



**Düsseldorf local division**  
**UPC\_CFI\_559/2024**  
**UPC\_CFI\_106/2025**

**Judgment**  
**of the Court of First Instance of the Unified Patent Court**  
**issued on 23 April 2026**  
**concerning EP 3 156 843**

HEADNOTE:

A finding of an act of use in one Contracting Member State is sufficient to issue an order also in respect of the other Contracting Member States in which the patent is in force. This applies even where an act of use can only be established in the Contracting Member State in respect of which the patent proprietor, for procedural reasons, does not assert any claims in the infringement action ('carve-out').

KEYWORDS:

Art. 34 UPC Agreement; carve-out

HEADNOTE:

For an order to be issued in respect of all Contracting Member States in which the patent is in force, it is sufficient to establish an act of infringement in one Contracting Member State. This applies even if an act of infringement can only be established in a Contracting Member State in which the patent proprietor does not assert any claims in the infringement proceedings for procedural reasons ('carve-out').

KEYWORDS:

Art. 34 UPCA; carve out

Claimant:

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DEFENDANT:

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PATENT AT ISSUE:

European Patent No. EP 3 156 843

DECISION-MAKING PANEL/CHAMBER:

Panel 1 of the Düsseldorf local division JUDGES:

This decision was delivered with the participation of Presiding Judge Thomas, legally qualified Judge Dr Schumacher as judge-rapporteur, legally qualified Judge Agergaard and technically qualified judge Dr Wilhelm.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT MATTER: Action for infringement and counterclaim for annulment

ORAL HEARING: 12 March 2026

BRIEF SUMMARY OF THE FACTS:

1. The claimant brings proceedings against the defendants for infringement of European patent EP 3 156 843 B1 (including the German translation submitted as Annex LR 3, hereinafter: the patent at issue), which was granted in French.
2. The patent at issue was filed on 11 October 2016. It claims the priority of the French application FR 1502170 of 14 October 2015. The patent application was published on 19 April 2017. The notice of grant of the patent at issue was published on 18 April 2018. No preliminary objection was filed against the grant of the patent at issue at the European Patent Office (EPO). The patent at issue is in force in, inter alia, Belgium, Germany, France, Italy and the Netherlands.
3. The German part of the patent at issue, in respect of which the claimant is not asserting any claims in the present action, was the subject of an action for nullity brought by the first defendant in Germany. The Federal Patent Court annulled the German part of the patent at issue by judgment of 19 May 2022 (2 Ni 73/20 (EP), Annex KAP 1). By judgment of 23 July 2024, the Federal Court of Justice, on appeal by the Claimant in the present proceedings, set aside that judgment and dismissed the action for nullity (X ZR 88/22, Annex KAP 2).
4. The German part of the patent at issue is also the subject of a German patent infringement action brought by the Claimant against the first and second defendants and two natural persons before the Regional Court of Düsseldorf. By judgment of 8 April 2025, the Regional Court of Düsseldorf found the defendants there liable for patent infringement (4a O 78/20, Annex LRN 2).
5. The claimant is the sole proprietor of the patent at issue.
6. The patent at issue is entitled "DISPOSITIF ET PROCÉDÉ POUR RECONSTRUIRE EN TROIS DIMENSIONS LA TÊTE ET LE CORPS" (Device and method for the three-dimensional reconstruction of the head and body). Independent claims 1 and 14, which protect a device and a method, are worded as follows:

Claim 1 (in the French language of the proceedings):

"Dispositif pour la prise de vue en stéréophotogrammétrie de parties du corps, comprenant un appareil de prise de vue (1) et une optique double (2) munie de deux sous-optiques (2b,2c) permettant d'obtenir deux prises de vue simultanées selon chacune un angle différent, caractérisé en ce qu'il comprend un système de mesure de distance (34) configuré pour signaler l'utilisateur que la distance entre le dispositif et une partie du corps à reproduire correspond à une distance cible de prise de vue définie parmi au moins deux distances prédéfinies distinctes correspondant chacune à un format (A4, A3) de reproduction d'image différent."

