Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC – Court of Appeal
Action n°:
UPC_CoA_302/2025
UPC_CoA_305/2025

DECISION

of the Court of Appeal of the Unified Patent Court
issued on 17 February 2026

HEADNOTES

- A decision on whether the subject-matter of a dependent patent claim is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, Art. 138 (1)(b) EPC, is not required for lack of legal interest on the part of the revocation (counter)claimant if the (counter)claim for revocation is already unsuccessful with respect to the independent patent claim to which the dependent patent claim directly or indirectly refers back and which therefore has a scope of protection that also encompasses the dependent patent claim.
- Pursuant to Art. 75(1) UPCA, where the Court of Appeal sets aside a decision of the Court of First Instance, it shall, as a rule, give a final decision itself. This means that the Court of Appeal, after considering the appeal of the Claimant (and revocation defendant) against the judgment of the Court of First instance in the counterclaim for revocation to be well-founded, must, in order to issue a final decision, as a rule decide not only on the counterclaim for revocation but also render a final decision on the infringement action.
- A referral back to the Court of First instance is contemplated, as follows from Article 75(2) UPCA, only in exceptional cases and in accordance with the Rules of Procedure. Accordingly, Rule 242.2(b) RoP provides that the fact that the Court of First Instance failed to decide an issue which it is necessary for the Court of Appeal to decide on appeal does not normally constitute an exceptional circumstance justifying a referral back. Consequently, the fact that the Court of First Instance did not have to rule on the infringement of the patent at issue because, in the context of a counterclaim for revocation brought by the Defendant, it considered the patent underlying the infringement action to be invalid and therefore revoked it does not, as a rule, give the Court of Appeal grounds to refer the counterclaim for revocation and the infringement action — or even only the infringement action — back to the Court of First Instance.
- In addition to finding a patent infringement, an order pursuant to Art. 80 UPCA also requires the finding of a legitimate interest of the claimant in the requested publication of the decision at the defendant's expense. In this regard, all circumstances of the individual case must be considered, such as the scope and severity of the infringement, the public presentation of the conflict, the public's interest in information, and whether the publication of the decision can contribute to eliminating misconceptions in the market caused by the infringement or to deterring future infringements.

KEYWORDS

Appeal, corrective measures, counterclaim for revocation, destruction, indirect infringement, inventive step, legitimate interest, novelty, person skilled in the art, proportionality, publication of decisions, referral back, sufficiency.

APPELLANT (CLAIMANT IN THE INFRINGEMENT PROCEEDINGS AND COUNTERDEFENDANT IN THE REVOCATION PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Rematec GmbH & Co KG, Poststraße 10, 84378 Dietersburg, Germany

(hereinafter: "the Claimant" or "the Counterdefendant")

represented by: Attorney-at-law Dr. Ulrich Blumenröder, Grünecker PartG mbB

RESPONDENT (DEFENDANT IN THE INFRINGEMENT PROCEEDINGS AND COUNTERCLAIMANT IN THE REVOCATION PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE)

Europe Forestry B.V., Stegerdijk 13, 7737PT Stegeren, The Netherlands

(hereinafter: "the Defendant" or the Counterclaimant")

represented by: Attorney-at-law Dr. Michael Rüberg, Boehmert & Boehmert Anwaltspartnerschaft mbB, Patentanwälte, Rechtsanwälte

PATENT AT ISSUE

EP 2 548 648

PANEL AND DECIDING JUDGES

This decision was issued by Panel 1a with the participation of

Klaus Grabinski, President of the Court of Appeal
Peter Blok, legally qualified judge,
Emmanuel Gougé, judge-rapporteur and legally qualified judge
Max Tilmann, technically qualified judge
Gérard Myon, technically qualified judge

LANGUAGE OF PROCEEDINGS

German

IMPUGNED ORDER OF THE COURT OF FIRST INSTANCE

- □ Order of the Court of First Instance of the Unified Patent Court, Mannheim Local Division, dated 31 January 2025
- □ Action n°: UPC_CFI_340/2023

ACT_576606/2023
CC_7594/2024

ORAL HEARING

The oral hearing took place on 18 December 2025.
Appeal proceedings UPC_CoA_302/2025 and UPC_CoA_305/2025 were heard together (R. 302.3 RoP).

SUMMARY OF FACTS AND REQUESTS OF THE PARTIES

1. Both parties are, inter alia, engaged in the commercialisation of machinery for forestry applications, in particular mills for the comminution of wood chips.

2. The Claimant is the proprietor of European Patent 2 548 648 (hereinafter: patent at issue). The patent at issue relates to a "mill for comminuting of material". It was filed on 25 June 2012 in German, claiming priority from the German utility model 20 2011 103 394 dated 19 July 2011. The notice of publication of the patent at issue was published on 8 October 2014. The opt-out originally declared by the Claimant on 30 May 2023 in respect of the patent at issue was withdrawn again on 7 June 2023, pursuant to Article 83(3) and (4) UPCA.

3. Device claim 1 of the patent at issue reads as follows in the granted version:

> **1.** Mühle (1) zur Zerkleinerung von Mahlgut, insbesondere von Holzhackschnitzeln,
> mit einem Mahlwerk, das einen Rotor (3) mit einer Vielzahl von Mahlelementen (5) aufweist, wobei der Rotor (3) um eine Rotationsachse (R) in einem Mahlraum antreibbar ist,
> wobei die Innenwand (2) des Mahlraums mit den Mahleelementen (5) zusammenwirkt, um das Mahlgut zu zerkleinern, und
> wobei der Mahlraum eine Zuführöffnung (11) und eine Abführöffnung (13) aufweist, die eine bezüglich der Rotationsachse (R) im Wesentlichen radiale Zuführung und Abführung von Mahlgut ermöglichen,
> **dadurch gekennzeichnet, dass**
> die Zuführöffnung (11) und die Abführöffnung (13) jeweils im unteren Bereich des Mahlraums angeordnet sind,
> dass die Zuführöffnung (11), der höchste Punkt des Mahlraums, und die Abführöffnung (13) am Umfang der Innenwand (2) des Mahlraums in Rotationsrichtung (R) des Rotors (3) sequentiell angeordnet sind, und
> dass die Abführöffnung (13) siebfrei ist. [1]

[1] 1. Mill (1) for the grinding of grist, in particular wood chips, with a grinder having a rotor (3) with a plurality of grinding elements (5), wherein the rotor (3) can be driven in a grinding area about an axis of rotation (R), wherein the internal wall (2) of the grinding area cooperates with the grinding elements (5) to grind the grist, and wherein the grinding area has a feed-in opening (11) and a discharge opening (13) which enable essentially radial feed-in and discharge of grist relative to the axis of rotation (R),

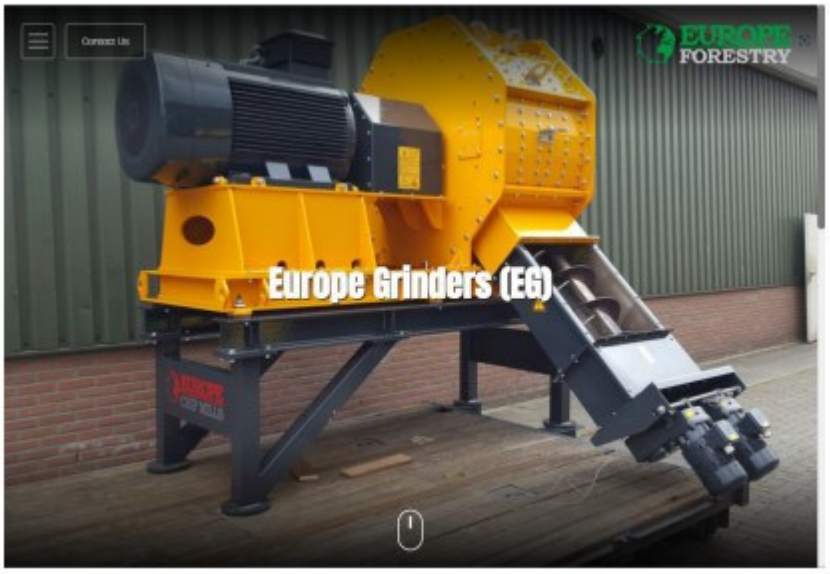
characterised in that the feed-in opening (11) and the discharge opening (13) are each arranged in the lower region of the grinding area, the feed-in opening (11), the highest point in the grinding area and the discharge opening (13) are arranged in sequence at the circumference of the internal wall (2) of the grinding area in the direction of rotation (R) of the rotor (3) and the discharge opening (13) is free of sieves.

4. Method claim 15 of the patent at issue has the following wording in the granted version:

> **15.** Verfahren zur Zerkleinerung von Mahlgut in einer Mühle (1) mit einem Mahlwerk, das einen Rotor (3) mit einer Vielzahl von Mahlelementen (5) aufweist, wobei der Rotor (3) um eine Rotationsachse (R) in einem Mahlraum angetrieben wird, und wobei zunächst das Mahlgut durch eine Zuführöffnung (11) im unteren Bereich des Mahlraums zugeführt wird, dann durch Zusammenwirkung der Innenwand (2) des Mahlraums und der Mahlelemente (5) zerkleinert wird, während es von der Zuführöffnung (11), über den höchsten Punkt des Mahlraums zu einer Abführöffnung (13) transportiert wird, und wobei schließlich das Mahlgut in im Wesentlichen radialer Richtung durch die im unteren Bereich des Mahlraums gelegene Abführöffnung (13) abgeführt wird, wobei die Abführöffnung (13) siebfrei ist. [2]

5. The Defendant advertises mills under the designations “Europe Grinders” and “Europe Chip Mills” on its website and in brochures (K20, K23, BB8) (hereinafter: the contested embodiment).

6. The configuration of the contested embodiment is shown in the figure below.



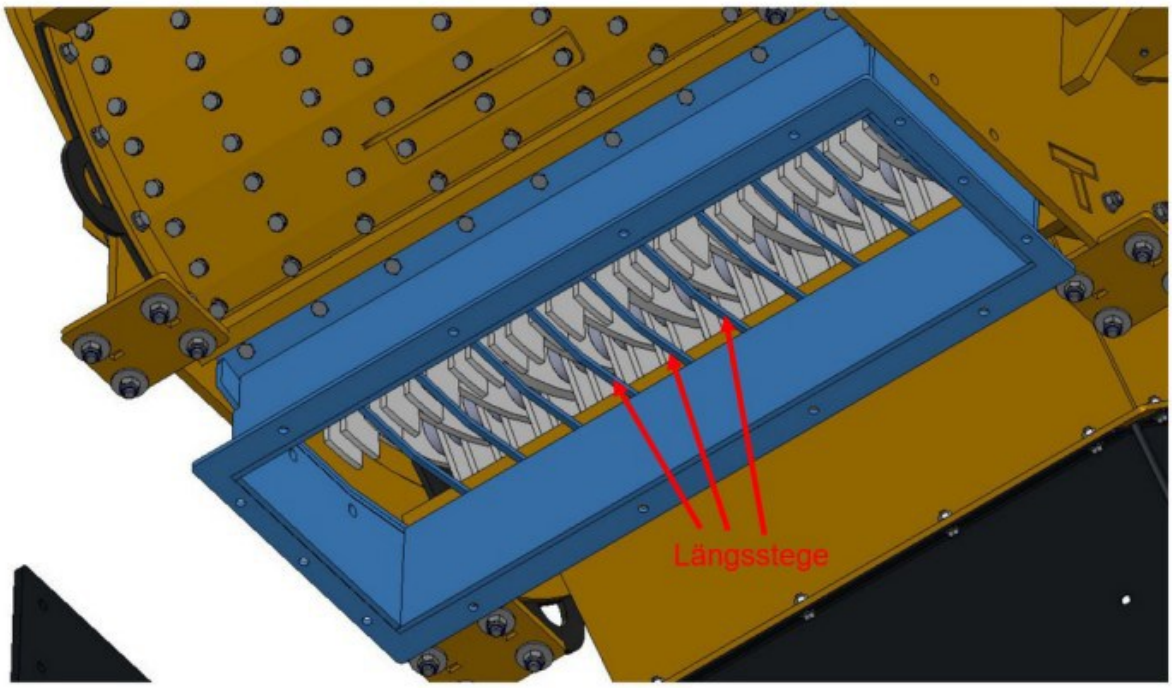
[2] 15. Method for the grinding of grist in a mill (1) with a grinder having a rotor (3) with a plurality of grinding elements (5), wherein the rotor (3) is driven in a grinding area about an axis of rotation (R), and wherein initially the grist is fed through a feed-in opening (11) in the lower region of the grinding area, then it is ground by means of cooperation of the internal wall (2) of the grinding area and the grinding elements (5) while it is transported from the feed-in opening (11) via the highest point in the grinding area to a discharge opening (13), and wherein finally the grist is fed in an essentially radial direction through the discharge opening (13) in the lower region of the grinding area, wherein the discharge opening (13) is free of sieves.

