

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 7 November 2025
concerning an application for provisional measures
(R. 206 RoP)

HEADNOTE

Experimental data which are not disclosed in the patent specification are, as a general rule, not relevant to the interpretation of the patent claims.

KEYWORDS

Provisional measures; claim construction.

APPELLANT (DEFENDANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

OTEC Präzisionsfinish GmbH, Heinrich-Hertz-Straße 24, 75334, Straubenhardt-Conweiler, Germany (hereafter "**OTEC**")

represented by Klaus Haft, attorney-at-law, HOYNG ROKH MONEGIER, Düsseldorf, Germany, and other representatives of that firm

RESPONDENT (APPLICANT IN THE PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

STEROS GPA Innovative S.L., Calle Salvador Alarma, 16, ES-08035 Barcelona, Spain (hereafter "**STEROS**")

represented by Sebastian Ochs, Grünecker PartG mbB, Munich, Germany, and other representatives of that firm

PATENT AT ISSUE

EP 4 249 647

DECIDING PANEL

Panel 1a

Klaus Grabinski, presiding judge and President of the Court of Appeal,
Emanuel Gougé, legally qualified judge and judge-rapporteur,

Peter Blok, legally qualified judge,
Jeroen Meewisse, technically qualified judge,
Martin Schmidt, technically qualified judge.

LANGUAGE OF THE PROCEEDINGS

English

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- ☐ Order of the Court of First Instance of the Unified Patent Court, Hamburg Local Division, dated 16 June 2025, as rectified by the order of 11 August 2025
- ☐ Numbers attributed by the Court of First Instance:

UPC_CFI_281/2025

ACT_14764/2025

ORD_28305/2025

DATE OF THE ORAL HEARING:

15 September 2025

FACTS AND REQUESTS OF THE PARTIES

The Parties and the patent at issue

1. The Spanish company Drylyte, S.L is the registered owner of EP 4 249 647 on an electrolytic medium and electropolishing process using such electrolytic medium (hereafter the “patent”) to which STEROS, who is part of the Drylyte-group, has been granted an exclusive license.
2. The patent relates to the treatment of metal surfaces, more specifically to electropolishing, and provides for an electrolytic medium and an electropolishing process using such electrolytic medium. It was filed on 30 November 2021 claiming a priority of 9 December 2020. Its mention of grant was published on 26 February 2025 and its unitary effect was registered in the Register for unitary patent protection on 21 March 2025.
3. Claim 1 of the patent reads as follows
 1. *Electrolytic medium comprising:*
 - *a set of solid electrolyte particles, comprising solid particles that retain a conductive solution, the set presenting an electrical conductivity greater than 10 microns/cm, and*
 - *a non-conductive fluid immiscible in the conductive solution, immiscible being understood as not forming a single phase in any proportion from 0 to 100°C, the non-conductive fluid when being at rest at room temperature not significantly conducting electrical current.*

the electrolytic medium being suitable for an electropolishing process comprising the steps of:

- a) connecting at least one piece to be polished to a power supply;*
- b) connecting at least one electrode to the opposite pole of the power supply;*
- c) contacting the at least one piece to be polished and the solid electrolyte particles of the electrolytic medium with a relative movement between the piece and the particles;*
- d) applying a potential difference between the piece to be polished and the electrode, which produces a current flow between them through the electrolytic medium.*

4. OTEC manufactures and sells electropolishing and electrofinishing machines, such as the ones referenced EF-Smart or EF-One, as well as the electrolytic medium for use thereto, including the electropolishing medium EF 16-11 (hereafter the “attacked embodiment”) and the refill liquid RF 16-0, in the territories of some UPC contracting members States, including Germany.