Claim 1 (in English translation):

"Device for capturing parts of the body using stereo photogrammetry, comprising a

A recording device (1) and a dual-lens system (2) equipped with two sub-lenses (2b, 2c) that enable two simultaneous recordings to be obtained, each from a different angle, **characterised in that** it comprises a distance measurement system (34) designed to signal to the user that the distance between the device and a part of the body to be reproduced corresponds to a defined target recording distance from at least two predefined different distances, each corresponding to a different image reproduction format (A4, A3).”

Claim 14 (in the French language of the proceedings):

„Procédé comprenant l’ utilisation d’un dispositif selon l’une quelconque des revendications 1 à 13, comprenant les étapes suivantes: une sélection(100) de distance cible, un placement relatif (200) de l'appareil de prise de vues et d'un sujet à la distance cible au moyen du système de mesure (34), puis une réalisation (300) d'une ou plusieurs prises de vue à la distance cible, caractérisée en ce que la distance cible est l'une parmi au moins deux distances prédéfinies de prise de vue correspondant chacune à un format (A4,A3) de reproduction d'image différent et le système de mesure (34) signale que la distance entre le dispositif et une partie du corps à reproduire correspond à ladite distance cible.“

Claim 14 (in German translation):

“A method comprising the use of a device according to any one of claims 1 to 13, comprising the following steps: selecting (100) the target distance, relatively positioning (200) the imaging device and a subject at the target distance by means of the measuring system (34), and subsequently taking (300) one or more images at the target distance, **characterised in that** the target distance is one of at least two predefined imaging distances, each corresponding to a different image reproduction format (A4, A3), and the measuring system (34) indicates that the distance between the device and a part of the body to be reproduced corresponds to the target distance.”

7. Defendants 1) to 4) belong to the Canfield Group, the parent company of which is Defendant 2). Defendant 1) is the German sales company of Defendant 2), while Defendants 3) to 5) are its other sales companies in the member states of the UPC Agreement. Defendants 1), 3) and 4) are wholly-owned subsidiaries of Defendant 2).
8. The fifth defendant is not part of the group of companies comprising the first to fourth defendants.
9. In its claim, the claimant challenges the ‘Canfield Vectra H2’ 3D imaging system (hereinafter: the contested embodiment). The user guide for the contested embodiment is attached as Annex LR 9.
10. The contested embodiment is manufactured by Defendant 2) and distributed by the other defendants in their respective sales territories. The defendants also offer the contested embodiment via the website [www.canfieldsci.com/imaging-sys-tems/vectra-h2-3d-imaging-system/an](http://www.canfieldsci.com/imaging-sys-tems/vectra-h2-3d-imaging-system/an).

KEY PROCEDURAL STEPS:

11. In its reply in the infringement proceedings, the claimant stated that it was extending its claim to include an application for provisional reimbursement of costs in the amount of EUR 60,000. In support of this,

it stated that it concurred with the defendants' submissions regarding the provisional reimbursement of costs and was now also making a corresponding application.

12. In a document dated 11 March 2026, the day before the oral hearing, the defendants submitted to the file the annexes KAP NWK 23 (the article 'A new Camera for Cosmetic Surgery' by Melvin A. Shiffman) and KAP NWK 24 (user manual for the associated Polaroid Macro 5 SLR) to the file and stated that these demonstrated general technical knowledge of distance measurement systems using intersecting light beams in the field of dermatology. The existence of the camera mentioned in these documents was known to the Claimant from the US proceedings.

THE PARTIES' APPLICATIONS:

Action for infringement

13. The claimant requests:

- I. That the defendants be ordered to refrain from

1. offering, placing on the market, using, importing or possessing for the aforementioned purposes

in Belgium, France, Italy and the Netherlands, to place on the market, or to use, or to import or possess for the aforementioned purposes,

where the device for capturing parts of the body in stereo photogrammetry comprises a capture device (1) and a dual-lens system (2) equipped with two sub-lenses (2b, 2c) that enable two simultaneous images to be obtained, each at a different angle, and if it comprises a distance measurement system (34) designed to signal to the user that the distance between the device and a part of the body to be reproduced corresponds to a defined target capture distance from at least two predefined different distances, each corresponding to a different image reproduction format (A4, A3);

in particular where

the device is characterised in that the at least two predefined different distances (A4, A3) are contained within a range of space corresponding to the depth of field (6) of the device (sub-claim 2);