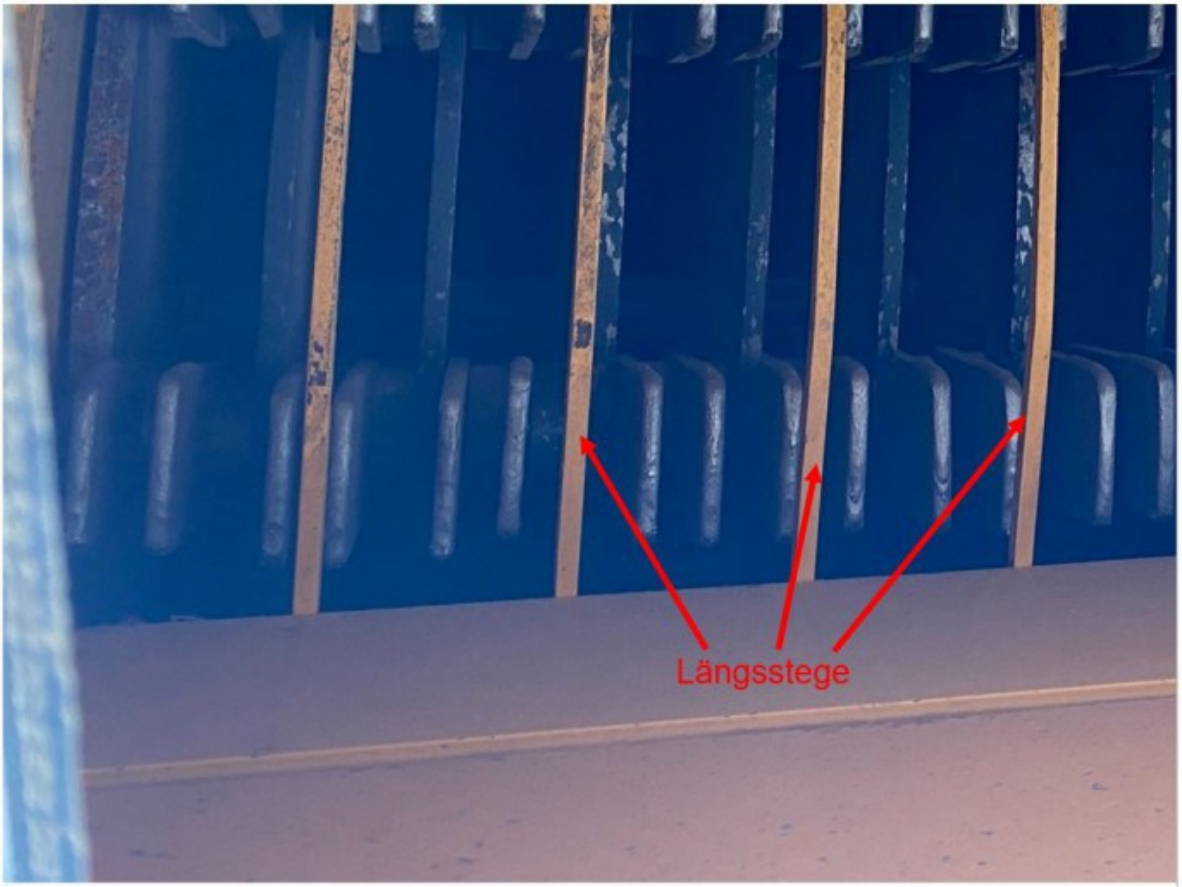
7. With regard to the contested embodiment, the brochure submitted as Exhibit BB8 further contains the following information:

8. The following information relating to the contested embodiment is taken from brochures K20 and K23:

9. The Defendant has sold units of the contested embodiment to customers.

10. The contested embodiment comprises a discharge opening through which the grist can leave the grinding area. Several parallel longitudinal bars are arranged in the discharge opening. The specific configuration of the discharge opening of the contested embodiment, including the parallel longitudinal bars arranged therein, is shown in the two figures below.





11. In the embodiment shown, the distance between the longitudinal bars is 110 mm. According to the Defendant's submissions, the customer can choose between several different spacings (50, 70, 90, 110 and 130 mm).

12. The Claimant brought an action for infringement of the patent at issue before the Unified Patent Court, Mannheim Local Division (Mannheim LD), seeking injunctive relief, recall, removal, destruction, information, publication, a declaration of liability for damages, and lump-sum damages. The Defendant opposed the action and filed a counterclaim for revocation. The Claimant defended the patent at issue in the granted version and by way of nine auxiliary requests with amended sets of patent claims.

13. The Mannheim LD
    - declared the patent at issue invalid with effect for Germany, the Netherlands, Austria, Belgium, Bulgaria, Denmark, Finland, France, Italy, Portugal, Romania, Sweden and Slovenia;
    - dismissed the infringement action; and
    - ordered that three quarters of the costs of the proceedings be borne by the Claimant and one quarter by the Defendant.

14. In giving the reasons for its decision, the Mannheim LD stated essentially that the patent at issue is not patentable, neither in the granted version nor in the form of the auxiliary requests. Since the patent at issue was not patentable to the extent relevant for the examination of the allegation of infringement, the infringement action was to be dismissed without further consideration.

15. Claim 1 of the patent at issue was to be construed as meaning that the feed-in opening and the discharge opening merely allow for the essentially radial feed-in and discharge of grist. By contrast, it is not required that the grist actually be conveyed through the openings in a radial direction. The direction of movement of the grist is determined to a significant extent by the feed-in and discharge devices adjacent to the openings, which however are not the subject-matter of claim 1. Claim 15 does not require a radial feed-in of the grist through the feed-in opening, but contains stricter requirements with regard to the discharge. The discharge is indeed required to take place in a radial direction, rather than this merely being enabled, as formulated in claim 1. Moreover, all of the grist must leave the grinding area through the discharge opening.

16. On the basis of this understanding, the Mannheim LD found that the subject-matter of claim 1 lacked novelty over German laid-open application DE 34 14 567 (D3). Although the subject-matter of claim 15 was not anticipated by D3, it was held to lack inventive step, since a radially oriented discharge of the grist would have been obvious to the person skilled in the art in light of their general knowledge.

REQUESTS AND SUBMISSIONS OF THE PARTIES IN THE APPEAL PROCEEDINGS

17. In its appeal, the Claimant seeks to set aside the decision of the Mannheim LD and continues to pursue the requests submitted at first instance as follows:

    I. Counterclaim for revocation

        1. that the counterclaim for revocation be dismissed;
        2. in the alternative, in the event that the Court considers claims 1 and 15 in the granted version to be invalid:

that the patent at issue be amended and maintained on the basis of auxiliary requests 1, 1a, 2, 2a, …, 9, 9a (for the exact wording of the auxiliary requests, reference is made to Exhibit K42);

3. that the Defendant bear the costs of the proceedings.

II. Infringement action

1. The Claimant requests that the Defendant be ordered to cease and desist from

1.1

manufacturing in the Netherlands and/or offering, placing on the market or using in Austria, Belgium, Bulgaria, Germany, Denmark, Finland, France, Italy, the Netherlands, Portugal, Sweden and Slovenia, or from importing or possessing for the aforementioned purposes

1a) a mill for the grinding of grist, in particular wood chips,

1b) with a grinder having a rotor with a plurality of grinding elements, wherein the rotor can be driven in a grinding area about an axis of rotation,

1c) wherein the internal wall of the grinding area cooperates with the grinding elements to grind the grist, and

1d) wherein the grinding area has a feed-in opening and a discharge opening which enable essentially radial feed-in and discharge of grist relative to the axis of rotation,

1e) wherein the feed-in opening and the discharge opening are each arranged in the lower region of the grinding area,

1f) wherein the feed-in opening, the highest point in the grinding area and the discharge opening are arranged in sequence at the circumference of the internal wall of the grinding area in the direction of rotation of the rotor and

1g) the discharge opening (13) is free of sieves.

(Claim 1 of EP 2 548 648, by direct infringement);

In the alternative to 1.1:

1.1.1

The request under 1.1 is modified in that feature 1g) is replaced by the feature

that the discharge opening comprises longitudinal bars forming openings having a clear length of at least 200 mm in the tangential direction and a clear width in the axial direction of at least 50 mm,

in the alternative

at least 70 mm,

in the alternative

at least 90 mm,

in the alternative

at least 110 mm,

... (for the auxiliary requests under 1.1.2 to 1.1.9, reference is made to the Claimant’s appeal dated 31 March 2025);

1.2

offering to customers in Austria, Belgium, Bulgaria, Germany, Denmark, Finland, France, Italy, the Netherlands, Portugal, Sweden and Slovenia for use in those states and/or supplying to such customers,
a mill that is suitable and intended for
15a) carrying out a method for the grinding of grist in a mill,
15b) with a grinder having a rotor with a plurality of grinding elements, wherein the rotor is driven in a grinding area about an axis of rotation, and
15c) wherein initially the grist is fed through a feed-in opening in the lower region of the grinding area,
15d) then it is ground by means of cooperation of the internal wall of the grinding area and the grinding elements,
15e) while it is transported from the feed-in opening via the highest point in the grinding area to a discharge opening, and
15f) wherein finally the grist is fed in an essentially radial direction through the discharge opening in the lower region of the grinding area, and
15g) the discharge opening comprises longitudinal bars forming openings having a clear length of at least 200 mm in the tangential direction and a clear width in the axial direction of at least 70 mm.
(Claim 15 of EP 2 548 648, by indirect infringement);

2. The Claimant requests that the Defendant be ordered, at its own expense,
   1. to recall the products referred to in item 1 from the channels of commerce;
   2. to definitively remove the products referred to in item 1 from the channels of commerce, and
   3. to destroy the products referred to in item 1 that are in its possession.

3. The Claimant requests that the Defendant be ordered to communicate the following information to the Claimant:
   - The origin and channels of commerce of the products referred to in item 1;
   - the quantities produced, manufactured, delivered, received or ordered, and the prices paid for the products referred to in item 1, and
   - the identity of all third parties involved in the manufacture or commercialisation of the products referred to in item 1.

4. The Claimant requests that it be authorised to publicise and publish the decision, in whole or in part, in public media, with the Defendant being required to reimburse the costs of one full-page publication (print) in five national daily newspapers and five specialist publications, in each case to be selected by the Claimant.

