, B 57 cm, LH 250 cm
LH max. 430 cm bei L 160 cm	LH max. 339 cm bei L 130 cm

DOLLE alu-top Scherentreppe aus Aluminium-Druckguss mit geriffelten Stufen, 14 cm tief (Teleskophandlauf auf Wunsch gegen Berechnung) Lukenkasten aus Tischlerplatte, 24 cm hoch Lukendeckel aus 19 mm Tischlerplatte mit PU-Schaum und Hartfaserplatte U-Wert 0,8W/m²C°	
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- 144 The hatch cover thus consists of a blockboard with PU foam and a hardboard. Overall, it is therefore not disclosed that the hatch cover is essentially made of a heat-insulating material.

V. Inventive step of claim 1

- 145 The patent at issue is also based on inventive activity.

1. Principle

- 146 According to Art. 56 EPC, an invention is considered to be based on an inventive step if it is not obvious to a person skilled in the art from the prior art. According to the case law of the courts of first instance at the UPC (see Central Chamber Munich, UPC_CFI_1/2023, decision of 16 July 2024; Local division Düsseldorf, UPC_CFI_363/2023, decision of 10 October 2024; UPC_CFI_16/2024, decision of 14 January 2025; UPC_CFI_50/2024, decision of 8 March 2025), the assessment of inventive step always requires a case-by-case evaluation taking into account all relevant facts and circumstances. An objective approach must be taken. The subjective ideas of the applicant or inventor are irrelevant. The only relevant factor is what the claimed invention actually contributes to the state of the art. Inventive step must be assessed from the perspective of a person skilled in the art on the basis of the entire state of the art, including general technical knowledge. It can be assumed that the person skilled in the art had access to the entire generally accessible state of the art at the relevant point in time. The decisive factor is whether the claimed subject matter is such that the person skilled in the art would have found it on the basis of their knowledge and skills, e.g. through obvious modifications of what is already known.

147 In order to assess whether a claimed invention was obvious to a person skilled in the art or not, it is first necessary to determine a starting point in the prior art. It must be justified why the person skilled in the art would consider a particular part of the prior art to be a realistic starting point. A starting point is realistic if its teaching would have been of interest to a person skilled in the art who, at the priority date of the patent at issue, was seeking to develop a product or process similar to that disclosed in the prior art, i.e. one that has a similar basic problem to the claimed invention (see Court of Appeal, UPC_CoA_335/2024, Order of 26 February 2024, under "cc" in the original German version, "For a person skilled in the art who was faced with the task at the priority date of the patent in suit, [...] D 6 was of interest"). There may be several realistic starting points, whereby it is not necessary to take the "most promising" starting point

claimed subject matter as interpreted with the prior art, the question arises as to whether it would have been obvious to a person skilled in the art to arrive at the claimed solution based on a realistic disclosure of the prior art, taking into account the underlying problem. If it was not obvious to arrive at this solution, the claimed subject matter meets the requirements of Article 56 EPC. In general, a claimed solution is obvious if the skilled person, starting from the prior art, would be motivated (i.e. would have an incentive, see the CoA in NanoString v. 10x Genomics, p. 34), to consider the claimed solution and implement it as the next step ("next step", see UPC_CoA_335/2024, order of 26 February 2024) in the development of the prior art. On the other hand, it may be relevant whether the skilled person would have expected particular difficulties in carrying out the next step or steps. Depending on the facts and circumstances of the case, it may be permissible to combine disclosures from the prior art. A technical effect or advantage achieved by the claimed subject-matter compared to the prior art may be an indication of inventive step. A feature that has been arbitrarily selected from several possibilities cannot generally contribute to inventive step. Retrospective analysis must be avoided. The question of inventive step should not be answered by searching retrospectively, with knowledge of the patented subject-matter or solution, for (combined) disclosures in the prior art from which that solution could be derived.

2. Application

148 Measured against this, the defendant's submission is not suitable for calling the inventive step into question.

a) Starting point A 3

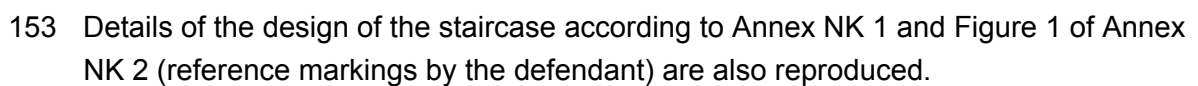
149 The use of A 3 as a starting point is not possible overall. As explained above, A 3 does not represent the state of the art, as the patent at issue effectively claims priority from A 3. In this respect, a combination of A 3 with general technical knowledge, JP 2000-336920 A (Exhibit NK 7), FR 1,042,678 (Exhibit NK 14) and NK 4 or NK 6 cannot cast doubt on the inventive step.

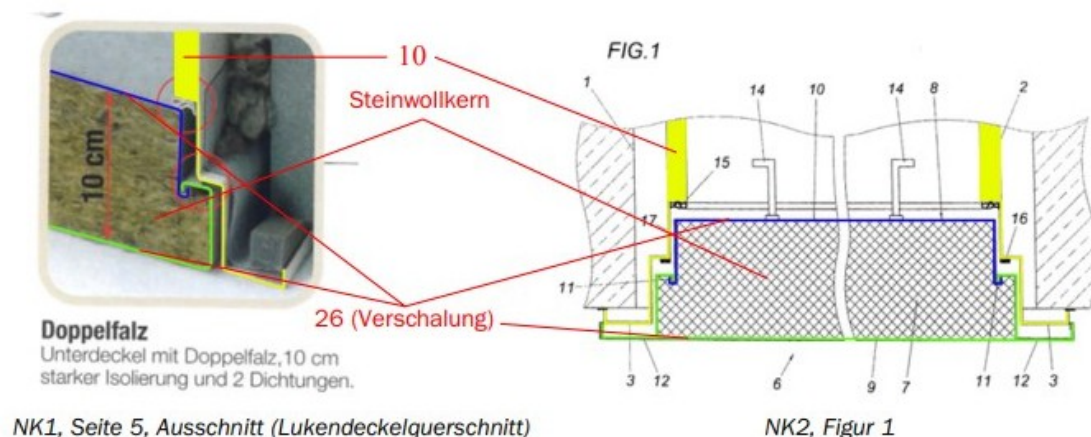
b) Starting point: obvious prior use of "Wippro GM-4 Isotec" (Exhibit NK 1)

150 Insofar as the defendants attempt to justify the lack of inventive step on the basis of prior use "Wippro GM-4 Isotec" (Annex NK 1), it is not apparent what reason the skilled person would have to combine the solution disclosed therein with the further prior art cited in order to arrive at the claimed subject-matter.

151 The public nature of the prior use according to NK 1 has been sufficiently proven. Wipplinger GmbH & Co. KG had already brought loft ladders onto the market before the priority date of the patent at issue. As evidence of public knowledge and to describe the technical features of such loft ladders, the defendants submitted a catalogue entitled "Loft ladders – safety first" and Austrian patent AT 504 484 B1 as Annexes NK 1 and NK 2. Exhibit E1i, an extract from "The Wayback Machine", shows that the brochure (Exhibit NK 1), which can be downloaded as a PDF file, was filed on 17 August 2007. Exhibit E1h shows the dealer price list "Attic Stairs 2009". Patent AT 504 484 B1, registered on 29 March 2007 in the name of the exhibitor's managing director, Mr Robert Wipplinger, in accordance with Annex NK 2, relates – in the defendant's view – to the "Wippro GM-4 Isotec" loft ladder exhibited at BAU 2007 (NK 1, page 5) exhibited at BAU 2007 and contains details on the design and functionality of the hatch cover.

152 Page 5 of Annex NK 1, which has been marked with reference numbers by the defendant, is reproduced below:





154 Contrary to the reference in the drawing, there is no direct connection between the design according to Annex NK 1 and Annex NK 2: neither of the two publications refers to the other. There is a similarity between the subject matter of the two publications, but no identity. For example, NK 2 merely refers to "thermal insulation" in general as insulation, or to "thermal insulation 7" in the example, without specifying the material. NK 1, on the other hand, describes a rock wool core. Due to the lack of identity, NK 1 and NK 2 are to be regarded as separate documents.

"heat insulation 7" and does not specify the material. NK 1, on the other hand, describes a rock wool core. Due to the lack of identity, NK 1 and NK 2 are to be treated as separate publications, each containing different information.