The first instance proceedings

5. On 26 March 2025 STEROS lodged an application for provisional measures against OTEC before the Hamburg Local Division of the UPC Court of First Instance (hereafter “Hamburg LD”), for infringement of claim 1 of the patent, requesting that OTEC is ordered to cease and desist from infringing claim 1 of the patent, pay a recurring penalty of € 250,000 to the Court for each individual breach of the order and pay the costs of the proceedings.
6. In response, OTEC requested the application to be dismissed and STEROS to bear the costs of the proceedings and, in the alternative, in any event where provisional measures are ordered, to order STEROS to provide a security not below € 500.000 for the enforcement of the provisional measures.
7. On 16 June 2025, the Hamburg LD ordered OTEC to cease and desist from manufacturing and/or offering, placing on the market or using or exporting or possessing an electrolytic medium according to claim 1 of the patent in all UPC Contracting Member States which have ratified the UPCA as of the date of the impugned order, to pay a recurring penalty payment for each individual case of non-compliance with the order and to pay the costs of proceedings
8. It considered more likely than not that the patent is not invalid, that the attacked embodiment includes all the features of claim 1 and that OTEC infringes the patent.
9. On infringement, the reasoning of the CFI is based inter alia on a claim construction of claim 1 of the patent according to which, when the non-conductive fluid is an emulsion, if the emulsion at rest separates in two phases, i.e. a less dense (oily) phase on top of a denser (aqueous) phase, then the conductivity of each phase has to be measured separately in order to establish whether it is conductive or not (impugned order, p. 17).
10. Based on this interpretation, the CFI found that the attacked embodiment has a non-conductive fluid immiscible in the conductive solution (impugned order, page 19, last paragraph) and that said non-conductive fluid has a conductivity lower than 10 micronS/cm when being at rest and being immiscible in the conductive solution (impugned order, page 20, penultimate paragraph) and that all other features of claim 1 of the patent were reproduced in the attacked embodiment.

11. OTEC lodged an appeal against the impugned order. It requests the impugned order to be set aside, the application for an injunction to be rejected and STEROS to bear the costs of the proceedings. In the alternative OTEC requests the impugned order is partially set aside and STEROS' request for an injunction is only granted under the condition that the alleged infringement is allowed to continue subject to the provision of a security and, in a further alternative, that an injunction is only granted under the condition that the enforcement of the order for provisional measures is dependent on the provision of security by STEROS.
12. OTEC requested suspensive effect (R. 223 RoP) for the appeal, which was rejected (CoA order of 10 July 2025, ORD_32771/2025 in App_30685/2025).
13. According to OTEC, the attacked embodiment contains one same electrolyte liquid inside and outside the particles which is a conductive oil-in-water-type emulsion with a water-type continuous phase and oily micelles. The conductivity of the liquid shall be assessed by measuring the emulsion as a whole, which shows that there is no non-conductive fluid according to claim 1 of the patent, and not, as the CFI did, by separating the ingredients of the emulsion and assessing the conductivity of both phases separately and identifying the presence of a non-conductive fluid.
14. STEROS responded to the appeal, requesting the Court of Appeal to reject the appeal and to order OTEC to pay the costs of the appeal proceedings.
15. Although STEROS widely agrees with the CFI reasoning, it considers that the non-conductivity of the fluid immiscible in the conductive solution, which is claimed in the patent to be not significantly conductive, must be viewed in the context of the invention and not, as the CFI did, by reference to the 10 micronS/cm electrical conductivity value above which the electrical conductivity of the solid electrolyte particles shall be. Instead of a strict quantitative value, STEROS considers that the not significantly conductive value of the non-conductive liquid has to be assessed by reference to a qualitative standard, relative to the conductive solution retained in the solid particles: a fluid is "non-conductive" as long as its conductivity at rest is sufficiently below the conductivity of the set of particles retaining the conductive solution which shall itself have a conductivity greater than 10 micronS/cm.
16. On infringement, STEROS argues that when applying the claim interpretation adopted by the CFI, according to which the conductivity of each phase of an emulsion has to be measured separately in order to establish its conductivity, the oily phase of the emulsion present in the attacked embodiment shows a negligible conductivity of 0,291 micronS/cm (STEROS exhibit GRU 5), hence staying far below the threshold of 10 micronS/cm and qualifying as a "non-conductive fluid" in the sense of the patent at issue.
17. STEROS further argues that, should OTEC's claim construction be adopted, according to which the conductivity of the emulsion should be assessed as a whole instead of each phase of the emulsion, the patent is also infringed: due to the conductivity ratio between the set of solid particles (3.785 micronS/cm) and the surrounding liquid of EF 16-11 (max. 408,3 micronS/cm), considering that the non-conductivity of the non-conductive fluid has to be assessed relative to the conductivity of the conductive solution retained in the