5. In the event of any violation of
   1. the decision pursuant to item 1, as well as of
   2. the orders pursuant to items 3 and 4,

   the Claimant requests that the Defendant be required to pay a periodic penalty payment to the Court, the amount of which shall be determined by the Court.

6. The Claimant requests that it be ordered that the Defendant is liable to compensate the Claimant for any damages already incurred and any future damages arising from the acts pursuant to item 1 since 8 November 2014, with the amount of damages to be determined in subsequent proceedings.

7. The Claimant requests that the Defendant be furthermore ordered to pay a provisional lump-sum amount of EUR 50,000 as damages.

18. In support of its submissions, the Claimant argues, in essence, that:

- claim 1 of the patent at issue is to be construed as meaning that, during intended operation of the claimed mill, the grist processed by the mill must be fed into and discharged from the grinding area at least predominantly in a radial direction, that is, on average closer to the radial direction than to the tangential direction;
- on the basis of this construction, the subject-matter of claim 1 is novel and involves an inventive step over the prior art relied upon by the Defendant;
- the same applies to claim 15; and
- the contested embodiment, on the basis of the advertising of its intended use and an expert report submitted by the Claimant, directly infringes claim 1 and indirectly infringes claim 15, in particular because it is to be regarded as "free of sieves" within the meaning of those claims.

19. By contrast, the Defendant requests that:

1. the Claimant's appeal be dismissed.

2. the Claimant bear the costs of the proceedings.

20. In support of its submissions, the Defendant argues, in essence, that:

- the Mannheim LD correctly found that, according to claim 1, the direction of movement of the grist is determined to a significant extent by the feed-in and discharge devices adjacent to the openings, which however are not the subject-matter of the claim;
- claim 1 lacks novelty over D3, and the same applies in view of US Patent No. 7,775,468 (D12), European Patent Application No. 1 195 201 (D6), and US Patent No. 3,966,126 (D10);
- claim 1 furthermore lacks an inventive step over D3 as well as over U.S. Patent No. 7,004,412 (D2) in combination with U.S. Patent No. 4,037,799 (D5), German Patent No. 915 520 (D4), and D12 in combination with D2 and the common general knowledge of the person skilled in the art;
- accordingly, the subject-matter of claim 15 is likewise neither novel nor inventive;
- the contested embodiment is equipped with a bar screen which is offered to customers in a manner adapted to their specific application and the size of the input material, as indicated in the advertising materials (inter alia: "output determined by size of screens, RPM overtop rotor and …"), which also refer to a limitation of the input material size to G100; and
- the attempt to establish infringement on the basis of the Claimant's party-appointed expert opinion is unsuitable for the reason that the expert did not examine the contested embodiment, but instead relied on a fictitious test setup created by the Claimant.

GROUNDS FOR THE DECISION

A. Appeal against the revocation of the patent at issue

21. The appeal lodged by the Claimant and revocation defendant against the revocation of the patent at issue in the impugned decision of the Mannheim LD is admissible and well-founded.

I. Subject-matter of the patent at issue

22. The counterclaim for revocation is admissible, but is not well-founded on the merits. The contrary view taken by the Mannheim LD does not withstand review in the appeal proceedings.

1. The patent at issue and its technical background

23. The teaching of the patent at issue relates to a mill for the grinding of grist, in particular wood chips, as well as to a method applicable in such a mill.

24. The description of the patent at issue states that mills are known from the prior art having a rotor with a plurality of grinding elements, wherein the rotor can be driven in a grinding area about an axis of rotation, and the grinding elements cooperate with the internal wall of the grinding area. The grinding area has a feed-in opening and a discharge opening, which allow grist to be fed in and discharged essentially radially with respect to the axis of rotation [0001].

25. According to the description, such a device is known, for example, from the German laid-open application DE 30 20 955 A1 (D8), in which it is disclosed that the internal wall of the drum is formed alternately by grinding tracks and screen tracks, and an insertion opening is furthermore provided at the highest point of the grinding space, while the openings in the screen tracks form a plurality of discharge openings [0002].

26. Also according to the description, European patent application 0 164 489 A2 (D9) discloses a device for comminuting granular or fibrous material, in which grinding takes place between the internal wall of the grinding area and grinding elements, there being provided one feed-in opening and one discharge opening, which allow grist to be fed in and discharged. This, as is further stated, takes place “rather” in the tangential direction than in the radial direction [0003].

2. Problem of the invention

27. Against this background, the patent at issue is based on the problem of providing a mill for comminution of grist which has increased efficiency and enables a high throughput of grist in a short time [0004].

3. Feature structure of patent claims 1 and 15

28. To solve this problem, the patent at issue proposes, in device claim 1, a mill whose features can be structured as follows, corresponding to the feature breakdown used by the Mannheim LD:

1a) *Mühle (1) zur Zerkleinerung von Mahlgut, insbesondere von Holzhackschnitzeln,*

1b) *mit einem **Mahlwerk**, das einen **Rotor** (3) mit einer Vielzahl von **Mahlelementen** (5) aufweist, wobei der Rotor (3) um eine Rotationsachse (R) in einem **Mahlraum** antreibbar ist,*

1c) *wobei die Innenwand (2) des Mahlraums mit den Mahlelementen (5) zusammenwirkt, um das Mahlgut zu zerkleinern, und*

1d) *wobei der Mahlraum eine **Zuführöffnung** (11) und eine **Abführöffnung** (13) aufweist, die eine bezüglich der Rotationsachse (R) im Wesentlichen radiale Zuführung und Abführung von Mahlgut ermöglichen,*

dadurch gekennzeichnet, dass

1e) *die Zuführöffnung (11) und die Abführöffnung (13) jeweils im unteren Bereich des Mahlraums angeordnet sind,*

1f) *dass die Zuführöffnung (11), der höchste Punkt des Mahlraums, und die Abführöffnung (13) am Umfang der Innenwand (2) des Mahlraums in Rotationsrichtung (R) des Rotors (3) sequentiell angeordnet sind, und*

1g) *dass die Abführöffnung (13) siebfrei ist.* [3]

[3] **1a)** Mill (1) for the grinding of grist, in particular wood chips,
1b) with a **grinder** having a **rotor** (3) with a plurality of **grinding elements** (5), wherein the rotor (3) can be driven in a **grinding area** about an axis of rotation (R),
1c) wherein the internal wall (2) of the grinding area cooperates with the grinding elements (5) to grind the grist,
1d) wherein the grinding area has a **feed-in opening** (11) and a **discharge opening** (13) which enable essentially radial feed-in and discharge of grist relative to the axis of rotation (R),
characterised in that
1e) the feed-in opening (11) and the discharge opening (13) are each arranged in the lower region of the grinding area,
1f) the feed-in opening (11), the highest point in the grinding area and the discharge opening (13) are arranged in sequence at the circumference of the internal wall (2) of the grinding area in the direction of rotation (R) of the rotor (3) and
1g) the discharge opening (13) is free of sieves.

29. Claim 15 can be structured as follows:

> ***15a)*** *Verfahren zur Zerkleinerung von Mahlgut in einer Mühle (1)*
> ***15b)*** *mit einem **Mahlwerk**, das einen **Rotor** (3) mit einer Vielzahl von **Mahlelementen** (5) aufweist, wobei der Rotor (3) um eine Rotationsachse (R) in einem **Mahlraum** angetrieben wird, und*
> ***15c)*** *wobei zunächst das Mahlgut durch eine **Zuführöffnung** (11) im unteren Bereich des Mahlraums zugeführt wird,*
> ***15d)*** *dann durch Zusammenwirkung der Innenwand (2) des Mahlraums und der Mahlelemente (5) zerkleinert wird,*
> ***15e)*** *während es von der Zuführöffnung (11), über den höchsten Punkt des Mahlraums zu einer **Abführöffnung** (13) transportiert wird, und*
> ***15f)*** *wobei schließlich das Mahlgut in im Wesentlichen radialer Richtung durch die im unteren Bereich des Mahlraums gelegene Abführöffnung (13) abgeführt wird,*
> ***15g)*** *wobei die Abführöffnung (13) siebfrei ist.*[4]

4. Interpretation of patent claims 1 and 15

a. Person skilled in the art

30. In accordance with the findings of the Mannheim LD, which were not challenged by the parties and with which the Court of Appeal concurs, the person skilled in the art from whose perspective patent claims 1 and 15 are to be interpreted is an engineer in the field of mechanical engineering who has multiple years of professional experience in the development and design of mills for the grinding of grist.

b. Features of patent claim 1

Features 1a to 1c

[4] **15a)** Method for the grinding of grist in a mill (1)
15b) with a **grinder** having a **rotor** (3) with a plurality of **grinding elements** (5), wherein the rotor (3) is driven in a **grinding area** about an axis of rotation (R), and
15c) wherein initially the grist is fed through a **feed-in opening** (11) in the lower region of the grinding area,
15d) then it is ground by means of cooperation of the internal wall (2) of the grinding area and the grinding elements (5)
15e) while it is transported from the feed-in opening (11) via the highest point in the grinding area to a **discharge opening** (13), and
15f) wherein finally the grist is fed in an essentially radial direction through the discharge opening (13) in the lower region of the grinding area,
15g) wherein the discharge opening (13) is free of sieves.

31. As the Mannheim LD has already correctly stated, features 1a to 1c define that the subject-matter of patent claim 1 must be a mill that is suitable for the grinding of grist. For this purpose, the mill comprises a grinding unit consisting of a rotor (3) and a plurality of grinding elements (5), wherein the rotor (3) can be driven in a grinding area about an axis of rotation (R). The grinding of the grist takes place through the cooperation of the internal wall (2) of the grinding area with the grinding elements (5).

Feature 1d

32. Feature 1d relates to the feed-in and discharge of grist into and out of the grinding area before and after it has been ground. In this respect, an essentially radial feed-in and discharge of grist relative to the axis of rotation (R) is provided, which is enabled by the feed-in opening and the discharge opening of the grinding area. In doing so, feature 1d focuses on the radial feed-in and discharge of the grist as such into and out of the grinding area, rather than on the direction of movement of individual constituent portions of the grist as a whole.

33. Contrary to the interpretation adopted by the Court of First instance, it is not sufficient that clear openings are present in the wall of the grinding area through which an essentially radial feed-in and discharge of the grist could theoretically take place, but in fact does not take place because the feed-in and discharge are, for example, oriented essentially tangentially and thus not essentially radially.

34. The Court of First instance arrives at its interpretation on the basis of the - unsubstantiated - assumption that the direction of movement is determined primarily by the feed-in and discharge devices adjoining the openings. However, there is nothing in claim 1 to suggest that a feed-in and/or discharge device that may be provided has any influence on the direction of movement; **feed-in and discharge devices adjoining the openings are not mentioned in claim 1**. The assumption made by the Court of First instance therefore runs counter to the fact that, under that assumption, the essentially radial orientation of the feed-in and discharge required by feature 1d would be rendered ineffective, thereby depriving essential functional aspects of the feature of their meaning, since the person skilled person in the art could then also choose a feed-in and discharge orientation that is not essentially radial. Rather, feature 1d is to be interpreted as meaning that the radial feed-in and discharge are determined by the feed-in and discharge openings, which thereby "enable" a corresponding orientation. Claim 1 does not specify the exact design of the feed-in and discharge openings that would achieve this.