155 Features 1.1 to 1.9 and 1.11 are disclosed by NK 1, but not features 1.10, 1.12 to 1.14. In detail:

156 Contrary to the claimant's view, feature 1.7 is disclosed. This is because NK 1 indicates that the stairs are attached to the frame, which, according to the above interpretation, means that the hatch cover does not bear the operating loads, as the hatch cover is attached separately to the frame and is therefore not load-bearing. When closed, the hatch cover can serve to support the stairs.

157 Feature 1.11, according to which the hatch cover is essentially a single piece, is also disclosed. This is because the hatch cover is clearly designed as a separate assembly unit. Thus, based on the information in the eleventh bullet point on the above page of the brochure ("Thermal insulation through 10 cm rock wool insulation in the double-folded sub-cover") and the accompanying illustration, the skilled person must assume that the hatch cover of the NK 1 system is designed as a single piece.

158 The cladding of the "Wippro GM4-Isotec" is designed in two parts (highlighted by the blue and green sections in the figure above), with the two sections interlocking in an S-shape via angled tabs.

159 Insofar as the claimant asserts that the specific design of the insulation of NK 1 cannot be deduced and that no conclusion can be drawn from NK 2

may be the case. It may not be possible to conclude from the "double fold" figure in NK 1 that the hatch cover is designed in this way throughout. There could also be stiffening elements in the hatch cover, in which case it would no longer be a single piece. In particular, the cover would then not be essentially a single piece made of heat-insulating material. NK 2 is not helpful because it is not clear that the NK 1 hatch cover is designed in accordance with NK 2. However, on page 5 of NK 1, under the heading 'The advantages at a glance:', the eleventh bullet point states

"Thermal insulation through 10 cm rock wool insulation in the double-fold sub-cover" in conjunction with the information on the image section "Double fold: Sub-cover with double fold, 10 cm thick insulation and 2 seals". From this, the expert concludes that the hatch cover is uniformly constructed from such a material, namely a rock wool mat as insulation material. There is therefore no indication to support the claimant's assumption that NK 1 only shows a cross-section of a small section of the hatch cover and that it cannot therefore be ruled out that it could also be made up of several parts and not consist mainly of insulation material. Instead, based on the information in the eleventh bullet point and the accompanying illustration "double fold", the skilled person must assume that the hatch cover in NK 1 is designed as a single piece with a double fold and a single-piece insulation mat. This means that it is essentially designed as a single-piece cover (executed as an assembly unit) in accordance with feature M1.11.

160 However, features 1.12 to 1.14 are not disclosed. Neither does the disclosed rock wool insulation core constitute a foam core which has an insulating foam or is formed from an insulating foam (features 1.12 and 1.13), nor is the hatch cover essentially formed from a heat-insulating material (feature 1.10). This is because the fact that the hatch cover is made of metal means that it is no longer essentially made of a heat-insulating material. Contrary to the defendant's view, it is not solely a matter of selecting an alternative insulation material. This is because the skilled person would have to have a reason to form the hatch cover essentially from a heat-insulating insulation material, which would require replacing both the insulation material and the metal frame of the hatch cover.

161 This is not obvious to the skilled person. Even replacing the insulation material – insulation foam instead of rock wool – is not obvious.

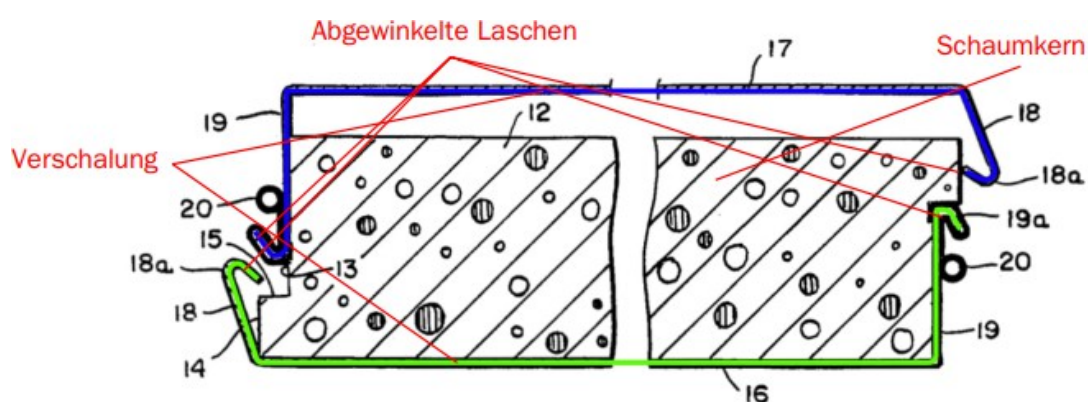
162 In the defendant's view, based on the obvious prior use of "Wippro GM-4 Isotec" and faced with the task of improving the thermal insulation of the hatch cover or even just finding an alternative thermal insulation material, it would be more than obvious for the specialist to replace the rock wool core with a material with lower thermal conductivity. This would not require any

specific suggestion or specific food for thought. The skilled person is always striving to achieve improvements. In the present case, this does not even require specialist knowledge or the basic knowledge described in the relevant technical field. Based on the obvious prior use of "Wippro GM-4 Isotec", the skilled person would arrive at the subject matter of claim 1 in an obvious manner by simply trying out alternative materials, without having to be inventive. This is all the more so as NK 2 explicitly focuses on "good thermal insulation" (e.g. page 2, lines 21 to 24). NK 2 therefore already prompts the skilled person to consider thermal insulation.

- 163 This cannot be agreed with. According to its own statements, NK 1 already has a particularly well-insulated attic staircase, which is also particularly suitable in terms of fire protection (see NK 1, page 5). The advantages of insulation are emphasised several times, as are the advantages of fire protection. In this respect, there are considerable doubts that the specialist would replace the rock wool core with a foam core. This is because NK 1 already discloses what it considers to be the optimal device.
- 164 In addition, even if the insulation material were replaced, the specialist would also have to replace the metal frame of the hatch cover in order to meet the requirement of feature 1.10. However, given that the obvious prior use of "Wippro GM-4 Isotec" significantly emphasises the advantage of fire protection, there is no reason to do so. The omission of a metal frame and the implementation of only a casing or lamination would significantly conflict with the fire protection aspects that have been emphasised several times.
- 165 The defendant's further argument that a combination with specialist knowledge leads to the subject matter of the technical teaching according to claim 1 is also unconvincing. As the claimant correctly points out, the information in NK 1 "fire-retardant T30" (first bullet point) and "circumferential fire protection seal" (tenth bullet point) in NK 1 give the expert no reason to use the expanded polystyrene EPS, which the defendant claim is obvious, instead of the rock wool used. This would only result in a 14% reduction in heat loss (PU rigid foam: 0.030 W/mK; rock wool 0.035 W/mK), which is negligible in comparison to the total surface area of the house. This minor advantage would instead be at the expense of the advertised fire protection.
- 166 The defendant's arguments against this are not convincing. They argue that fire protection and a fire-retardant effect are not relevant to the prior use of "Wippro GM-4 Isotec" because this is also irrelevant to the patent at issue. However, the patent at issue is irrelevant because it does not represent the state of the art. The decisive factor is what reason the

the skilled person would have had to modify the device according to NK 1, which is a finished device.

- 167 The skilled person also has no reason to combine the obvious prior use "Wippro GM-4 Isotec" with US 4,589,240 (Annex NK 3). NK 3 concerns insulating door panels (NK 3, column 1, lines 5-10; abstract: "A door panel having an insulating foam core [...]") and deals with the improvement of thermal insulation (column 2, lines 3-5: "The result is a panel that has effective thermal barrier properties and also exceptional rigidity, strength, and durability.") NK 3 discloses insulating door panels consisting of two shell halves (column 3, line 43: "protective skins or shells" 16, 17) and comprising a foam core ("foam core" 12). Figure 5 of NK 3 is reproduced below with coloured markings added by the defendant.