solid electrolyte particles, the conductivity of the surrounding liquid as the “non-conductive fluid” is not significantly conducting electric current as required under claim 1 of the patent.

GROUNDING FOR THE ORDER

18. For ease of reference, the features of claim 1 of the patent can be divided as follows:

[1] Electrolytic medium comprising:

[1.1] a set of electrolyte particles, comprising

[1.1.1] solid particles that retain a conductive solution,

[1.1.2] the set presenting an electrical conductivity greater than 10 micronS/cm,

and

[1.2] a non-conductive fluid immiscible in the conductive solution,

[1.2.1] immiscible being understood as not forming a single phase in any proportion from 0 to 100°C,

[1.2.2] the non-conductive fluid when being at rest at room temperature not significantly conducting electric current;

[2] the electrolytic medium being suitable for an electropolishing process comprising the steps of:

[2.1] a) connecting at least one piece to be polished to a power supply;

[2.2] b) connecting at least one electrode to the opposite pole of the power supply;

[2.3] c) contacting the at least one piece to be polished and the solid electrolyte particles of the electrolytic medium with a relative movement between the piece and the particles;

[2.4] d) applying a potential difference between the piece to be polished and the electrode, which produces a current flow between them through the electrolytic medium.

Subject-matter of the proceedings

19. Pursuant to R. 222.1 RoP, first sentence, requests, facts, evidence and arguments submitted by the parties under Rules 221, 225, 226, 236 and 238 shall, subject to paragraph 2, constitute the subject-matter of the proceedings before the Court of Appeal,

20. Regarding claim construction and infringement, both OTEC and STEROS have focused their dispute in the appeal on the feature of claim 1 of the patent which relates to the presence of a non-conductive fluid (feature 1.2 in the above claim chart of the patent, hereafter referred to as “feature 1.2”) and have not disputed the realization of other features of claim 1 of the patent in the attacked embodiment. The Court of Appeal shall thus concentrate its analysis of this decisive feature and, depending on the outcome regarding said feature, address the other issues in dispute between the parties.

Skilled person

21. According to the CFI, and as claimed by STEROS, the person skilled in the art is a mechanical engineer experienced in the field of surface treatment, especially in the field of electropolishing. Although OTEC is of

the opinion that the skilled person, as part of a team, is an electrochemist with a (technical) university degree and several years of experience in the further development of electrochemical processes for (industrial) production systems, machines and apparatus, OTEC does not raise any argument based on this different definition of the person skilled in the art which is decisive regarding the patent claim construction and infringement. There is thus no reason for the Court of Appeal to deviate from the position adopted by the CFI on this issue.

Principles on claim construction

22. Following the principles on claim construction set out by this Court, the patent claim is not only the starting point but the decisive basis for determining the protective scope of a European patent under Art. 69 EPC in conjunction with the Protocol on the Interpretation of Art. 69 EPC. The interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used. Rather, the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim. (UPC_CoA_335/2023, NanoString v 10x Genomics, 26 February 2024 as rectified).