35. That the actual implementation of the orientation required by feature 1d is decisive is confirmed by the description and the drawings of the patent at issue, which, according to the case law of the Court of Appeal of the Unified Patent Court and the Enlarged Board of Appeal of the European Patent Office, must always be taken into account when interpreting a patent claim (UPC CoA, Order of 26 February 2024, UPC_CoA_355/2023 – NanoString v 10x Genomics, p. 26 et seq.; EPO EBA, decision of 18 June 2025, G 0001/24 – Philip Morris v Yunnan Tobacco, para. 18).

36. This is supported by the fact that the mill known from prior art document D8, which has an essentially radial orientation of the feed-in opening 17 and an essentially radial orientation of the discharge

openings in the screen tracks, is mentioned as an example of a device in which features 1a) to 1d) of patent claim 1 are implemented [0002].

37. Moreover, the specification of the patent at issue considers it a disadvantage that, in document D9 cited as further prior art, feed-in and discharge take place rather in the tangential direction than in the radial direction [0003]. According to the patent at issue, this feed-in and discharge rather in the tangential direction is enabled in document D9 by the feed-in opening and the discharge opening of the device described therein, even though, in theory, the grist could pass through the openings in a radial direction. From this, it follows for the person skilled in the art that feature 1d is intended to achieve an essentially radial feed-in and discharge by means of a corresponding configuration of the feed-in and discharge openings.

38. This is confirmed by the sole exemplary embodiment of the invention, shown in Figure 1 and reproduced below, in which the feed-in direction and the discharge direction of the grinding material into and out of the grinding area are oriented radially with respect to the axis of rotation R of the rotor 3 [0037].

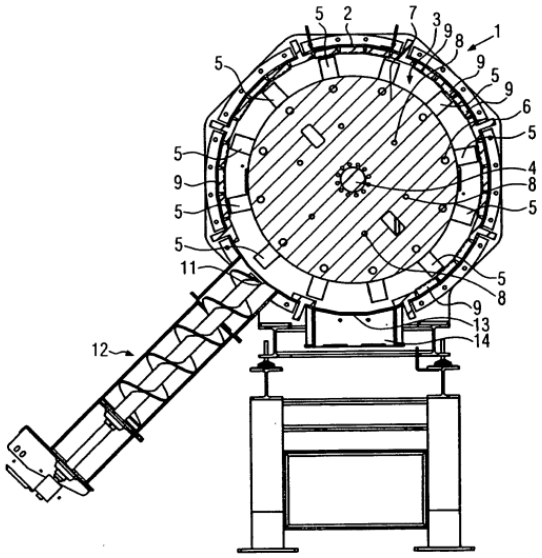
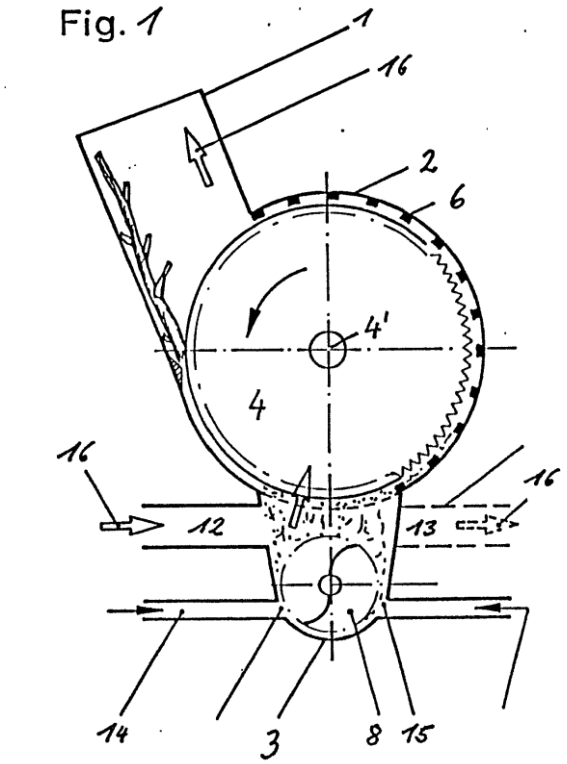


FIG. 1

39. As indicated by the term “essentially,” and as already correctly set out by the Mannheim LD in this respect, the orientation of the feed-in and discharge to be enabled does not depend on a strictly geometrical understanding. Rather, it is sufficient to enable a configuration in which the grist is fed in and discharged in a direction that is more radial than tangential.

40. The inventive teaching is thus distinguished from a device for grinding granular and/or fibrous material known from the prior art disclosed in European patent application 0 164 489 (D9), in which, according to the description, the grist is supplied “rather in the tangential than in the radial direction” (cf. [0003]). Such a feed-in oriented rather in the tangential than in the radial direction is apparent, for example, from Figure 1 of D9, which the person skilled in the art will also take into consideration, since D9 is cited as prior art in the patent at issue.



Features 1e and 1f

41. As explained in detail to the person skilled in the art in the description, the arrangement of the feed-in and discharge openings provided for in feature 1e, each in the lower region of the grinding area, and the sequential arrangement of the feed-in opening, the highest point of the grinding area, and the discharge opening along the circumference of the internal wall of the grinding area in the direction of rotation (R) of the rotor according to feature 1f, implement a relatively long path, covering at least the upper two quadrants, along which all or almost all of the grist can be ground to the desired size through the interaction of the grinding elements arranged on the rotor and the internal wall of the grinding area. This effect is further reinforced in that the discharge opening is located in the lower region of the grinding area, so that, in addition to the centrifugal forces, the force of gravity also moves the grist from the grinding area into the discharge opening (cf. paragraph [0005]).

Feature 1g

42. As is known to the person skilled in the art on the basis of their common general knowledge, the function of a sieve arranged at the discharge opening of a mill for the grinding of grist is to retain material that has not been ground to the desired maximum size during grinding, so as to prevent it from leaving the mill through the discharge opening, for example in order to be returned to the grinding process.

43. According to the description, the relatively long grinding path defined by features 1e and 1f makes it possible to design the discharge opening “free of sieves”, which has the advantage that the discharge opening cannot become clogged by grist and thus enables operation without problems and maintenance [0005], [0029] and [0047].

44. A discharge opening is thus “free of sieves” if, during intended use of the mill, it does not prevent, by virtue of its spatial and physical configuration, the discharge of any grist that has travelled the path between the feed-in opening and the discharge opening of the grinding area, such that clogging by retained (sieved-out) grist is excluded.

45. If it forms part of the intended use of the mill to grind grist of different size grades, the discharge opening is still “free of sieves” even if, due to its spatial and physical configuration, it retains the grist for larger size grades but not for smaller ones. Because in that case, at least when processing smaller size grades, the mill has the property of avoiding retained grist and the associated risk of clogging. The fact that this effect does not occur for larger size grades, because the discharge opening acts as a sieve, does not deprive the discharge opening of its property of being “free of sieves” for smaller size grades.

c. With regard to the features of patent claim 15, in particular feature 15f.

46. Patent claim 15 is a method claim that is independent of patent claim 1. With regard to the interpretation of the method claim, reference can largely be made to the foregoing explanations relating to patent claim 1. It merely requires clarification that, in feature 15f, unlike in feature 1d, only a discharge (and thus not also a feed-in) of the grist in an essentially radial direction is provided for via the discharge opening located in the lower region of the grinding area.

II. Validity of the patent at issue

1. Novelty

47. The subject-matter of patent claims 1 and 15 is novel (Articles 52(1) and 54 EPC).

D3

48. Patent claims 1 and 15 are novel over German laid-open application DE 34 14 567 (D3), since they are not fully disclosed by that prior-art document.

49. Document D3 discloses a chopping-type hammer mill for comminuting materials such as, for example, chemicals, dyes, minerals, wood shavings, pulp, and plant and animal waste, in which the material flow of the material to be comminuted and conveyed takes place only in a single direction, with the material being broken and/or chopped, without being impeded by a sieve (D3, p. 5, lines 11 et seq.; p. 6, lines 27 et seq.).

50. To this end, D3 teaches arranging tearing and/or chopping elements (9) between the rotor (1) and the discharge opening (7) of the mill at a distance from the rotor (1) over a predetermined angular region (α) of the rotor circumference, wherein said angular region extends, in the direction of rotation (8) of the rotor (1), from the downward-movement end (10) of the feed-in opening (6) to the region of the discharge opening (7), preferably across its entire cross-section, and arranging a material flow blocking element (13, 14, 25) between the downward-movement end (11) of the

discharge opening (7) and the upward-movement end (12) of the feed-in opening (6) in the direction of rotation (8) of the rotor (1) (D3, patent claim 1).

51. Such a mill is shown, inter alia, in Figures 3 and 8 of D3:

Fig. 3

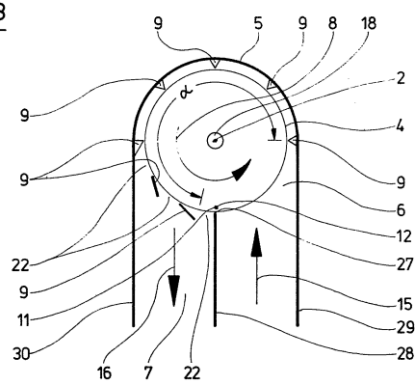
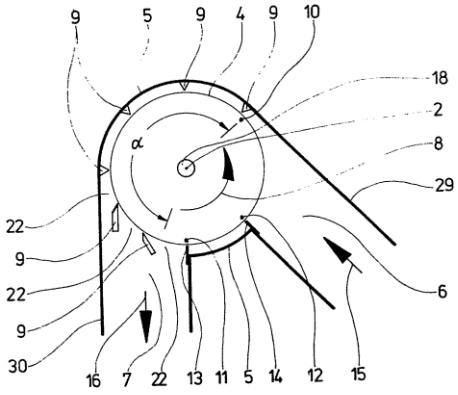


Fig. 8



52. The mills shown in Figures 3 and 8 undisputedly implement features 1a, 1b, 1f and 1g.

53. Whether, in the mills, the internal wall of the grinding area additionally interacts with the grinding elements within the meaning of feature 1c in order to grind the grist does not require a definitive determination, since in any event they do not implement feature 1d. Since the feed-in and/or discharge openings of the mills are not oriented essentially radially relative to the rotational axis (R), no correspondingly oriented feed-in and discharge is enabled. In the mills shown in the aforementioned Figures 3 and 8, the feed-in and/or discharge takes place rather in a tangential direction than in a radial direction, and thus not in an essentially radial direction. Supporting this interpretation, the description of D3 also states, with regard to the mills shown in Figures 3 and 8, that the feed-in duct (29) opens tangentially into the rotating body at the end (10) of the feed-in opening (6) that is downward-moving in the direction of rotation (8) of the rotor (1) (D3, p. 19, l. 33 – p. 20, l. 1), and that the discharge duct (30) is designed such that, at the end of the discharge opening (7) that is upward-moving in the direction of rotation (8) of the rotor (1), it is led away from the rotating body (4) tangentially or nearly tangentially, or at an acute angle relative to the tangential direction (D3, p. 20, l. 5 et seq.).