Figur 5, NK3 (mit farblichen Markierungen)

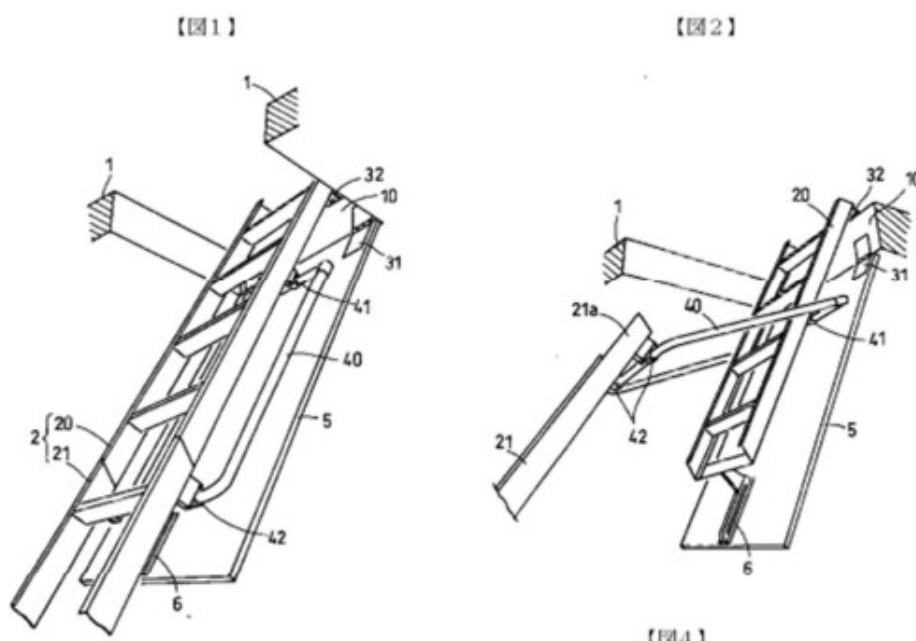
- 168 The defendant are of the opinion that Figures 6 to 8 of NK 3 show the functional principle of compressing the foam core in order to connect the two shell halves with each other to . The shell is formed by "metal skins" (NK 3, column 2, line 17 ff.: "metal skins") and the insulation core is made of foam (NK3, column 2, line 6: "foam core"). NK 3 thus explicitly shows the skilled person how to form a panel with a foam core and cladding halves which, analogous to the "Wippro GM-4 Isotec", ensures the connection with the cladding halves by exploiting the elastic compressibility of the foam core. If the skilled person were concerned with improving thermal insulation, he would undoubtedly try out other materials, such as those disclosed in NK 3, and thus arrive at the subject matter of claim 1.
- 169 T h i s is not convincing. Due to the fire protection emphasised in the obvious prior use of "Wippro GM-4 Isotec" and the necessary property of compression of the insulation material, there is no suggestion for the skilled person to replace the non-combustible rock wool in NK 1 with the

combustible "suitable resilient plastic foam", in particular expanded polystyrene, listed in NK 3.

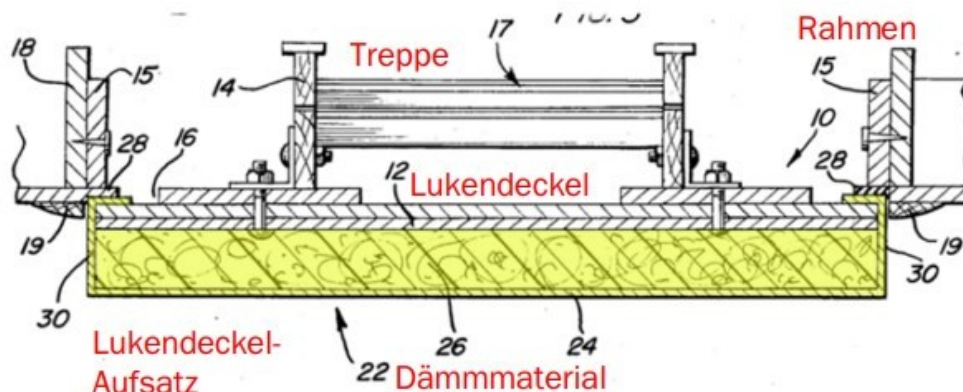
- 170 The defendant's further argument that the skilled person would arrive at the subject matter of the patent at issue on the basis of NK1 if he consulted one of the other documents from the prior art submitted in accordance with Annexes NK4 to NK6, NK8 to NK13, D3 and/or D5 is unsuccessful. These documents may each disclose the use of insulating foam in a hatch cover and thus constitute a relevant source of knowledge for the skilled person seeking to improve thermal insulation. However, the documents cited do not give the skilled person any reason to modify the loft ladder according to NK 1 in the direction of a loft ladder according to claim 1. From the skilled person's point of view, this is already an optimised device in terms of thermal insulation and fire protection.

c) Starting point JP 2000-336920 A (Annex NK 7)

- 171 The defendant's reference to NK 7 as the starting point for the expert's considerations is also unconvincing.
- 172 NK 7 discloses a generic attic staircase which is ordered in an opening ("ceiling opening 10"; reference mark from NK 7) in a room ceiling ("ceiling 1") and closes it as a floor closure device (cf. Fig. 5) (feature 1.1). Figures 1 and 2 of NK 7 are reproduced below.



- 173 The ceiling opening 10 (feature 1.2) has a fastening section to which a hatch cover 5 is pivotably attached by means of a hinge 31 (cf. para. [0009] of NK 7T: "The cover body 5 of Fig. 3 has an upper end section 5a which is pivotably attached to the opening section 10 of the ceiling by means of a first hinge (hinge) 31.")
- 174 Based on this disclosure, the defendant are of the opinion that all features except features 1.10, 1.12, 1.13 and 1.14 are disclosed. The skilled person would read the frame according to feature 1.2.
- 175 This view cannot be accepted for various reasons. NK 7 expressly states that the cover 5 and the upper ladder 20 are attached to the opening 10 by separate hinges 31 and 32 (NK 7 para. [0007]). In this respect, a frame cannot be read. Consequently, NK 7 does not disclose feature 1.2, the first part of feature 1.5 (upper end of the stairs pivotably attached to the inside of the frame) or feature 1.6 (frame-bearing). Because the (hatch) cover 5 is also attached directly to the opening by means of the hinge 31 and is not attached to a fastening section on the frame, NK 7 lacks feature 1.8 (fastening section on the frame) and 1.9 (hatch cover connected to fastening section [on the frame]).
- 176 Irrespective of whether the second part of feature 1.5 – multi-part folding staircase – is disclosed, since the two staircase parts are offset against each other via the bracket and not folded, features 1.10 and 1.12 to 1.14 relating to the hatch cover are also not disclosed.
- 177 A combination with US 4,563,845 (Annex NK 13) does not preclude the inventive step of the teaching according to the patent at issue.
- 178 NK13 concerns the technical field of loft ladders and, in particular, thermal insulation improvements for them. There is therefore much to suggest that the NK 13 specialist would consult NK 7 for improvement. NK 13 describes a so-called "energy-saving attachment" for the hatch cover of a loft ladder (column 1, lines 6-7: "energy savings attachments for use in connection with attic stairway openings"), which is intended to thermally insulate the hatch cover (NK 13, column 1, lines 5 ff.). Figure 3 of NK 13, which has been labelled and coloured by the defendant, is reproduced below.



Figur 3, NK13 (Bezugszeichen eingefügt)

179 The hatch cover attachment 22 comprises a plastic casing 24, 30 (column 2, lines 49-53) (feature 1.14), which surrounds a foam core 26 formed from a single-piece insulating material, namely plastic foam (column 2, lines 55 ff.) (features 1.10 to 1.13). According to NK 13, the hatch cover attachment 22 is designed to be pushed onto the hatch cover 12 and attached to it in order to improve thermal insulation (Figures 2 and 3; column 2, lines 58-61). The hatch cover 12 is attached to a frame 15 (cf. column 2, lines 38 et seq.:

"Frame members 15 may be attached to the ceiling structure around opening 16.").

180 In the defendant's view, when reworking NK 7, the skilled person would, if he had not already provided for a frame, do so at the latest when transferring the teaching of NK 13 to the attic stairs of NK 7.

181 This view cannot be accepted. It may be obvious – and this is undisputed between the parties – that the skilled person would combine the thin cover of NK 7 with the NK13 retrofit kit, as suggested in NK13. In doing so, its (NK13) panel structure 22 with a tray-like support element 24 made of lightweight rigid material, such as aluminium or plastic, and containing thermal insulation material 26 in the form of foam panels (NK13, column 2, lines 45-64), would be pushed onto the door panel 12, in NK 7 precisely the thin cover 5.