The invention

23. The patent aims to disclose a new electrolytic medium and an electropolishing process that uses it. According to the patent specification a new technology for polishing metal surfaces based on an electrochemical process using a solid electrolyte was released in 2016 [0002]. Different compositions of solid electrolytes are described in the prior art, all of which are based on two elements: a set of non-conductive inert support particles and an aqueous solution of strong acid [0008]. These compositions have limitations, like the generation of a ripple commonly called orange peel [0009]. Measures like varying the electrical parameters used in the process, reducing the concentration of the acidic solution that is included in the solid electrolyte, or reducing the amount of aqueous solutions, do not represent a solution sufficient to overcome these limitations [0010].
24. Further to the specification, the fundamental difference of the invention as claimed is the presence of a non-conductive fluid together with solid electrolyte particles [0013]. In contrast to the prior art, the non-conductive fluid contacts the surface of the spherical particles, without significantly penetrating the interior, avoiding the areas where the particle contacts another particle [0025]. This results in a concentration of liquid electrolyte in the areas in which the particles contact each other which translates into greater particle connectivity. In the particle-particle contact areas, the liquid electrolyte in the particles is concentrated. The immiscibility between the two fluids (conductive and non-conductive) makes the particle-particle conductive liquid menisci more concentrated in space, and therefore stronger. All of this translates into greater particle connectivity [0026].

Feature 1.2 non-conductive and immiscible fluid

25. According to feature 1.2 the fluid should be non-conductive and immiscible in the conductive solution of feature 1.1. The non-conductive fluid is, according to the patent description, a defining element of the invention [0067] and its main effect on the solid electrolyte particles is to cover the metal surface of the piece to be polished with non-conductive liquid, which has itself several technical effects that result in a better finish of the solid electrolyte electropolishing process [0072].

26. There is a limited number of types of fluids that are considered to be non-conductive ones under feature 1.2, whether used pure or in combination with each other, including hydrocarbons, organic solvents, essential oils, silicone and silicone oils, fluorinated solvents [0077].
27. Under the heading of non-conductive fluid (above [0067]), emulsions are described as a type of non-conductive fluid which deserves a special mention [0088]. The description refers to water-in-oil type emulsions (w/o) which are expressly a non-conductive non-polar continuous phase containing conductive polar solution micelles. The conductive polar solution of micelles has the same composition as the conductive solution that is retained by the solid electrolyte particles. As the non-polar continuous phase is non-conductive, the emulsion at rest without solid electrolyte particles is non-conductive [0089]. It is further described that although the emulsion is not conductive, the conductivity of the total mixture of the electrolytic medium, emulsion plus solid electrolyte particles, is clearly superior to formulations with non-emulsified fluids [0090].
28. When considering an emulsion in the context of feature 1.2, the parties do not agree as to whether the non-conductive fluid under feature 1.2 is the emulsion as such or whether, as decided by the CFI (impugned order p. 16, para. 5), said fluid is only one part of the emulsion. Respectively they disagree on the interpretation of the (non-)conductivity of the fluid, namely whether said conductivity shall be assessed by measuring the electrical conductivity of the emulsion as a whole or whether it shall be assessed by measuring the electrical conductivity of each ingredient of the emulsion separately.
29. According to the CFI, if the emulsion at rest separates in two phases, i.e. a less dense (oily) phase on top of a denser (aqueous) phase, then the conductivity of each phase has to be measured separately in order to establish whether it is conductive or not (impugned order, p. 17, para. 3 under part 2). Supporting this approach, STEROS is of the opinion that neither the patent specification nor claim 1 of the patent provide that the “non-conductive fluid” must be the whole bulk of liquid surrounding the solid particles or that the “non-conductive fluid” cannot be one part of an emulsion.
30. The Court of Appeal is however of a different opinion, for the following reasons.
31. Although claim 1 of the patent does not set the specific details on the configuration of the non-conductive fluid under feature 1.2, the description under the general heading “Non-conductive fluid” (above [0067]) and the further heading “Types” (above [0077]) explicitly refers to non-conductive fluids based on emulsified systems as one type of non-conductive fluid [0088]. Respectively it specifies that as the non-polar continuous phase is non-conductive, the emulsion at rest without solid electrolyte particles is non-conductive [0089]. This is further confirmed when the description refers to the non-conductivity of “the emulsion” as a whole rather than the conductivity of a phase of the emulsion (“Although the emulsion is non-conductive...”) to underline that the conductivity of the total mixture of the electrolytic medium, emulsion plus solid electrolyte particles, is clearly superior to formulations with non-emulsified fluids [0090].
32. This interpretation is supported by the systematics of the patent claims which, under the dependent claims to claim 1, expressly provide for an electrolytic medium wherein the non-conductive fluid is an emulsion (claim 8 of the patent).
33. Contrary to the CFI (impugned order, p. 16, 5th para.), the fact that an emulsion-based non-conductive fluid comprises, according to [0092], a non-conductive fluid as a non-polar continuous phase based on any of the non-conductive fluids mentioned in the description of the patent, a conductive solution as a dispersed polar