54. In the exemplary embodiments shown in Figures 4 and 10 of D3:

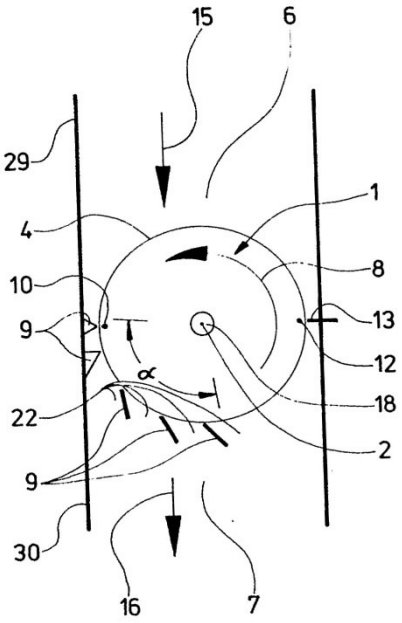
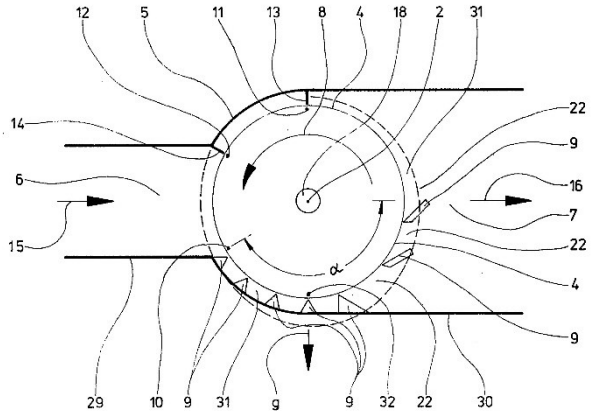


Fig. 4

Fig. 10



although the feed-in and discharge of the grist are essentially oriented radially relative to the axis (2) of the rotor (1), the feed-in opening, or respectively the feed-in opening and the discharge opening, are not located in the lower region of the grinding area, as required by feature 1e.

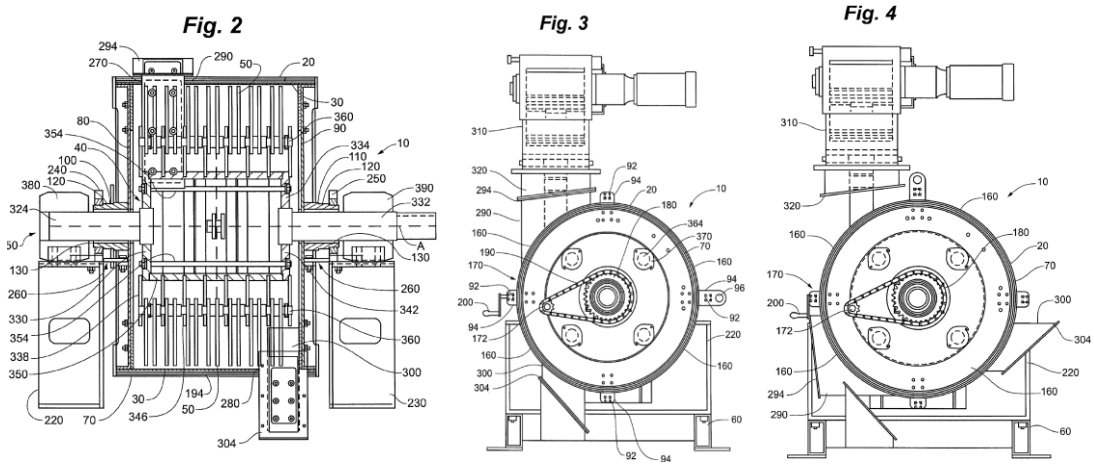
55. The same applies to the mill shown in Figure 8, in which the feed-in opening is likewise not arranged in the lower region of the grinding area.

56. Accordingly, in view of the foregoing considerations, the method according to claim 15 is likewise not disclosed in D3, since in none of the embodiments shown therein is the grist fed through a feed-in opening located in the lower region of the grinding area and discharged in an essentially radial direction through a discharge opening located in the lower region of the grinding area.

D12

57. U.S. Patent No. 7,775,468 (D12) also does not anticipate the subject-matter of patent claims 1 and 15.

58. D12 discloses a hammermill with a rotatable housing (20), which is intended to provide easier access to the interior of the mill for maintenance purposes (D12, col. 1, ll. 43–48). In Figures 3 and 4 of D12, reproduced below, an embodiment is shown in two rotational positions rotated by 90° clockwise, with the position illustrated in Figure 4 allowing for convenient access for hammermill maintenance (D12, col. 2, l. 51 et seq.), i.e. the mill is shown not in its operating position but in its maintenance position.



59. In the operating position shown in Figure 3, the upper feeder (310) is connected to the inlet spout (290), and the lower discharge (300) is connected to the lower outlet spout (304).

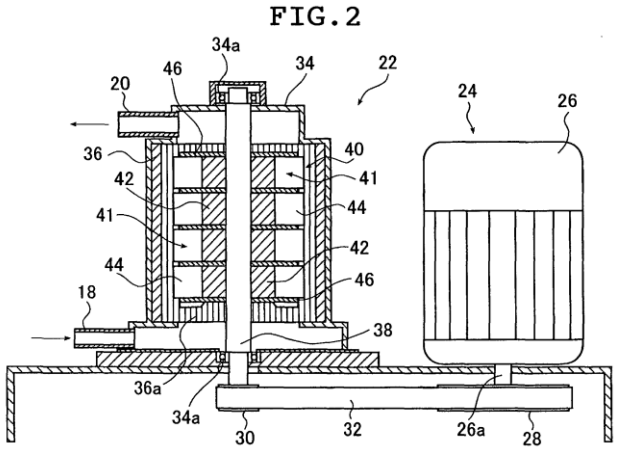
60. Accordingly, features 1d and 1e are not disclosed. The feed-in is effected not in the lower region but in the upper region, and in the mill disclosed in D12 the feed-in and discharge are enabled via the feed-in and discharge openings in an essentially tangential direction and thus not essentially radially with respect to the axis of rotation.

61. This conclusion is not altered by the fact that D12 mentions that the openings could be arranged at any position around the circumference (D12, col. 5, l. 53 et seq.), since this does not disclose a radial orientation of the feed-in or discharge opening.

D6

62. The European patent application 1 195 201 (D6) likewise does not prejudice the novelty of patent claims 1 and 15.

63. D6 discloses a mechanical crusher in which the rotating shaft (38) has a rotor (40) mounted about the rotating shaft and at least one sub-rotor (41) containing a plurality of blades (44). In the exemplary embodiments, the rotating shaft (38) is vertical, and the material introduction port (18) and the discharge port (20) are each arranged laterally, as shown in Figure 2 of D6 reproduced below.

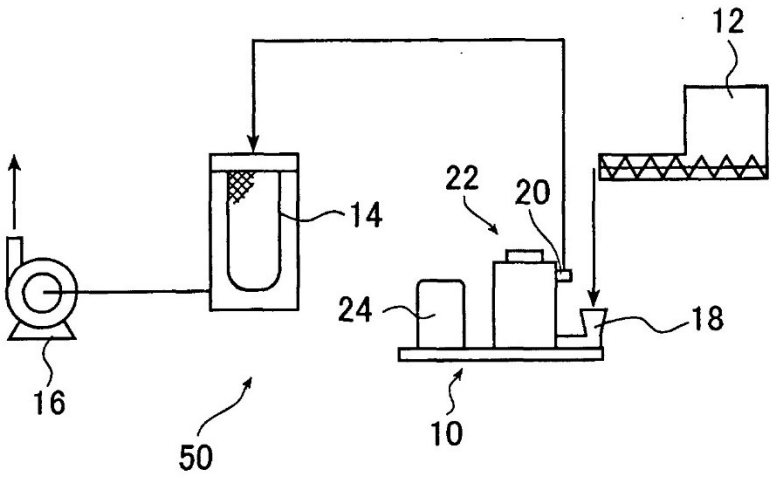


64. Accordingly, there is no disclosure of feature 1e, since the discharge port (20) is not arranged in the lower region of the grinding area.

65. The revocation counterclaimant does refer to paragraph [0087] of D6. However, the alternative of a horizontal arrangement of the rotating shaft (38) mentioned therein leaves open in which region the introduction and discharge ports are to be arranged. Accordingly, it does not emerge with the clarity and unambiguity required for a novelty-destroying disclosure that the introduction port and the discharge port are each to be arranged in the lower region of the grinding area, as required by feature 1e.

66. This conclusion is likewise unchanged even if the person skilled in the art further takes into account Figure 1 of D6, which shows a conceptual illustration of the mechanical crusher depicted in Figure 2.

FIG. 1



67. It follows from the description of D6 that the fiber-containing material, after being supplied to the introduction port (18) by the screw feeder (12), is crushed to a fine powder while being transported by the air stream formed by the sucking operation of the blower (16) from the introduction port (18) to the discharge port (20) in the upper portion of the crusher, and is discharged from the discharge port (20) (D6, [0025] et seq.). Nor does this further description of D6 disclose to the person skilled in the art, with the required clarity and unambiguity, that in the case of a horizontal arrangement of the rotor the discharge port provided in the upper portion of the crusher in Figure 1 is to be relocated to the lower portion thereof.

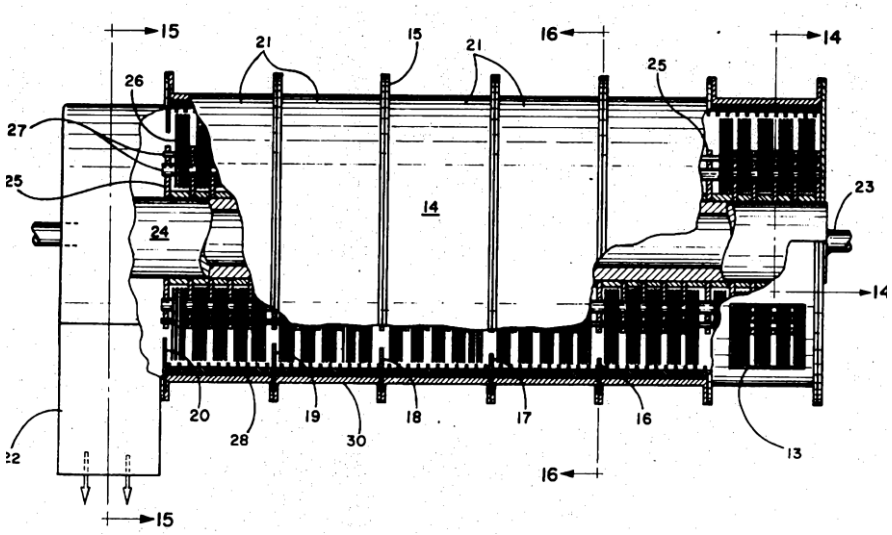
D10

68. U.S. Patent Specification 3,966,126 (D10) likewise does not anticipate the subject-matter of patent claims 1 and 15 in a novelty-destroying manner.

69. D10 discloses a classifying hammermill (14) for fibrous material having a plurality of inner rings (16) – (20) of decreasing diameter, which serve as classifier rings (D10, col. 3, l. 47 et seq.).

70. The grinding wall sections (28) have pockets (33) that cooperate with hammers (26) for grinding the grist.

71. The grist enters the grinding area through the inlet conduit (13) and is conveyed to the outlet (22) by the airflow and under the influence of the rotation of the hammers (26), as can be seen from Figure 3 of D10 reproduced below.



72. Figures 14 and 15 of D10 reproduced below show sectional views of the classifying hammermill taken at lines 14–14 and 15–15, respectively (D10, col. 3, l. 23).