182 However, there is no indication that the frame 15 disclosed in NK 13 would be transferred to NK 7. Due to the solution offered in NK 13, Figure 4, there is no reason for the skilled person starting from NK 7 to also transfer the NK 13 frame members 15 (NK13, Figure 3) to NK 7. This is because the design disclosed in NK 13 is only a retrofit solution for the hatch cover and not a redesign of an attic staircase. The insulation to be retrofitted to the hatch cover does not require a

frame, so that a person skilled in the art would not consider a corresponding transfer to NK 7.

d) NK 7 and other documents NK4 - NK6, NK8, NK10 - NK12, D3 and D5

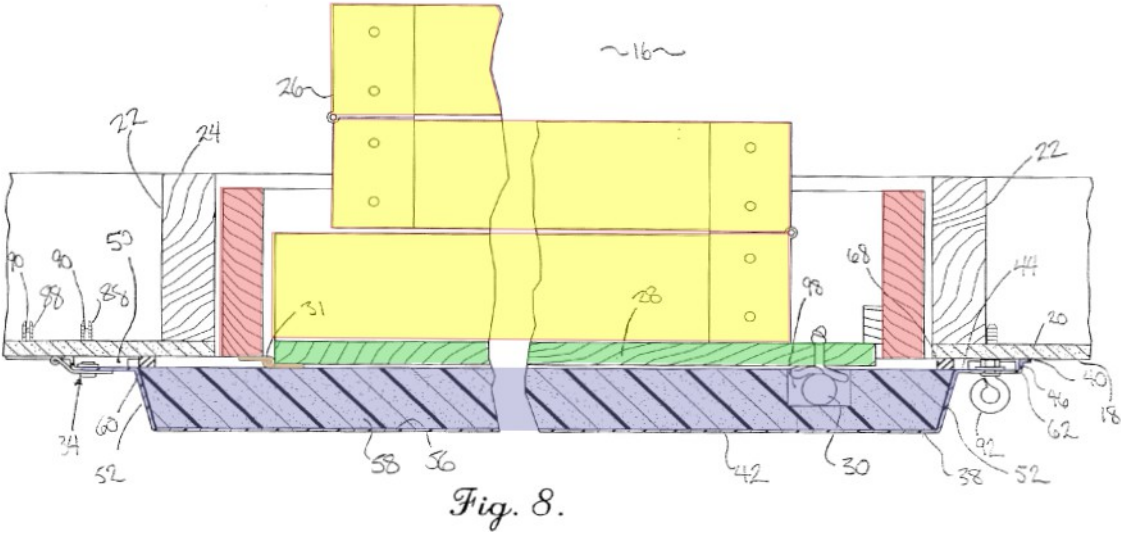
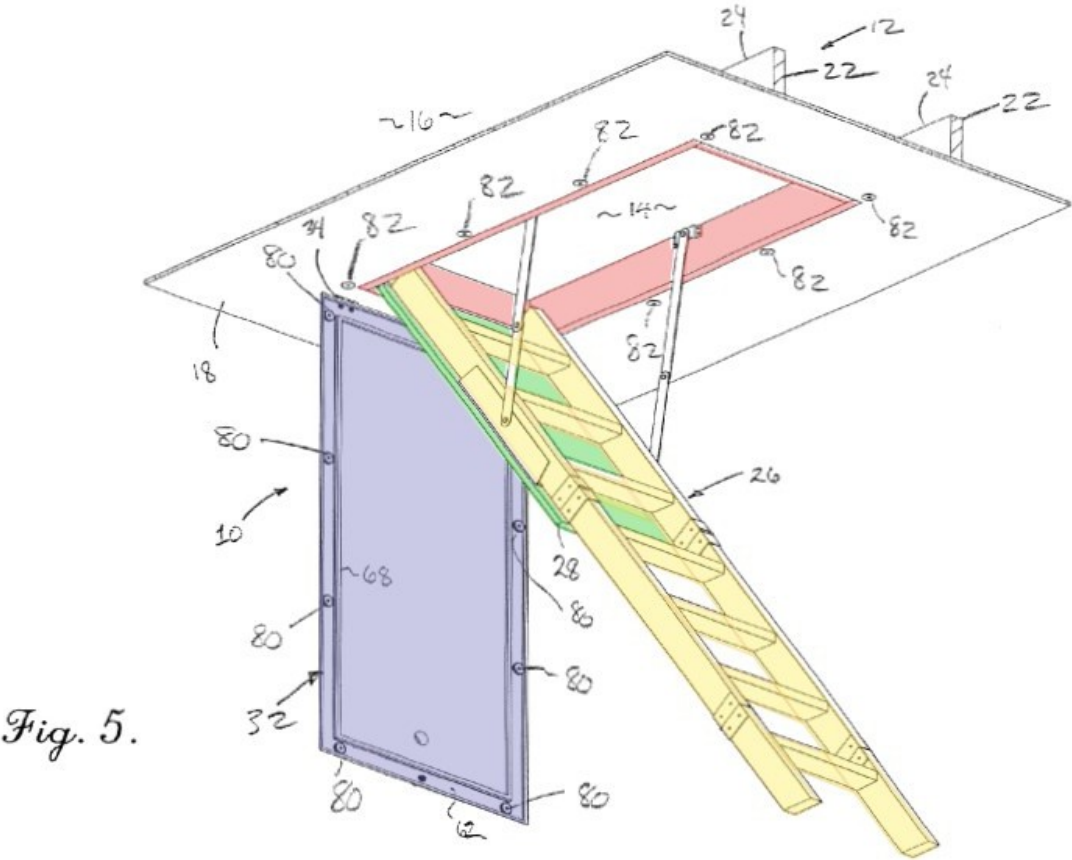
183 Insofar as the defendants cite further combinations with documents from the prior art, only general reference was made to the documents, so that there is no need for a specific discussion. The hatch covers may all be transferable to NK 7 (following the defendant's general argument). However, no reason for the expert to do so was presented and is not apparent.

e) Starting point US 2009/0241434 A1 (Annex D 5)

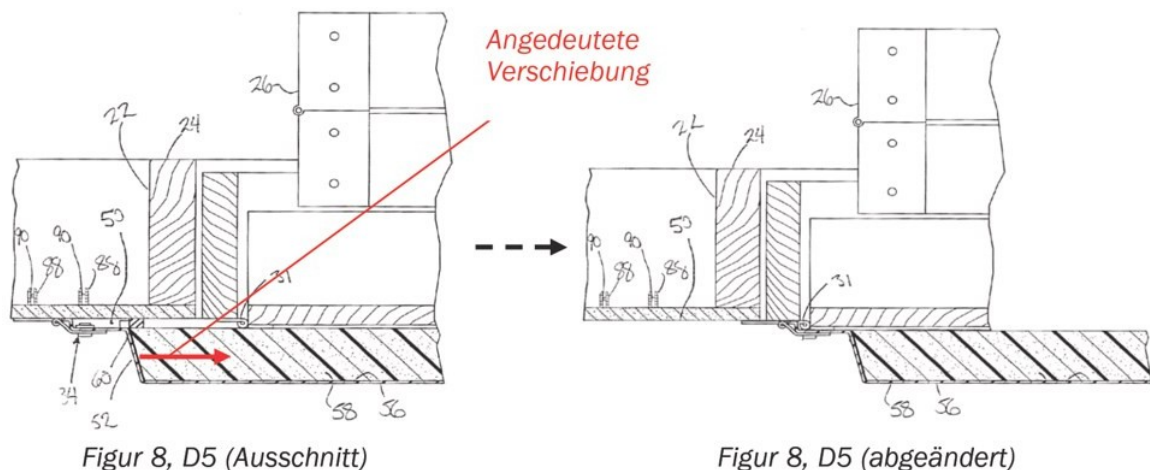
184 Taking into account the technical knowledge of the inventive step, D 5 does not conflict with the teaching of the patent at issue.