phase and surfactants to stabilize the emulsion, does not change this. It does not mean that the non-conductive fluid is only one part of the emulsion and that each component of the emulsion should be considered individually. Rather, it teaches that the emulsion forms the non-conductive fluid which, like any emulsion, contains a non-polar continuous phase or non-conductive fluid, a dispersed polar phase or conductive fluid, and a surfactant also known as emulsifier.

34. Also, when considering an emulsion as the non-conductive fluid under feature 1.2, the conductivity of its continuous phase is decisive as it determines the conductivity of the overall emulsion: when the non-polar continuous phase is non-conductive, the emulsion at rest without solid electrolyte particles is non-conductive ([0089] last sentence).
35. It follows that, when considering an emulsion as the non-conductive fluid under feature 1.2, the electrical conductivity of the overall emulsion shall be assessed, not that of each ingredient of the emulsion.

Feature 1.2.2 non-conductivity of the fluid

36. According to feature 1.2.2, the non-conductive fluid when being at rest at room temperature shall not significantly conduct electrical current.
37. The wording of feature 1.2 does not provide a specific value below which a fluid should be understood to be non-conductive. The conductivity of the conductive solution retained in the set of solid electrolyte particles is however expressly specified to be greater than 10 micronS/cm (feature 1.1.2).
38. According to STEROS, the non-conductivity of the non-conductive fluid shall not be determined by reference to the absolute value of 10 micronS/cm which applies to the conductive solution under feature 1.1.2. Instead, it has to be assessed relative to the actual conductivity of the conductive solution retained in the solid electrolyte particles: a fluid is “non-conductive” as long as its conductivity at rest is sufficiently below the conductivity of the set of particles retaining the conductive solution, so that the electric current does not bypass the intended pathway via the set of solid particles.
39. As rightly noted by the CFI, the non-conductive fluid not significantly conducting electrical current shall however be understood as having an electrical conductivity of not more than 10 micronS/cm. This understanding is based on feature 1.1.2 which provides that the set of electrolyte particles retaining a conductive solution should have an electrical conductivity greater than 10 micronS/cm. In the absence of any indication contrary thereto in the patent claims and the description, the non-conductivity should accordingly be below that limit since nothing in the patent suggests that the conductivity of the fluid and of the solution may be assessed by reference to a different value.
40. The additional evidence submitted by STEROS in the course of the appeal proceedings in relation to its interpretation of feature 1.2.2, according to which the non-conductivity of the liquid should be assessed relative to the conductivity of the particles, would not change the position of the Court of Appeal, irrespective as to whether the new facts and evidence filed by STEROS at the stage of the appeal proceedings should be held admissible under R. 222.2 RoP.
41. Based on the general observation that exemplary embodiments represent variants of a claimed invention and any claim construction which excludes such exemplary embodiments would systematically fail to accurately describe the technical teaching of the invention, STEROS refers to the various examples of an

emulsion as described in Tables 9, 10 and 11 of the patent specification. In Table 10 a non-conductive fluid with Hydroseal G 232 H and detergent A as components is exemplified, whereas the description does not disclose the conductivity of the set of particles in this example nor the non-conductive fluid which, according to feature 1.2.2, shall not significantly conduct electric current. STEROS further refers to tests it had performed with substances reproducing the composition disclosed in Table 10 and (as to the composition of detergent A) Table 14 and that reproduction had shown that the fluid at rest and room temperature had values from approx. 190 to 410 micronS/cm throughout the period of measurement, thus evidencing, according to STEROS, that it can no longer be upheld that the fluid is only non-conductive if it has a conductivity below 10 micronS/cm.