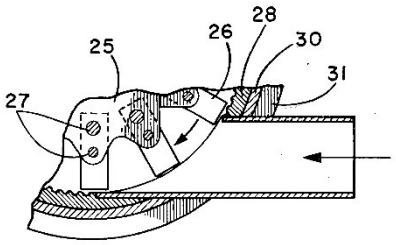


FIG. 14

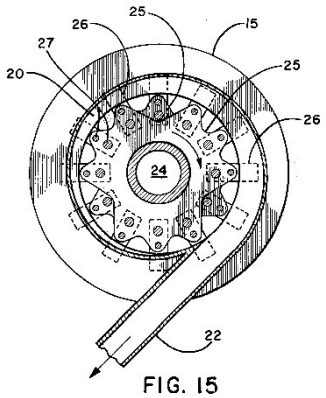


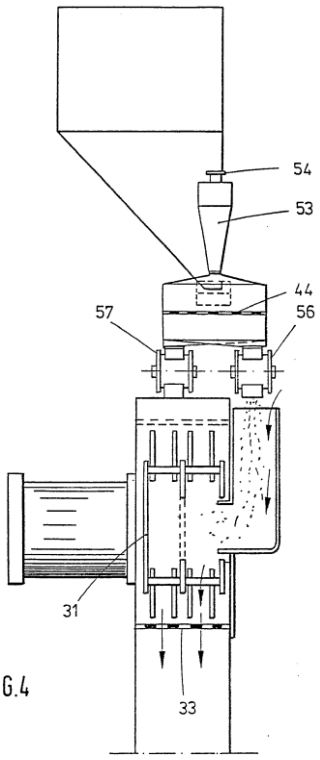
FIG. 15

73. It follows therefrom that the feed-in opening and the discharge opening of the classifying hammermill shown in D10 enable an essentially tangential feed-in and discharge of grist relative to the axis of rotation, and thus not an essentially radial feed-in and discharge of grist, with the result that feature 1d and feature 15f are not disclosed.

D11

74. European Patent Specification 0 053 755 (D11) likewise does not prejudice the novelty of patent claim 15 (with respect to patent claim 1, this is not alleged by the Defendant).

75. In the method for impact crushing granular raw materials to a finished material disclosed in D11, there is in any event no feed-in in the lower region, as is apparent from the drawing of the cited prior art reproduced below.



G.4

2. Inventive step

76. For the assessment of whether the subject-matter of the independent patent claims 1 and 15 involves an inventive step within the meaning of Article 56 EPC, the general principles developed by the UPC Court of Appeal are to be applied (UPC CoA, 26 February 2024, UPC_CoA_335/2023 – NanoString v 10X Genomics; 25 November 2025, UPC_CoA_464/2024 – Meril v Edwards; 25 November 2025, UPC_CoA_528/2024 – Amgen v Sanofi).

77. Accordingly, the subject-matter of patent claims 1 and 15 involves an inventive step. The revocation claimant, who bears the burden of presentation and proof in this respect, has not demonstrated that this was obvious at the priority date claimed by the patent at issue. Accordingly, patent claims 2 to 14, which are dependent on patent claim 1, likewise involve an inventive step.

a) Patent claim 1

D3

78. For a person skilled in the art who was confronted with the problem of providing a mill for grinding grist that exhibits increased efficiency and enables a high throughput of grist within a short time, D3 was of interest, since it proposes a chopping-type hammer mill in which the material flow of the material to be comminuted and conveyed takes place only in a single direction, with the material being broken and/or chopped, without being impeded by a sieve, wherein the conveying medium is preferably air (D3, p. 6, lines 27 et seq.).

79. According to D3, this is to be achieved by the fact that
    - tearing and/or chopping elements are arranged between the rotor and the discharge opening, provided at a distance from the rotor over a predetermined angular region of the rotor circumference,
    - said angular region extends, in the direction of rotation of the rotor, from the downward-movement end of the feed-in opening to the region of the discharge opening and
    - a material flow barrier is arranged between the downward-movement end of the discharge opening in the direction of rotation of the rotor and the upward-movement end of the feed-in opening in the direction of rotation of the rotor, so that
    - it is possible to dispense with a screen between the rotor and the discharge opening and thus also with the application of additional suction power, which would otherwise convey the ground material through such a sieve in addition to the centrifugal force exerted by the rotor (D3, p. 7).

80. There is therefore no suggestion to modify the feed-in and discharge openings of the mills shown in Figures 3 and 8 in such a way that, instead of providing an essentially tangential feed-in and discharge, they would enable an essentially radial feed-in and discharge.

81. In D3, it is further stated in a general manner with regard to the orientation of the feed-in and discharge that, in principle, these may be arranged practically arbitrarily around the circumference of the rotor in the housing, following one another in the direction of rotation of the rotor (D3, p. 11, lines 19 et seq.). However, this leaves open the question of the orientation of the feed-in and discharge openings, and therefore does not provide the person skilled in the art with sufficient incentive to change them from an essentially tangential orientation to an essentially radial orientation.

82. Nor do the further explanations in D3 change this assessment, according to which the person skilled in the art, taking into account the influence of gravity on the grinding effect of a chopping-type hammer mill, is advised to provide the feed-in opening as the discharge cross-section of a horizontal feed-in channel and the discharge opening as the feed-in cross-section of a horizontal discharge channel, in order thereby to increase the performance of the chopping-type hammer mill with regard to its grinding effect, wherein the feed-in and discharge openings are preferably arranged in alignment with one another (D3, p. 11, lines 21 et seq.), as shown, for example, in Figure 10 of D3 already reproduced above. For in such a configuration, the feed-in opening and the discharge opening are indeed arranged radially with respect to the axis of the rotor within the meaning of feature 1d. However, there is no suggestion to relocate the feed-in opening and the discharge opening into the lower region of the grinding area, especially since doing so would shorten the path used for grinding the material between the feed-in opening and the discharge opening and would thus reduce the performance of the mill.

D2 and D5

83. U.S. Patent No. 7,004,412 (D2) discloses a hammermill for comminuting material, which conveys the material to be comminuted via cutting plates 26 along an essentially helical pathway 21 from an inlet 14 in the upper part of the working chamber to a discharge outlet 16 in the lower part of the working chamber.

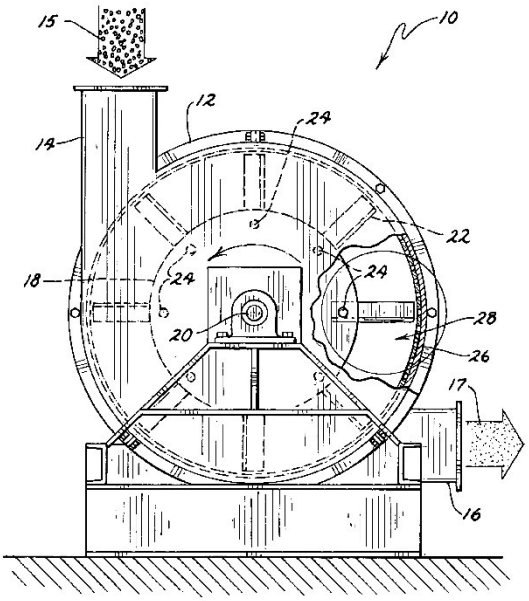


FIG. 1

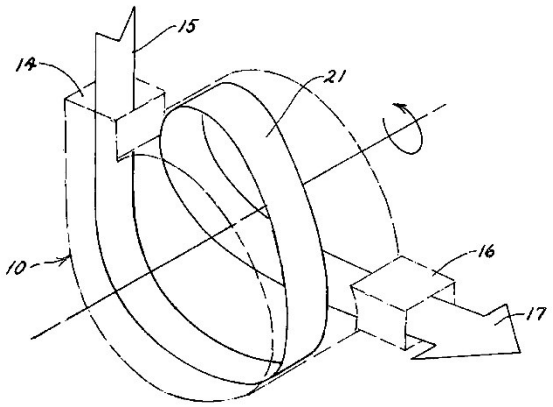


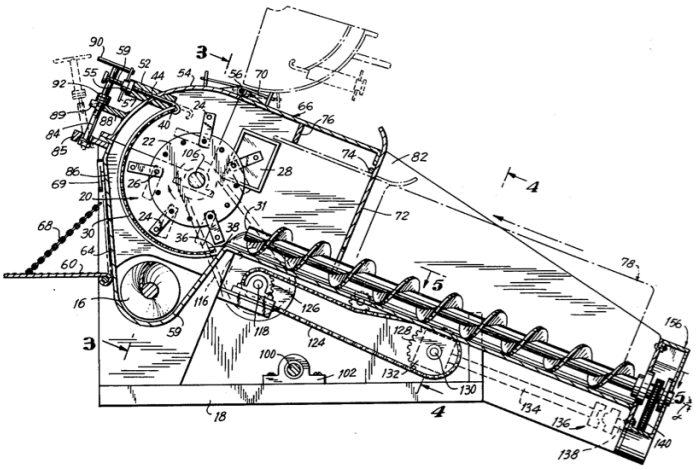
FIG. 5

84. A person skilled in the art who was faced with the problem of providing a mill for grinding grist with increased efficiency and a high throughput of material within a short time could derive from D2, inter alia, the insight that, in a hammermill of the configuration shown in Figure 1, the degree of particle reduction can be controlled by the length of the helical grinding pathway and thus by the residence time (see D2, col. 2, lines 28 et seq.; col. 4, lines 37 et seq.; 47 et seq.).

85. In the mill disclosed in D2, the feed-in opening enables an essentially tangential feed-in of the material to be communited. Moreover, the opening is located in the upper region of the mill. Accordingly, neither features 1d and 1e nor feature 15c are disclosed.

86. In D2, the person skilled in the art also finds no suggestion to modify the disclosed mill in accordance with the stated features. In this context, the revocation claimant does refer to the description of D2, which states that the helical profile 21 can be adjusted to more or less than 450 degrees depending on the particular requirements of the material to be comminuted, depending on specific needs (col. 2, lines 27 et seq.). However, this provides neither a reason to modify the feed-in opening shown in Figure 1 in such a way that it enables an essentially radial feed-in, nor to relocate the feed-in opening into the lower region of the grinding area.

87. Such a reason also does not arise from U.S. Patent No. 4,037,799 (D5), from which Figure 2 reproduced below originates.



88. There are already doubts as to whether the access door 72 of the hammermill disclosed in Figure 2 of D5 is actually located in the lower region, or whether it does not also extend into the upper region when, for example, the bale of hay 78 to be ground is moved through the access door 72 by means of the auger 32/34. In any event, the structural differences between the hammermills of D2 and D5 are so substantial that the person skilled in the art would not have used D5 as a model for arranging the inlet disclosed in D2 in the upper region of the housing. This is because, while D2 teaches moving the material to be comminuted from the inlet to the outlet of the grinding area in an essentially helical profile by means of a cutting plate, in order to influence particle comminution, and for this purpose provides a relatively small inlet opening in the upper region of the mill, the grinding area in D5 - limited to 180° by the screen 30 - is comparatively short, which allows for a large feed-in opening on the side of the mill opposite the screen.

D4

89. In the crushing mill disclosed in German Patent No. 915,520 (D4), the feed-in opening is provided in the upper region of the housing and enables an essentially tangential, and thus not an essentially radial, feed-in of the material to be comminuted. Contrary to the defendant's view, D4 provides no incentive to modify the arrangement disclosed in D4 in the direction of features 1d and 1e or 15c.

D12 and D2

90. Following from the above, D12 discloses neither feature 1d nor feature 1e, because the feed-in is effected in the upper region, and the feed-in and discharge are enabled via the feed-in and discharge openings in an essentially tangential direction and thus not essentially radially relative to the axis of rotation. Even if the skilled person were to additionally consider D2, as argued by the Defendant, they would derive from it neither a suggestion to arrange the feed in the lower region, since in D2 it is likewise arranged in the upper region of the grinding area, nor any indication to modify the feed-in and discharge openings in such a way that they would enable a feed-in and discharge that are essentially radial relative to the axis of rotation.