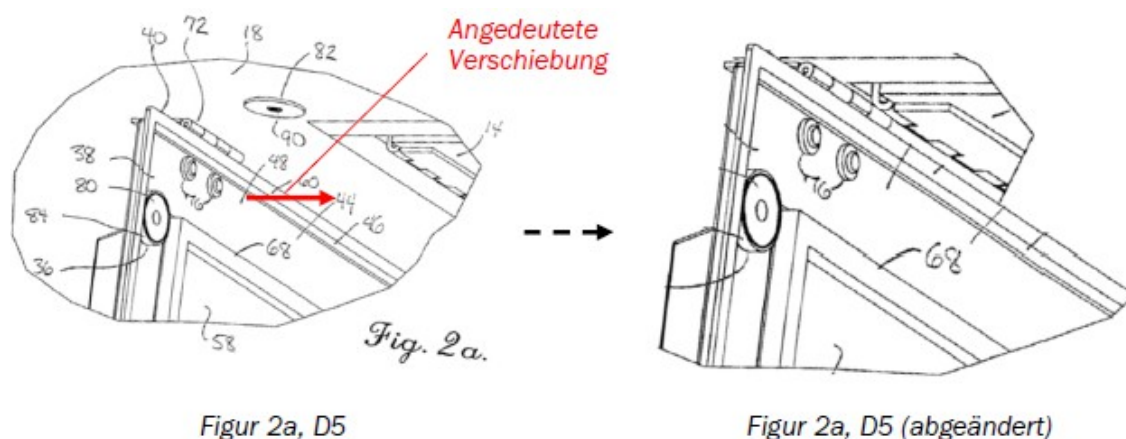
185 D 5 discloses an attic staircase (para. [0023]: "attic stair assembly" 26; Figures 5, 8) which is ordered in an opening in a room ceiling and closes it as a floor closure device (feature 1.1). The attic staircase comprises a frame ordered in the opening, which can be seen in Figure 8 (marked in red below) (feature 1.2). The frame is ordered between the ceiling beams ("frame members" 22; "ceiling joints" 24"). The entire "attic stair assembly" 26 (marked in red, yellow and green below), including the (red) frame, is inserted into the attic opening. A (blue) hatch cover 32 ("cover structure") is pivotally mounted to the ceiling by means of a hinge 34 ("pivotal mount") (see in particular Fig. 5 and para. [0024]) (features 1.4, 1.9). The loft ladder also has a multi-part folding (green, yellow) ladder 26, which is pivotally attached to the frame at its upper end on the outside (Fig. 8). The pivotability is achieved by means of a hinge 31 ("hinge"). The (green, yellow) staircase consists of three stair segments that can be folded together via hinges (see in particular Fig. 6) (second part of feature 1.5). The frame is designed to be load-bearing (feature 1.6) and the (blue) hatch cover is not a load-bearing element (feature 1.7).

186 Figures 5 and 8 of D 5 are reproduced below (colour highlighting added).

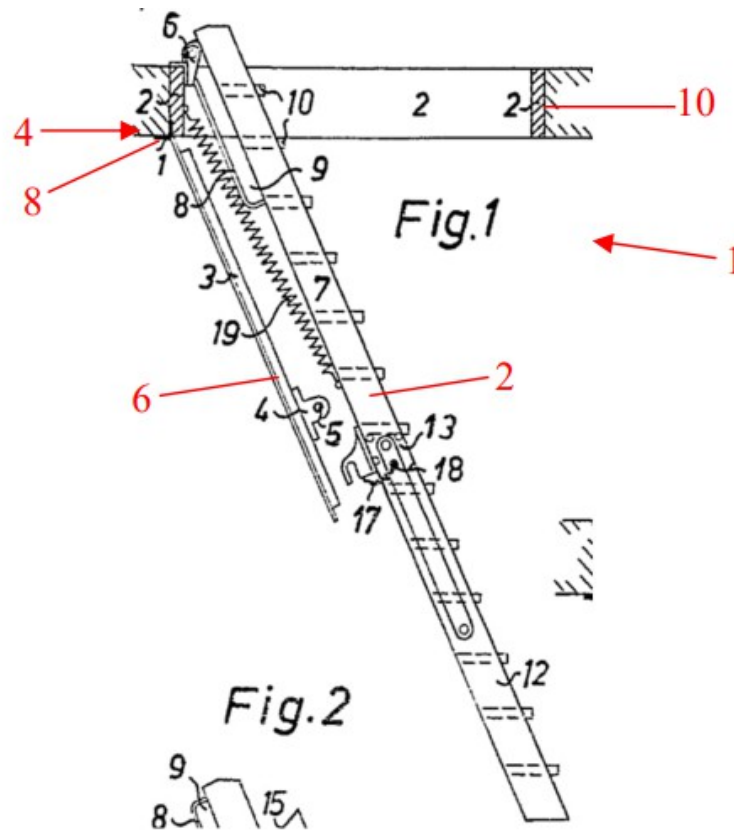


- 187 According to paragraph [0025] of D 5, the (blue) hatch cover ("cover structure") 32 has a thin cladding in the form of cover panels ("cover panel") 38 made of a light, flexible material and an insulating body ("insulating body") 58 surrounded by this cladding 38, which is designed as a one-piece extruded polystyrene foam board (para. [0026]), on (features 1.10 to 1.14). In particular, the cross-sectional view according to Fig. 8 shows that the polystyrene foam board is formed in one piece and forms the essential component of the hatch cover 32. The entire (blue) cover is obviously a mounting unit and thus formed in one piece (feature 1.11).
- 188 Apart from the first part of feature 1.5 (stairs attached to the inside of the frame), feature 1.9 is not disclosed. This is because the hatch cover is not ordered to be attached to the frame by means of a fastening section; rather, the (blue) hatch cover 10 is attached to the ceiling in the D 5, as can be seen in Figure 5. Since the fastening section for the (blue) hatch cover (insulated cover) 10 is not ordered to the (red) frame but to the ceiling, D 5 lacks features 1.3, 1.8 and 1.9.
- 189 The defendant believes that the skilled person starting from D 5 would have reason to simplify the installation of this loft ladder and reduce the number of installation steps required. This is because installing the cover overhead and damaging the ceiling would be disadvantageous. Therefore, the skilled person would notice that there would be sufficient space on the (red) frame of the loft ladder to order the hinge 34 without further modification. Only the hatch cover would need to be shortened, as there would be sufficient free installation space available. Excerpts from figures in D 5, which have been labelled by the defendants, are reproduced below.





- 190 They are of the opinion that the simple steps for the order of the hinge and measuring the hatch cover are within the scope of the usual skills of a specialist.
- 191 This is not convincing. Even if the skilled person were to make such a shift, the (yellow, green) staircase would still not be pivotably attached to the inside of the (red) frame, but to the underside of the (red) frame (missing first part of feature 1.5).
- 192 It is therefore merely pointed out that the skilled person starting from D 5 could carry out the displacement of hinge 34 towards the (red) frame 10 cited by the defendant. However, there is no reason for this in D 5. This is because D 5 offers a ready-made solution for sealing a ceiling opening in which a (green, yellow) loft ladder is already installed (including a (green) cover and a pulling cord 30). This retrofit solution of the D5 explicitly offers an improved (additional) attic opening cover with easier installation, use and durability (paragraph [0005], lines 7-11: "[...] it is believed an improved attic opening cover may be possible to provide greater ease of installation, use, and durability."; Paragraph [0006], lines 3-9: "the attic opening cover hereof not only provides insulation and limits air intrusion from attic spaces into normally occupied areas of a residence, but is easy to install and use, may be mounted horizontally, vertically or at angles therebetween depending on the location, and helps limit access to attic spaces by small children, especially when pull-down stairs are positioned in the opening.").
- 193 A combination with FR 1,042,678 (Annex NK 14) is also of no help in this respect.
- 194 Although NK 14 may reveal a non-load-bearing hatch cover that is attached to the frame of the attic staircase via a hinge (see Figure 1 of NK 14 below, which was provided by the defendant with reference marks from the patent at issue):



Figur 1, NK14 (Beschriftung hinzugefügt)

- 195 However, there is no apparent reason to attach the cover of D 5 to an attic staircase with a multi-part staircase attached to the frame in accordance with NK 14. The defendant leaves open what such a combination of D 5 and NK 14 would actually look like.
- 196 Irrespective of this, a combination of D 5 with NK 14, in which the staircase there is adopted, does not result in an object with the (missing) feature 1.5. This is because the staircase 12 of NK14 is not attached with its upper end in a pivotable manner "to the inside" of the frame 2 as required. Instead, there is a guide groove 9 on the lower wall of each of the stringers of the upper part 7 of the staircase, via which the staircase can be moved along the bearing blocks 6 arranged above the door frame.
- 197 Insofar as the defendants further assert a combination of D 5 with NK 1, NK 4-NK 7, NK 9, NK 11 and/or NK 12, the defendants have only made general statements on this point and have not provided any detailed explanations. It remains unclear what reasons the skilled person starting from D 5 would have for combining it with attic stairs of the aforementioned prior art if these are already thermally insulated attic stairs.