42. In contrast, OTEC in its response argues that the accurate implementation of the example of Table 10 requires that conductivity shall be measured only after combination of the non-conductive fluid composed of Hydroseal G 232 H and detergent A with the polymeric particles (Mitsubishi Relite CFH) and the conductive solution (H₂O, 98% Sulfuric acid and 85% Phosphoric acid) as indicated in Table 10 to an electrolytic medium as protected by patent claim 1. A test run by OTEC showed according to their submissions that after combination of all the elements indicated in Table 10 the surrounding liquid was a water-in-oil-type emulsion with no conductivity for the entire bandwidth of the ratio between the conductive solution and the set of solid electrolyte particles as indicated in para [0066] of the patent specification between 34% and 52% by mass/mass total as optimal for an electropolishing process. In contrast, the composition selected by STEROS (only the precursor liquid of oil and STEROS detergent A) did not form a stable emulsion as its components separate immediately after mixing. Rather the conductivity measurement is increasingly driven by the conductive detergent and growing quickly as phases separate, as also shown in STEROS experiments where values increased from approx. 190 to 410 micronS/cm. Moreover, nothing in the patent suggests that it would be preferred to set all components (but water) of detergent A, described in Table 14 only by a range, always to the maximum of the respective range as done by STEROS in their experiments. Furthermore, OTEC argues that the experiments were unprofessionally conducted by STEROS.
43. For the Court of Appeal, the first thing to note is that Table 10 of the patent specification only states the composition of the elements and the percentages by mass of each element of “an example of emulsified formula for carbon steels” as follows:

Element	Composition	% by mass
Non-conductive fluid	Hydroseal G 232 H	21.0
	Detergent A	4.8
Polymeric particle	Mitsubishi Relite CFH	63.0
Conductive solution	H ₂ O	8.7
	98% Sulfuric acid	1.7
	85% Phosphoric acid	0.8

The table itself does not give any indication as to the conductivity of the non-conductive fluid of the electrolyte medium when being at rest at room temperature as provided for by patent claim 1. Nor does the rest of the patent specification. STEROS failed to demonstrate that the person skilled in the art, on the basis of the Table and their common general knowledge, would understand that the Table presents an embodiment of a non-conductive fluid within the meaning of claim feature 1.2 having an electrical conductivity of more than 10 micronS/cm. STEROS relies primarily on the results of experiments which it has conducted for the purpose of the present proceedings. These experimental data are not disclosed in the

patent specification and are therefore, as a general rule, not relevant to the interpretation of the patent claims.