3. Reproducibility of patent claims 6 and 8

91. Insofar as the Defendant and revocation Counterclaimant considers the subject-matter of dependant patent claims 6 and 8 to be not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Art. 138(1)(b) EPC), no decision is required for lack of legal interest, since the counterclaim for revocation is already unsuccessful with respect to the independent patent claim 1, to which patent claims 6 and 8 directly and indirectly refer back and which therefore has a scope of protection that also encompasses patent claims 6 and 8.

B. Appeal against the dismissal of the infringement action

92. The appeal lodged by the Claimant against the dismissal of the infringement action in the impugned decision of the Mannheim LD is admissible and, for the most part, well-founded.

93. The Court of Appeal must also decide on the infringement action, even though the Mannheim LD dismissed the infringement action without ruling on the infringement of patent claims 1 and 15, after declaring the patent at issue invalid on the basis of the Defendant's counterclaim for revocation and drawing, from its perspective, the consequential conclusion that the patent at issue could not be infringed due to its lack of validity.

94. Pursuant to Art. 75(1) UPCA, where the Court of Appeal sets aside a decision of the Court of First Instance, it shall, as a rule, give a final decision itself. This means that, in the present case, the Court of Appeal, after considering the appeal of the Claimant (and revocation defendant) against the judgment of the Court of First instance in the counterclaim for revocation to be well-founded, must, in order to issue a final decision, as a rule decide not only on the counterclaim for revocation but also render a final decision on the infringement action.

95. A referral back to the Court of First instance is contemplated, as follows from Article 75(2) UPCA, only in exceptional cases and in accordance with the Rules of Procedure. Accordingly, Rule 242.2(b) RoP provides that the fact that the Court of First Instance failed to decide an issue which it is necessary for the Court of Appeal to decide on appeal does not normally constitute an exceptional circumstance justifying a referral back. Consequently, the fact that the Court of First Instance did not have to rule on the infringement of the patent at issue because, in the context of a counterclaim for revocation brought by the Defendant, it considered the patent underlying the infringement action to be invalid and therefore revoked it does not, as a rule, give the Court of Appeal grounds to refer the counterclaim for revocation and the infringement action — or even only the infringement action — back to the Court of First Instance.

96. No grounds which might exceptionally justify a referral back in the present case have been put forward by the Defendant and revocation claimant, nor are any such grounds otherwise apparent.

1. Direct infringement of claim 1 of the patent

a) Offering

97. The Defendant offered the contested embodiment (the “Europe Grinders” and “Europe Chip Mills” grinding mills), Article 25(a) UPCA.

98. According to the case law of the UPC Court of Appeal, the concept of “offering” within the meaning of Article 25(a) UPCA must be interpreted autonomously and understood in an economic sense. An “offering” does not have to constitute a legally binding contractual offer. It is sufficient that an item is presented in such a way that a third party could make an offer to acquire it, for example by concluding a contract of sale, lease, or hire (UPC CoA, decision of 3 October 2025 - 2024, UPC_CoA_534/2024 – Belkin/Philips, para 205).

99. Applying those principles, the Defendant offered the contested embodiment by advertising it in brochures K20, K23 and BB8.

b) Direct use by offering contested embodiments with longitudinal bars spaced at least 70 mm apart

100. By offering the contested embodiment in the aforementioned brochures, the Defendant directly used the subject-matter of claim 1 of the patent, Article 25(1)(a) UPCA.

101. It is undisputed between the parties that the contested embodiment, as offered in the brochures, embodies features 1a to 1f of claim 1 of the patent, so that no further submissions are required in that respect.

102. Contrary to the opinion of the Defendants in the infringement proceedings, the discharge opening of the grinding mills is, moreover, to be regarded as “free of sieves” within the meaning of feature 1g even if the discharge opening comprises longitudinal bars, provided that the resulting openings have a clear length of at least 200 mm in the tangential direction and a clear width of at least 70 mm in the axial direction.

103. As explained above, the discharge opening of a mill which, in accordance with its intended purpose, is designed to grind grist of various particle sizes is “free of sieves” even if, by virtue of its spatial and structural configuration, it is capable of retaining insufficiently ground grist in the case of larger particle sizes but not in the case of smaller ones, since the mill, when processing smaller particle sizes, still possesses the property of not retaining any grist.

104. According to the Defendant’s brochures, the contested embodiment is suitable for grinding grist of up to “max G100” (K20, p. 1; K23, p. 1; BB8, p. 7). “G100” refers to the particle size distribution of wood chips as defined in Table 1 of Austrian Standard ÖNORM M 7133 as follows:

Tabelle 1: Größenverteilung des Holzhackgutes

Gesamtmasse 100%				Hackgut-Größenklasse		
				G 30 fein	G 50 mittel	G 100 grob
Grobanteil max. 20%	Einzelstücke	Querschnitt max.	cm^2	3	5	10
		Länge max.	cm	8,5	12	25
	Grobsieb-Nenn-Maschenweite		mm	16	31,5	63
Hauptanteil 60% bis 100%	Mittelsieb-Nenn-Maschenweite		mm	2,8	5,6	11,2
Feinanteil (inkl. Feinstanteil) max. 20%	Feinsieb-Nenn-Maschenweite		mm	1	1	1

5

105. It therefore follows from the indication "max G100" that the contested embodiment is intended to process wood chips of size class G100 under ÖNORM M 7133, as well as ("max") wood chips of the smaller size classes G50 and G30. According to the assessment of the Defendant's expert, Dr Englisch, these two classes account for more than 90% of the wood chips available on the market (Exhibit K38, expert report, p. 14) and are therefore also of considerable practical significance. In any event, if wood chips of the smallest of these size classes, G30, are to be ground using the contested embodiment, longitudinal bars at the discharge opening spaced at least 90 mm apart can no longer perform any screening function, since the maximum particle size of wood chips in size class G30 is only 85 mm.

106. According to the further information in the brochures, the input material, described as "max size input" is to measure only "6 × 3 × 2 cm" and thus only 60 mm on its longest side. On the basis of this value, even longitudinal bars at the discharge opening spaced at least 70 mm apart no longer perform any screening function.

[5] **Table 1**: Particle Size Distribution of Wood Chips

Total mass 100%			Wood chip size class		
			G 30 (fine)	G 50 (medium)	G 100 (coarse)
Oversized fraction max. 20%	Single pieces	Cross-section max. cm^2	3	5	10
		Length max. cm	8.5	12	25
	Coarse sieve nominal mesh size mm		16	31.5	63
Main fraction 60% to 100%	Medium sieve nominal mesh size mm		2.8	5.6	11.2
Fine fraction (incl. fine particles) max. 20%	Fine sieve nominal mesh size mm		1	1	1

107. By contrast, it is irrelevant whether, as the Defendant submits, the spacing of the longitudinal bars at the discharge opening can be selected by customers at distances of 50, 70, 90, 110 or 130 mm, depending on the type of grist and the size of the wood chips to be produced. For even if a customer selects, for example, a spacing of 110 mm in order to retain, and thus "screen out", larger wood chips that have not yet been reduced to the desired size (i.e. to retain them within the mill), this does not exclude the suitability of the contested embodiment for being used to grind wood chips in cases where, owing to the small size of the wood chips, the longitudinal bars at the discharge opening spaced 110 mm apart no longer perform any screening function, as is the case, for example, with wood chips of size class G30.

108. This suitability of the contested embodiment with longitudinal bars spaced at least 70 mm apart is not altered by the statement in brochure BB8 that the ground material ("output") is determined by the size of the screens and other factors such as the RPM of the overtop rotor and the speed of the infeed augers (BB8, p. 23, first bullet point: "output determined by: size of screens, RPM overtop rotor and speed of infeed augers"). This generally worded advertising statement likewise does not make it clear that the contested embodiment, due to the spacing of the longitudinal bars at the discharge opening, functions as a sieve rather than "free of sieves," even when grinding inherently smaller input material, such as that of size class B30 or with a "max size input: 60 × 30 × 20 mm."

109. Accordingly, the contested embodiments with discharge openings in which the spacing of the longitudinal bars is at least 70 mm are to be regarded as "free of sieves" within the meaning of feature 1g.

c) Irrelevance of the Claimant's submissions regarding one specimen of the "Europe Forestry ECM 1250" mill

110. It is therefore no longer relevant, for the purpose of proving an act of infringement, to decide whether a specimen of the "Europe Forestry ECM 1250" mill - whose discharge opening was equipped with longitudinal bars spaced 110 mm apart and which was allegedly inspected by one of the Claimant's customers at a company in the Netherlands - directly makes use of patent claim 1.

d) No proof of direct use by the contested embodiments with longitudinal bars spaced less than 70 mm apart

111. The Claimant further relies on a report by its expert, Dr. Englisch, with which it seeks to demonstrate that the longitudinal bars of the contested embodiment do not perform the function of a sieve and therefore have no influence on the grinding result. The tests conducted by the expert for this purpose were not carried out on a specimen of the contested embodiment, but rather on a Rematec RPM 650 mill, which the Claimant asserts is identical to the Rematec RPM 1000 mill except for the different grinding area width and, consequently, its capacity. The RPM 1000, in turn, is alleged by the Claimant to be essentially identical in design to the contested embodiment. Material of grades G100 and G50 was reportedly ground. The grinding results obtained in the process, which the Claimant photographed (see Reply of 12 April 2024, p. 49), are said to rule out a screening effect of the longitudinal bar even at a clear spacing of 50 mm, since they exhibited a size of only just over 10 mm at most.

112. By contrast, the Defendant disputes that the mill examined by the Claimant's expert and the reconstructed bar screen are identical or even comparable in their relevant functional characteristics. The Defendant further disputes that the Claimant used wood chips of size grade G100 as the input material.

113. The tests carried out by the Claimant do not demonstrate that the contested embodiments with longitudinal bars at the discharge opening spaced less than 70 mm apart are to be regarded as "free of sieves". With regard to the contested embodiments featuring longitudinal bars at the discharge opening spaced at least 70 mm apart, proof is not required, since, as explained, direct use already follows from the offering of the contested embodiment in the Claimant's brochures.

114. No reliable conclusions regarding the sieve-free nature of the contested embodiment can be drawn from the tests conducted by the Claimant's expert, as they were not performed on the contested embodiment but on a different mill, the RPM 650, and the Claimant has not sufficiently demonstrated that the two mills are identical.

115. To prove the identity of the two mills, the Claimant relied on the written statements and photographs of Mr. Pot (Exhibits K36 and K37). While these do indicate that, in the ECM 1250 mill, as in the RPM 1000 mill, both the feed-in opening and the discharge opening are located in the lower region of the mill and extend across the entire width of the grinding area, with the material being conveyed by the rotor from the feed-in opening over the highest point of the grinding area and then discharged through the discharge opening (Exhibit K36, p. 5), they contain no information regarding the behaviour of the two mills in actual operation. From the further comparison of photographs of the two mills relied upon by the Claimant (Reply, para. 23), an external similarity between the two mills is indeed apparent. However, this likewise says nothing about whether the grinding process in actual operation is equally efficient in both mills. Consequently, the report of the Claimant's expert, Dr. Englisch, likewise provides no further proof regarding the sieve-free nature of the contested embodiment beyond the findings set out above under section b) on this issue.

2. Indirect infringement of patent claim 15

116. By offering the contested embodiment (the "Europe Grinders" and "Europe Chip Mills" grinding mills) in the aforementioned brochures, the Defendant has indirectly used the subject-matter of patent claim 15, Art. 26(1) UPCA.