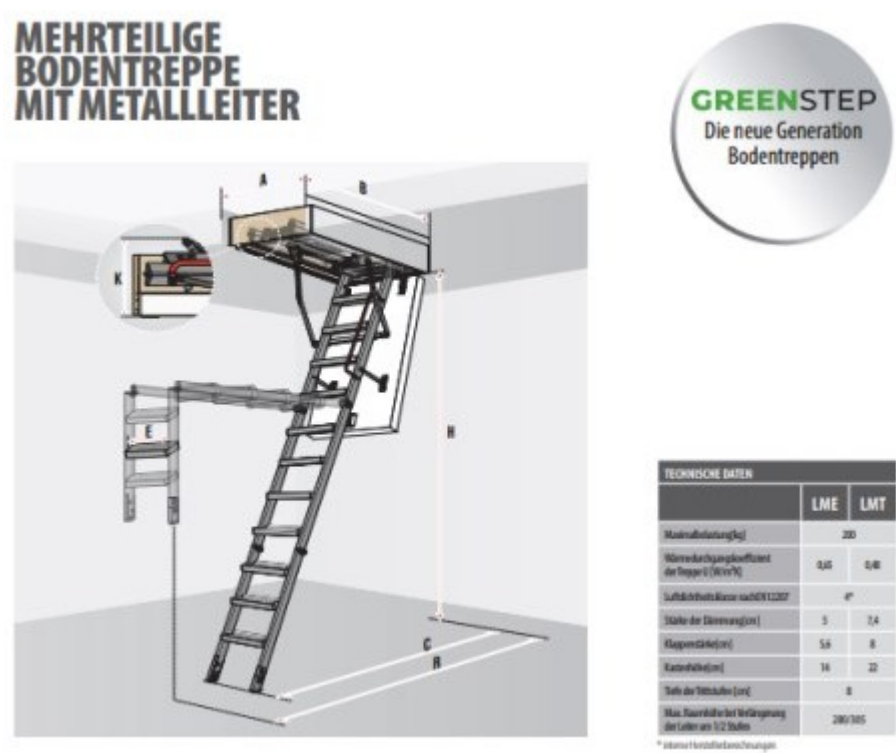
198 Since the main claim is already considered to be legally valid, the question of the possible legal validity of the subclaims is irrelevant.

D. INFRINGEMENT OF CLAIM 1

199 The contested embodiments unproblematically realise all the features of claim 1.

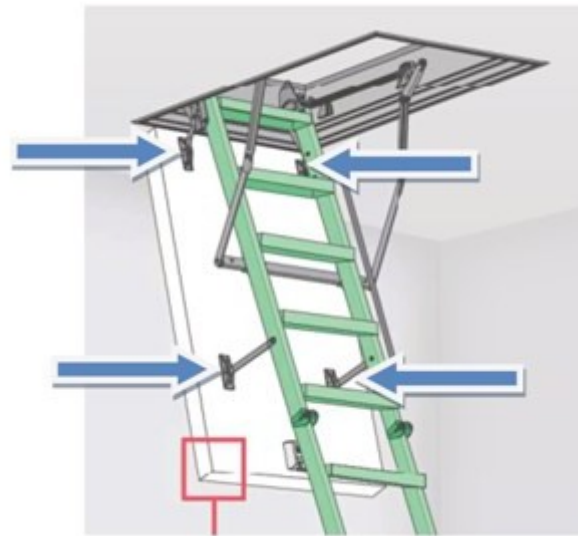
Contested embodiments

200 The claimant considers the distribution of the defendant's products under the names "GREENSTEP LME Energy Efficient" and "GREENSTEP LME Energy Efficient Plus" to be an infringement of the patent at issue.
under the names "GREENSTEP LME Energy Efficient" and "GREENSTEP LMT Super Thermo". A representation from The German product catalogue is reproduced below (see Annex ES 9):



- 201 The contested embodiments – "LME Energy Efficient" and "LMT Super Thermo" – consist of an identical design with regard to the features of claim 1 of the patent at issue.
- 202 The defendant's objection that the claimant did not clearly identify the contested embodiments (see statement of defence, page 11, and rejoinder, page 6 et seq.) is unfounded. The contested embodiments are the models mentioned above, which are available in various sizes. All of these sizes are contested, as the installation size is independent of the question of infringement and they do not differ in their other features relevant to the question of infringement of the patent at issue. The fact that models with the same core features are also contested does not require explicit confirmation (see Munich local division, GRUR-RS 2024, 27897, para. 83).
- 203 Insofar as the defendant asserts that there is no infringement because, on the one hand, the hatch cover is designed to be load-bearing contrary to feature 1.7 and, on the other hand, there is no hinge within the meaning of feature 1.9, neither objection is valid.
- 204 As explained in the interpretation, it is not relevant to the patent at issue that the hatch cover does not bear any load at all. Rather, what is decisive is that the hatch cover does not have to bear part or all of the operating load when the staircase is in use. This is not the case with the contested embodiments, since the multi-part folding staircase of the contested embodiments is undisputedly arranged on the frame, so that the frame

absorbs the operating load during use. The fact that the staircase is attached to the hatch cover by means of an arm does not alter this.



- 205 The fact that the contested embodiments fulfil feature 1.7 is made clear by the fact that the ladder can be used in the operating position even without the hatch cover; the cover does not bear the relevant operating load during use. The upper articulated connections serve only to pivot the cover around the frame by means of the hinge, and the lower connections serve to hold the cover to the ladder. Overall, these connections enable the cover to be pivoted together with the ladder.
- 206 The contested embodiments also implement feature 1.9, since – as explained in the interpretation – the claim does not specify a particular design of the hinge. The term 'hinge' in feature 1.9 covers all types of hinges, including not only double-jointed hinges but also multi-jointed hinges.
- 207 Features 1.10 to 1.14 are also realised by the contested embodiments. Reproduced below is a section of the cut-away hatch cover of the contested embodiments, which was created and labelled by the Claimant (Exhibit ES 10).



208 The single-piece foam core is made of EPS (expandable polystyrene) and has a high-density fibreboard (HDF) shell on its outer surface. The cutaway view clearly shows that the hatch cover is essentially made of the foam core. The HDF cladding protects the foam core and is not particularly heavy (see, for example, model LME, size 58x120, total weight 3.63 kg, of which 2.6 kg is accounted for by the HDF panels; see overview in the defendant's document of 29 March 2025, page 7 f.).

E. PASSIVE LEGITIMACY

209 The defendants have passive legitimacy as infringers. By offering and distributing the contested embodiments, the defendants have also committed acts of infringement within the meaning of Article 25(a) UPC Agreement. At the same time, offering and placing on the market gives rise to a rebuttable presumption that the defendant also use the contested embodiments or import or possess them for the purposes of offering, placing on the market or using them (local division Düsseldorf, UPC_CFI_7/2024, decision of 3 July 2024; UPC_CFI_363/2023, decision of 10 October 2024).

210 This is not disputed with regard to defendants 1), 2) and 4). Defendant 1) offers and markets the contested embodiments in Austria in accordance with Art. 25(a) UPCA. The act of offering is evident from the website of defendant 1), where the LME Energy Efficient model and the LMT Super Thermo model can be ordered for delivery in Austria. Defendant 2) offers and markets the contested embodiments in Germany in accordance with Art. 25(a) UPCA.

a) UPCA. The contested embodiments are offered in

its official product catalogue for loft ladders in Germany (Exhibit ES 9). This catalogue is aimed directly at German customers, as it can be downloaded in German from the German website of the second defendant and accessed online. On page 34 of the catalogue, the second defendant is named as the responsible publisher of the catalogue; the contested embodiments are shown and described on pages 3, 6 and 10 of the catalogue.