44. Furthermore, if the person skilled in the art would have reproduced the example, she or he would have tried to implement the example in such way that it is consistent with the teaching of patent claim 1, which provides, as already explained, that the set of electrolyte particles of the electrolytic medium that retain a conductive solution presents an electrical conductivity greater than 10 micronS/cm and that the non-conductive fluid immiscible in the conductive solution when being at rest at room temperature does not significantly conduct electric current, taken as presenting an electrical conductivity lower than 10 micronS/cm.
45. Based on this understanding, the person skilled in the art would have concluded that it is not significant for the implementation of the example described in Table 10 whether the non-conductive fluid has a conductivity lower than 10 micronS/cm after the two components Hydroseal G 232 H and detergent A have been combined but that the non-conductivity of the non-conductive fluid matters only after it has been combined with the polymeric particles and conductive solution in the percentages by mass as indicated in Table 1 to become the electrolytic medium protected as final product in patent claim 1.
46. When implementing the example of Table 10, STEROS measured the conductivity of the non-conductive fluid after it had combined components Hydroseal G 232 H and detergent A (choosing the maximum of 10 % by mass of the ranges provided in Table 14 for the components of detergent A, namely Dodecylbenzenesulfonic acid, C10.9M Ethoxylated Alcohol and Coconut diethanolamide, except H₂O) but did not proceed in combining that fluid with the polymeric particles and the conductive solution resulting in the final electrolytic medium and measuring the conductivity of the fluid surrounding the particles in the electrolytic medium, by separating it again from the particles. Only OTEC in their experiment did this, with the result that the surrounding fluid was a water-in-oil-type emulsion with a conductivity of 0.0 micronS/cm irrespective of whether the water content was 34, 45 or 52%, whereas the filtered ion exchanger was always much more than 10 micronS/cm, meaning 1137, 1312 or 8320 micronS/cm corresponding to the mentioned water content percentages.
47. As the person skilled in the art would have understood from the teaching of patent claim 1 that it is the non-conductivity of the non-conductive fluid as part of the electrolytic medium that matters and not the non-conductivity of the non-conductive fluid in an earlier stage of preparation, STEROS did not provide the Court with evidence that the implementation of the example described in Table 10 by the person skilled in the art would have resulted in a product that is contrary to the understanding of feature 1.2.2 that the non-conductive fluid when being at rest at room temperature does not significantly conduct electric current, understood as having a conductivity lower than 10 micronS/cm. The experiments made by STEROS implementing the example of Table 10, therefore, do not put into question the construction of claim 1 already given by the Court of Appeal in that respect.

Infringement

48. Based on the above-mentioned construction of claim 1 of the patent, it is more likely than not that the non-conductive fluid under feature 1.2 is not reproduced by the attacked embodiment for the following reasons.
49. STEROS has failed to demonstrate that the attacked embodiment, namely the electropolishing medium EF 16-11 with solid particles, contains a non-conductive liquid immiscible in the conductive solution which

does not significantly conduct electric current according to the above claim construction, that is with conductivity no greater than 10 micronS/cm. STEROS own analysis of OTEC's electrolyte EF 16-11 specify that the surrounding liquid or filtrated liquid of the attacked embodiment, when analyzed as a whole, has an electric conductivity above 400 micronS/cm, way higher than the 10 micronS/cm limit above which the fluid is no longer not significantly conducting electric current as required under feature 1.2.2 (see STEROS' report under exhibit GRU 5, p. 14, with a value at 408.3 micronS/cm, and STEROS' report under exhibit GRU 17, p. 13, with a value at 469.7 micronS/cm).

50. The tests performed by OTEC on the conductivity of the surrounding liquid after removal of the particles lead to similar results (OTEC Exhibit HRM 06, p. 4, para 4, reporting a conductivity of 340 micronS/cm of the surrounding liquid after removal of the particles) and confirm that the attacked embodiment EF 16-11 contains an emulsion which is not non-conductive and does therefore not implement a non-conductive fluid in the sense of feature 1.2.
51. It follows from the above that it is more likely than not that claim 1 of the patent is not infringed by the attacked embodiment. The appeal is successful.

Validity and other requests

52. Based on the above, the Court is not required to assess whether it is more likely than not that the patent is invalid and to decide on the other requests.

Costs

53. As the unsuccessful party, STEROS must bear the costs of the first instance and appeal proceedings.

ORDER

The Court of Appeal

- sets aside the impugned order;
- orders that STEROS' application for provisional measures is rejected;
- orders that STEROS shall bear the costs of the first instance and appeal proceedings.

This order was issued on 7 November 2025

Klaus Grabinski, presiding judge and President of the Court of Appeal,

Emanuel Gougé, legally qualified Judge and judge-rapporteur,

Peter Blok, legally qualified judge,

Jeroen Meewisse, technically qualified judge,

Martin Schmidt, technically qualified judge.