117. As is apparent from the reasoning relating to patent claim 1, the contested mill is suitable for carrying out the method for the grinding of grist according to patent claim 15. This also applies with regard to the sieve-free nature of the discharge opening required by feature 15g in the contested mill, in which the discharge opening is fitted with longitudinal bars spaced at 70, 90, 110, or 130 mm, when it is used for grinding wood chips and is employed, in accordance with the information in the Defendant's brochures, for wood chips with a "max size input" of "6 × 3 × 2 cm". The Defendant, as a specialized company that published the brochure, was also aware of that.

118. The Defendant should also have known that purchasers of the contested mill use it, with a discharge opening and longitudinal bars spaced 70, 90, 110, or 130 mm apart, for grinding wood chips with a maximum size of "6 × 3 × 2 cm," as is also evident from the corresponding information in the Defendant's brochures.

3. Permanent injunction

119. If a patent infringement is established, the Court may, pursuant to Article 63(1) UPCA, grant an injunction against the infringer aimed at prohibiting the continuation of the infringement. An "infringer" within the meaning of Article 63(1) UPCA is the person who carries out the acts of use themselves (UPC-CoA, decision of 3 October 2025, UPC_CoA_524 – Belkin/Philips, para. 177). The Court must grant a permanent injunction against that party unless there are special reasons for not doing so, which may arise in particular from the general obligations under Article 3 of Directive 2004/48/EC (UPC-CoA, decision of 25 November 2025, UPC_CoA_464/2024 – Meril/Edwards, para. 189 et seq.).

120. In the present case, the acts infringing patent claim 1 directly and patent claim 15 indirectly were committed by the Defendant, so that a permanent injunction must be granted against it. No special reasons for refraining from doing so have been presented, nor are any apparent.

121. Since, based on the parties' submissions, only one contested embodiment with a discharge opening that has longitudinal bars spaced at least 70 mm apart can be regarded as "free of sieves" within the meaning of features 1g and 15g, the requests for a permanent injunction (and the further related requests for recall, removal, destruction, provision of information, publication, and damages) are to be granted only on the basis of auxiliary requests I. 1.1.1 and 1.2.1, and the action is otherwise to be dismissed.

4. Corrective measures

122. Following the finding of direct infringement of patent claim 1 by the contested embodiment, corrective measures are ordered against the Defendant pursuant to Article 64(2) and (3) UPCA on the basis of request II. 1. 1.1. in conjunction with auxiliary request I. 1. 1.1.1, namely the recall and permanent removal of the contested embodiment from the channels of commerce as well as the destruction of the contested embodiment (see also UPC-CoA, decision of 3 October 2025, UPC_CoA_524 – Belkin/Philips, para. 230 et seq.).

123. With regard to the principle of proportionality laid down in Article 64(4) UPCA, it must be clarified that, in order to comply with the order to destroy the contested embodiments in the Defendant's possession, it is sufficient if the longitudinal bars at the discharge opening that are spaced at least 70 mm apart are replaced with bars spaced below that value.

124. Insofar as the claimant also requests corrective measures on the grounds of indirect infringement of patent claim 15 by the contested embodiment, no decision is required, as an order concerning the contested embodiment already results from the direct infringement of patent claim 1. It can therefore remain undecided whether corrective measures pursuant to Article 64 UPCA can be

ordered at all in the event of (only) an indirect patent infringement being found and, if so, under what circumstances the ordering of corrective measures in the event of an indirect patent infringement meets the requirement of proportionality pursuant to Article 64(4) UPCA.

5. Communication of information

125. Following the finding of direct infringement of patent claim 1 and indirect infringement of patent claim 15 by the contested embodiment, the communication of information is ordered pursuant to Article 67 UPCA on the basis of requests III in conjunction with auxiliary requests I. 1.1.1 and 1.2.1.

6. Publication of the decision

126. The request for an order to publish the decision at the defendant's expense pursuant to Article 80 UPCA is unfounded. In addition to finding a patent infringement, such an order also requires the claimant to demonstrate a legitimate interest in the requested publication of the decision at the defendant's expense. In this regard, all circumstances of the individual case must be considered, such as the scope and severity of the infringement, the public presentation of the conflict, the public's interest in information, and whether the publication of the decision can contribute to eliminating misconceptions in the market caused by the infringement or to deterring future infringements.

127. Since the plaintiff has not demonstrated a legitimate interest in a full-page publication (print) it has requested in five national daily newspapers and five trade media, each at the plaintiff's discretion, its application cannot be successful.

7. Penalty payments

128. Pursuant to Rule 354.3 RoP, it is ordered upon the Claimant’s request that, in the event the Defendant fails to comply with the terms of the Decision set out in the operative part, the Defendant shall be liable to make periodic penalty payments payable to the Court. The amount of the periodic penalty payments to be made in each case of non-compliance has been determined by the Court (see UPC-CoA, order of 14 October 2025 – Kodak/Fujifilm, para. 33).

8. Liability for damages

129. As explained above, by offering the contested embodiment the Defendant directly infringed patent claim 1 and indirectly infringed patent claim 15. As the manufacturer of the offered embodiment, it should at least have known that it was thereby infringing the said claims of the patent at issue, pursuant to Article 68(1) UPCA (see UPC-CoA, decision of 9 December 2025, UPC_CoA_8/2025 – Bhagat/Oerlikon, para. 25).

130. Accordingly, upon the Claimant’s request, it is declared that the Defendant is liable to compensate it for all damage already incurred and to be incurred in the future as a result of acts in accordance with auxiliary requests I. 1.1.1 and 1.2.1 since 8 November 2014.

9. Interim award of costs

131. The Claimant's application for an interim award of damages pursuant to Rule 119 RoP for a lump-sum amount of €50,000, on the grounds that it is already foreseeable that the costs of the proceedings alone will be substantial, is successful only in part.

132. Considering

- the fact that the Claimant has not further substantiated the amount claimed as lump-sum damages,
- the fact that, apart from the offering of the contested embodiment, only two sales of that embodiment are currently at issue between the parties,
- the value in dispute of the infringement action of €400,000, of which, in view of the remaining term of the patent at issue, only a smaller portion relates to the claim for damages, and
- the court fee payable for the application to determine damages (Table of Court Fees of 4 November 2025, D-AC/08/02072025_rev.1_D),

the interim award of an amount of €20,000 to cover the expected costs is appropriate.

10. Costs and value of action

133. The cost decision follows from Art. 69(1) and (2) UPCA and R. 118.5 RoP.

134. As the unsuccessful party, the revocation claimant (and Defendant) must bear the costs of the counterclaim for revocation in both instances.

135. The Claimant (and revocation defendant) must bear 20% of the costs incurred by the Defendant in the infringement action in both instances, as well as 20% of the court fees, since it succeeded not with its main request but only with an auxiliary request and also not with its request for publication of the decision. The Defendant (and revocation counterclaimant) must bear 80% of the costs incurred by the Claimant in the infringement action in both instances, as well as 80% of the court fees.

136. In accordance with the value of the action set at first instance, the value in dispute of the infringement action is also set at €400,000 for the appeal proceedings, and the value in dispute of the counterclaim for revocation is set at €600,000.

DECISION

I. The Decision of the Court of First Instance of the Unified Patent Court, Mannheim Local Division, of 31 January 2025 is set aside in its entirety.

II. The counterclaim for revocation is dismissed.

III. The Defendant is ordered to cease and desist from

1.1
manufacturing in the Netherlands and/or offering, placing on the market or using in Austria, Belgium, Bulgaria, Germany, Denmark, Finland, France, Italy, the Netherlands, Portugal, Sweden and Slovenia, or from importing or possessing for the aforementioned purposes
1a) a mill for the grinding of grist, in particular wood chips,

1b) with a grinder having a rotor with a plurality of grinding elements, wherein the rotor can be driven in a grinding area about an axis of rotation,

1c) wherein the internal wall of the grinding area cooperates with the grinding elements to grind the grist, and

1d) wherein the grinding area has a feed-in opening and a discharge opening which enable essentially radial feed-in and discharge of grist relative to the axis of rotation,

1e) wherein the feed-in opening and the discharge opening are each arranged in the lower region of the grinding area,

1f) wherein the feed-in opening, the highest point in the grinding area and the discharge opening are arranged in sequence at the circumference of the internal wall of the grinding area in the direction of rotation of the rotor and

1g) the discharge opening contains longitudinal bars which form openings having a clear length of at least 200 mm in the tangential direction and a clear width of at least 70 mm in the axial direction,
(Claim 1 of EP 2 548 648, by direct infringement);

1.2
offering to customers in Austria, Belgium, Bulgaria, Germany, Denmark, Finland, France, Italy, the Netherlands, Portugal, Sweden and Slovenia for use in those States and/or supplying to such customers
a mill configured to
15a) carry out a method for the grinding of grist in a mill,
15b) with a grinder having a rotor with a plurality of grinding elements, wherein the rotor is driven in a grinding area about an axis of rotation, and
15c) wherein initially the grist is fed through a feed-in opening in the lower region of the grinding area,
15d) then it is ground by means of cooperation of the internal wall of the grinding area and the grinding elements,
15e) while it is transported from the feed-in opening via the highest point in the grinding area to a discharge opening, and
15f) wherein finally the grist is fed in an essentially radial direction through the discharge opening in the lower region of the grinding area, and
15g) the discharge opening contains longitudinal bars which form openings having a clear length of at least 200 mm in the tangential direction and a clear width of at least 70 mm in the axial direction.

(Claim 15 of EP 2 548 648, by indirect infringement);

IV. It is ordered that the Defendant, at its own expense,
1. recall the products referred to in item III 1.1 from the channels of commerce;
2. definitively remove the products referred to in item III 1.1 from the channels of commerce;
3. destroy the products referred to in item III 1.1 that are in its possession.

V. It is ordered that the Defendant communicate information to the Claimant on the following points:

- the origin and channels of commerce of the products referred to in item III;
- the quantities produced, manufactured, delivered, received or ordered, and the prices paid for the products referred to in item III, and
- the identity of all third parties involved in the manufacture or distribution of the products referred to in item III.

VI. In the event of any non-compliance of
1. the Decision set out in item III
2. the Orders set out in items IV and V,

the Defendant shall be liable to pay periodic penalty payments to the Court, in the event of non-compliance with the Decision set out in item III, in an amount of up to €500,000, and in the event of non-compliance with the orders set out in items IV and V in an amount of up to €100,000.

VII. It is declared that that the Defendant is liable to compensate the Claimant for any damages already incurred and any future damages arising from the acts pursuant to item III since 8 November 2014, with the amount of damages to be determined in subsequent proceedings.

VIII. It is ordered that the Defendant shall pay the Claimant, on a provisional basis, €20,000.00 as lump-sum damages.

IX. The infringement action is dismissed in all other respects.

X. The Defendant shall bear, in both instances, the court fees for the counterclaim for revocation and the costs incurred by the Claimant as a result of the counterclaim for revocation.

The Defendant shall bear, in both instances, 80% of the court fees for the infringement action and 80% of the costs incurred by the Claimant as a result of the infringement action.

The Defendant shall bear, in both instances, 20% of the court fees for the infringement action and 20% of the costs incurred by the Defendant as a result of the infringement action.

XI. In the appeal proceedings, as in the first instance, the value in dispute for the infringement proceedings is set at €400,000 and the value in dispute for the counterclaim for revocation at €600,000.

Issued on 17 February 2026

Klaus Grabinski, President of the Court of Appeal

Peter Blok, legally qualified judge,

Emmanuel Gougé, judge-rapporteur and legally qualified judge

Gérard Myon, technically qualified judge

Max Tilmann, technically qualified judge

For the registry