- 211 The fourth defendant, together with the first, second and third defendants, offers the contested embodiments in Germany, Austria, Denmark and Sweden and places them on the market and/or imports them into these countries for the purpose of placing them on the market, Art. 25(a) UPCA. The contested embodiments are also offered to customers in Austria, Germany, Denmark and Sweden on the website fakro.com, which is operated by the fourth defendant, independently of the national Fakro websites (see Annex ES 24). A country-specific selection can be made via this website. For example, if the customer clicks on a country such as Denmark, a link to the domain fakro.dk is displayed, which takes the customer to the website of defendant 3. The same applies to Germany, Austria, and Sweden. If the customer clicks on the "Contact", they are taken directly to the contact form, where it is possible to select the desired country. This makes it clear that the offer of the contested embodiments on this website is also aimed at customers in Germany, Austria, Denmark and Sweden.
- 212 In any case, there is also a risk of first infringement for placing on the market and/or importing by the fourth defendant into Sweden. The company Nordiska Fönster, Lagegatan 24, 262 71 Ängelholm (hereinafter: FAKRO Sweden), operating under the FAKRO brand, already sells the defendant's windows and accessories in Sweden on the website www.fakrosverige.se (see screenshot of the website as Annex ES 19). This shows that the marketing and product portfolio of FAKRO Sweden corresponds to that of the FAKRO Group, in particular defendants 1), 2) and 4). On the FAKRO Group's website, www.fakro.com, FAKRO Sweden is listed as the official distribution partner for FAKRO products in Sweden, as can be seen from a screenshot of the page www.fakro.com/distribution (Exhibit ES 20). The contested embodiments can therefore be seamlessly integrated into the existing product portfolios of FAKRO Sweden. It can therefore be assumed and is to be expected that the fourth defendant can supply the contested embodiments to FAKRO Sweden at any time in order to offer and further distribute the products through the companies there in Sweden.
- 213 The passive legitimacy of the third defendant can also be established. Its website is linked to the fakro.com website via the country selection,

that the offer on this website – fakro.com – is also aimed at Danish customers. In this respect, the third and fourth defendants are acting jointly within the meaning of Article 25(a) UPC Agreement. The fact that the third defendant does not reproduce the contested embodiments on its own country-specific website does not preclude this. By linking to the website of the fourth defendant, it adopts the offers made by the fourth defendant on the website fakro.com as its own. In this context, offering and placing on the market at the same time gives rise to a rebuttable presumption that the defendant also use the contested embodiments or import or possess them for the purposes of offering, placing on the market or using them (local division Düsseldorf, UPC_CFI_7/2024, decision of 3 July 2024; UPC_CFI_363/2023 decision of 10 October 2024; UPC_CFI_50/3035, decision of 10 April 2025).

- 214 Insofar as the defendants argue in the oral hearing that the defendant 3) had no knowledge of such a link, the Chamber considers this to be a protective claim. Regardless of this, the defendants, and thus also the third defendant, were warned by the claimant in a letter dated 18 July 2024 (Exhibit ES 16), so that the third defendant had, at least since that date, knowledge of the (imminent) infringement of the patent at issue by the contested embodiments alleged by the claimant. It was easily possible and reasonable for it to review any acts of use by itself or jointly with other companies in the Fakro Group. Furthermore, none of the defendants denied any possible responsibility in their response to the warning letter.

F. LEGAL CONSEQUENCES

1. Injunction

- 215 Taking into account the circumstances of the case, the claimant has a right to prohibit the continuation of the infringement pursuant to Art. 25 (a) UPC Agreement in conjunction with Art. 63 (1) UPC Agreement.

2. Recall

- 216 The decision regarding the recall from the distribution channels of the directly infringing products is justified under Art. 64(2)(b)(4) of the UPC Agreement.
- 217 The defendant's view that the claim for recall of products under I. 2. is too broad is unfounded. The defendant argues that simply replacing the hatch cover, which does not meet features 1.10 to 1.14, would eliminate the patent infringement. In this respect, an unconditional order to recall the products would be disproportionate. Furthermore, a recall should not be carried out in relation to non-commercial customers and should only take place if the products were placed on the market after the patent was granted. A grace period must also be granted.

218 The defendant's objection of disproportionateness is unfounded, if only because they themselves argue that they have only sold a very small quantity of the contested embodiments to date. This is because, with only a small quantity, the effort required to implement the recall claim is minimal. Furthermore, the claim is only directed at a recall from commercial customers; in this respect, the wording of the application corresponds to the case law of the Düsseldorf local division (GRUR-RS 2024, 17732). However, the objection to the granting of a deadline is well-founded (Düsseldorf local division, UPC_CFI_50/2024, decision of 10 April 2025; decision of 10 October 2024, UPC_CFI_363/2023).

3. Final removal from distribution channels

219 The same applies with regard to the requested permanent removal from distribution channels. In this respect, the requested order is based on Art. 64(2)(d) and 64(4) UPC Agreement.

4. Information

220 The obligation to provide information arises from Art. 67 UPC Agreement. The information is necessary for calculating and assessing the method by which damages will be sought. In this context, the claimant may also request the submission of supporting documents, namely invoices or, if these are not available, delivery notes. The claimant has a legitimate interest in being able to verify the accuracy of the information on a random basis (local division Düsseldorf, UPC_CFI_7/2023, decision of 3 July 2024; Local Division Düsseldorf, UPC_CFI_16/2024, decision of 14 January 2025; Local Division Mannheim, UPC_CFI_210/2023, decision of 22 November 2024). Insofar as the defendants claim that there is no legal basis for the information under sections I.4d) to f), this is based on Art. 68(3)(a), (b) UPC Agreement in conjunction with R. 191 p. 1, Alt. 2 RoP. According to this, the defendants must already provide information in the infringement proceedings which the claimant needs in order to be able to verify the accuracy of the information and obtain evidence for its calculation of damages. This also includes the submission of supporting documents (local division Munich, UPC_CFI_248/2024, decision of 22 August 2025).

221 Insofar as the defendants wish to provide information only to the claimant's legal representative in person, the application is unfounded. The fact that the information to be provided constitutes sensitive data belonging to the defendants does not mean that special confidentiality orders are required to ensure that the data is only disclosed to the claimant's legal representative. Neither the provisions of the UPC Agreement nor the RoP provide any reason for this. In addition, if the legal representative were to change, the claimant would again no longer have access to the necessary information.

222 Insofar as the defendants request the granting of a deadline for providing information, this objection is fundamentally justified according to the case law of the Court of Appeal (UPC_CoA_699/2025, order of 14 October 2025; UPC_CoA_534/2025, decision of 3 October 2025; dissenting opinion of the Munich local division, UPC_CFI_248/2024, decision of 22 August 2025). Since an order under Article 67(1) UPC Agreement requires a request that complies with the principle of proportionality, the time limit (which runs from the notification under Rule 118.8, first sentence, of the RoP) must be included in a corresponding application by the claimant. The time limit must therefore in any case be set in the decision on the main issue. The purpose of this is to ensure that the defendant is clear about the time limit available to him. If, as in this case, no time limit is set in the final decision, it is up to the claimant to set a time limit for the defendant to provide information when notifying the defendant of the intention to enforce (UPC_CoA_699/2025, order of 14 October 2025). A determination by the court itself is out of the question.

223 The rights to information provided for in the UPC Agreement, as laid down in particular in Art. 67 UPC Agreement and Art. 68(3)(a) and (b) UPC Agreement in conjunction with Rule 191(1) Alt. 2 RoP, also apply to the periods prior to the entry into force of the UPC Agreement (local division Mannheim, UPC_CFI_162/2024, decision of 11 March 2025; local division Düsseldorf, UPC_CFI_50/2025, decision of 10 April 2025; local division Munich, UPC_CFI_248/2024, decision of 22 August 2025).

5. Provisional damages

224 Under Rule 119 of the RoP, the court may award provisional damages to the prevailing party in its decision on the merits. The claimant estimates the corresponding costs based on an assumed value in dispute of at least EUR 1 million for the infringement proceedings in accordance with the court's schedule of fees.

225 The cost estimate is generally plausible and not objectionable. However, it is based on the value in dispute in the infringement proceedings, which the claimant estimates at EUR 1,000,000.00. In this context, it must be taken into account that the value in dispute in the damages proceedings does not necessarily correspond to that in the infringement proceedings. Rather, the value in dispute is based on the calculation of the damages to which the claimant is entitled in accordance with R. 131.2 lit. e) RoP.

226 However, it is not yet possible to estimate how high the value in dispute of the damages proceedings will be. The plaintiff's estimate that this should be measured at EUR 1,000,000.00 on the basis of lost profits is too general. This general assumption is contradicted by the defendant's assertion that only a very small number of the contested embodiments were sold. This is an unsubstantiated assertion.

However, there are no indications for the amount in dispute assumed by the claimant. In this respect, only the fixed fee of EUR 3,000, which is always incurred, can be taken into account in favour of the claimant (cf. R. 132 RoP in conjunction with Section I of the court fee table).

- 227 Insofar as the defendants provide for an application for security in the event of a corresponding order, such an order is unfounded. The court may award damages subject to conditions, such as security pursuant to R. 352.1 RoP. However, there is no reason to do so in the present case.

6. Determination of damages

- 228 The determination of the award of damages on the merits is based on Art. 26 in conjunction with Art. 68(1) of the UPC Agreement (claim I.6.). The defendants should have recognised, with due care, that their actions infringed the patent at issue.

7. Ordering of penalty payments

- 229 In the event of non-compliance with the orders under claim I.1., repeated penalty payments may be imposed on the defendants (Art. 63 (2) UPC Agreement, R. 354.3 RoP). The amounts proposed by the claimant are necessary to ensure compliance with the court orders. They also reflect the economic damage that the claimant could suffer if the defendant fails to comply with the law. The defendant have objected to this, arguing that only a warning should be considered. In principle, the threat of a penalty payment for failure to comply (Art. 63(2) UPC Agreement) does not give rise to any concerns. The basis for the threat of a penalty payment with regard to the provision of information and accounting is Art. 82(1), (4) UPC Agreement and Rule 354.3 RoP. However, it is consistent with the case law of the Local Divisions of the UPC that penalty payments can already be quantified in the final decision (see Court of Appeal, UPC_CoA_699/2025, order of 14 October 2025; Local division Munich, UPC_CFI_390/2023, decision of 13 September 2024; decision of 27 August 2024, UPC_CFI_74/2024; Local division Düsseldorf, UPC_CFI_7/2023, decision of 3 July 2024).

8. Enforceability

- 230 Pursuant to Art. 82(2) UPC Agreement, R. 118(8) sentence 2 RoP, the court may make any order or measure subject to the provision of security, the amount of which it shall determine.
- 231 The order of security for enforcement is therefore at the discretion of the court. The interests of the patent proprietor in the effective enforcement of its property right must be weighed against the interests in the effective enforcement

possible claims for damages in the event of a subsequent reversal of the decision (Court of Appeal, UPC_CoA_365/2025, order of 21 May 2025; local division Düsseldorf; UPC_CFI_50/2024, decision of 10 April 2025).

- 232 It is therefore always necessary to examine each case individually. Factors to be taken into account when deciding whether to order security include the financial situation of the claimant, which may give rise to legitimate and real concerns that a possible claim for damages cannot be enforced and/or executed, or can only be enforced and/or executed at disproportionate expense, if the first-instance decision is set aside or amended. The relevant facts and arguments must be presented by the defendant, who bears the burden of proof in this regard. Once such an argument has been made, it is incumbent upon the plaintiff to substantiate his dispute of these facts and reasons, especially since he generally has knowledge and evidence regarding his financial situation. It is also the plaintiff's responsibility to explain, if necessary, why, despite the reasons put forward by the defendant, his interest in enforcing his property right without security prevails (Court of Appeal, UPC_CoA_365/2025, order of 21 May 2025; Local division Düsseldorf; UPC_CFI_50/2024, decision of 10 April 2025).
- 233 The defendants have not presented any reasons that would justify making enforcement in the present case dependent on the provision of security. The court therefore refrains from ordering such security for enforcement.

9. Amount in dispute

- 234 The claimant has submitted a value in dispute of €1,000,000.00 for the infringement proceedings, justifying this on the grounds that it is the market leader for loft ladders and generates five million euros with a product corresponding to the contested embodiments. Accordingly, the corresponding damage in the form of lost profits would be assessed at a correspondingly high level. In addition, according to the defendant's own statements (see Annex ES 26), it plans to increase its market share significantly ("minimum 30% share"). The defendant merely objected that only fourteen stairs had been sold in Germany, Austria, Denmark and Sweden to date. No concrete evidence of this was presented. Against this background, and particularly in view of the fact that the patent at issue will remain in force for another six years, the court considers the amount in dispute for the infringement proceedings as submitted by the claimant to be appropriate.
- 235 The value in dispute for the nullity proceedings is therefore to be set at €1,500,000.00 in accordance with Section 2 b) (2) (ii) of the Administrative Committee's Directive on the determination of court fees and the upper limit for reimbursable costs of 24 April 2023. According to this provision, the value in dispute for a counterclaim for

a declaration of invalidity in the absence of relevant information is, in principle, equal to the value of the infringement action plus 50%.

G. DECISION ON COSTS

236 Pursuant to Art. 69(2) UPC Agreement in conjunction with R. 118.5 RoP, a decision on costs had to be made. Since the defendants have essentially lost the case, it is justified to impose 90% of the costs on them and to oblige them to pay a proportionate share of the costs. The counterclaim for annulment brought by all defendants is unfounded. The defendants must therefore bear the costs thereof.

DECISION

I. The defendant is ordered

1. to refrain from

attic stairs which are designed to be placed in an opening in a room ceiling and to close it as a floor closure device, with a frame for insertion into the opening, which is designed to be placed in the opening, a fastening section, a hatch cover, and a multi-part folding staircase pivotably attached at its upper end to the inside of the frame, wherein the frame is designed to be load-bearing and wherein the hatch cover is not a load-bearing element, characterised in that

the fastening section is arranged on the frame, and the hatch cover is pivotably connected to the fastening section by means of a hinge, and that the hatch cover is essentially formed from a heat-insulating material and is essentially one-piece, wherein the hatch cover is formed from a foam core which has an insulating foam or is formed from an insulating foam and has a casing or lamination on its outer surface,

(Claim 1 of EP 2 476 814 B1)

in Denmark (DK), Germany (DE), Austria (AT) and Sweden (SE), or to import or possess them for the aforementioned purposes;

2. which are listed under Section I.1. which have been delivered since 5 June 2021, within a period of 30 days after delivery of the notification within the meaning of R.118(8) sentence 1 of the RoP and, where applicable, the certified translation, at the expense of the defendant, 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 2 476 814 B1, whereby the defendants must make a binding commitment to the third parties 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. the infringing products referred to in section I.1, which have been delivered since 5 June 2021, must be removed from the distribution channels within a period of 30 days after delivery of the notification within the meaning of R.118(8) sentence 1 RoP and, if applicable, the certified translation, at the defendant's expense, by requesting the defendant, with reference to the fact that this court has found that the products infringe European patent EP 2 476 814 B1, third parties who are commercial customers but not end users with regard to the products referred to in Section I.1 to cancel all orders relating to the products referred to in Section I.1 and to submit to the court and the Claimant, within the aforementioned period of 30 days after delivery of the notification within the meaning of R. 118 (8) sentence 1 of the RoP and, where applicable, the certified translation, within the aforementioned period of 30 days after service of the notice;
4. to provide the claimant with information on the extent to which they have committed the acts referred to in section I.1 since 5 June 2021, in the form of a structured list of the following information for each month of a calendar year and for each infringing product:
 - (a) the 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 media, 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 made, whereby copies of the relevant purchase receipts (namely invoices or, alternatively, delivery notes) must be submitted as evidence of the information provided, whereby details requiring confidentiality may be blacked out outside the data subject to the obligation to provide information;
- 5. to pay the claimant an amount of €3,000.00 as provisional damages.
- II. It is hereby determined that the defendants are obliged to compensate the claimant for any further damage incurred or to be incurred in the future for all past and future actions in accordance with Section I.1 since 5 June 2021.
- III. In the event of any violation of
 - a) the orders under Section I.1, the defendants shall pay a repeated penalty payment of at least EUR 10,000.00 per infringing product;
 - b) in the event of any violation of the order pursuant to the application under I.2 and I.3, a recurring penalty payment of at least EUR 500.00 per day for each day of the violation;
 - c) in the event of any infringement of the order pursuant to the application under Section I.4, a repeated penalty payment of at least EUR 250.00 per day for each day of the infringement to be paid to the court.
- IV. In all other respects, the action is dismissed.
- V. The counterclaim for annulment is dismissed.
- VI. The defendants shall bear 90% of the costs of the action, and the claimant shall bear 10% of the costs of the action. The defendants shall bear the costs of the counterclaim for annulment.
- VII. The value in dispute for the action is set at EUR 1,000,000.00. The value in dispute for the counterclaim for annulment is set at EUR 1,500,000.00.
- VIII. The orders under I. 1. to 5. shall only be enforceable after the claimant has notified the court of which part of the orders it intends to enforce and has submitted a certified translation of the orders into the official language of the Member State of the contract in which enforcement is to take place, and after the defendant have been served with the notification and the (respective) certified translation.

Sabine Klepsch Presiding Judge and Rapporteur	
Dr Stefan Schilling legally qualified judge	
Andras Kupecz legally qualified judge	
Uwe Ausfelder technically qualified judge	
For the Deputy-Registrar	

INFORMATION ON THE APPEAL

Any party whose applications have been rejected in whole or in part may appeal against this decision within two months of its notification to the Court of Appeal (Art. 73(1) UPC Agreement, R. 220.1(a), 224.1(a) RoP).

INFORMATION ON ENFORCEMENT

A certified copy of the enforceable decision shall be issued by the Deputy-Registrar on the application of the enforcing party, Rule 69 RegR.

The decision was announced in open court on 5 November 2025.

Dr Stefan Schilling legally qualified judge	
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