and/or where

the device is characterised in that the measuring system (34) comprises at least two pairs of light projectors (3b, 3c) and (4b, 4c), wherein a first pair of light projectors (3b, 3c) is configured such that it converges at a first predefined distance (A3) of the at least two predefined different distances (A4, A3), and a second pair of light projectors (4b, 4c) is configured such that it converges at a second

predefined distance (A4) of the at least two predefined different distances (A4, A3) (sub-claim 3);

and/or where

the device is characterised in that it comprises a switch (5) which enables the selection of one of the at least two predefined shooting distances (A4, A3) (sub-claim 8);

and/or where

the device is characterised in that the smaller (A4) of the at least two predefined different imaging distances corresponds to a first imaging field of an area which, relative to the area of the imaging field corresponding to a second (A3) of the at least two predefined different imaging distances, is at least 25% smaller in terms of area (sub-claim 11);

2. a method comprising the use of a device according to section 1.1

to be offered or used in Belgium, France, Italy and the Netherlands,

where the method comprises the following steps: selecting (100) the target distance, relatively positioning (200) the imaging device and a subject at the target distance by means of the measuring system (34), subsequently performing (300) one or more exposures at the target distance, wherein the target distance is one of at least two predefined exposure distances, each corresponding to a different image reproduction format (A4, A3), and the measuring system (34) signals that the distance between the device and a part of the body to be reproduced corresponds to the target distance (claim 14);

in particular where

the method comprises operating a switch (5) to select (100) one of the at least two predefined shooting distances before proceeding with the positioning (200) of the subject relative to the device (Sub-claim 15);

and/or where

the method comprises the following steps: taking a plurality of images of stereoscopic pairs of the same subject at one of the at least two predefined shooting distances, subsequently determining, in three dimensions, the surfaces corresponding to the various images of this subject (400), subsequently mapping the various reconstructed surfaces (500) and finally merging the various mapped surfaces (600) into a single three-dimensional representation of the subject (sub-claim 16);

and/or where

the method comprises the step of using a computer program product comprising instructions configured, when executed by at least one processor, to perform the steps of determining, mapping and merging (sub-claim 17);

and/or where

the method comprises the user selecting (100) the steps of:

- selecting the distance (A4) from the at least two predefined different distances (A4, A3) that is closest to a subject as the target distance, subsequently positioning the recording device and the subject (200) at this target distance, and subsequently taking multiple images of the subject's face at this distance from various angles (300);
- or selecting a distance (A3) from the at least two predefined different distances (A4, A3) that is further away from the subject as the target distance, then positioning the imaging device and the subject relative to one another at this target distance (200), subsequently taking several images of the subject's upper body at this distance from various angles (300) (Sub-claim 18).

II. The defendants are further ordered, within a period of 30 days following service of the notice pursuant to Rule 118.8(1) of the RoP and, where applicable, the certified translation,

1. to provide the Claimant with information regarding the extent to which they have committed the acts described in sections I.1. and I.2. since 18 April 2018, in the form of a statement structured for each month of a calendar year and according to the infringing acts described in sections I.1. and I.2., containing the following information:
  - a) the origin and distribution channels of the infringing products and the distribution channels of the processes offered;
  - b) the quantities delivered, received or ordered and the prices paid for the infringing products or the applications of the process;
  - c) the identity of all third parties involved in the manufacture or distribution of the infringing products or in the application of the process;
  - d) the number and dates of the products or processes offered;

- e) the advertising carried out, broken down by advertising medium, its reach, the period of distribution and the distribution area; including evidence of these advertising activities;
- f) the costs, broken down by individual cost factors, and the profits made,

whereby copies of the relevant purchase documents (namely invoices, or alternatively delivery notes) must be submitted as evidence of the information provided, with details requiring confidentiality being redacted from the data subject to disclosure and notification requirements;

- 2. to recall the infringing products referred to in Section I.1 by notifying the third parties from whom the infringing products are to be recalled that this Court has found that the products infringe European Patent EP 3 156 843 B1, whereby the defendants must give a binding undertaking to the third parties to reimburse the costs incurred, to bear the packaging and transport costs, to reimburse the customs and storage costs associated with the return of the products, and to take the products back;
- 3. to permanently remove the infringing products referred to in point I.1 from the distribution channels, whereby the defendants, noting that this court has found that the products infringe European Patent EP 3 156 843 B1, to request third parties who are commercial customers but not end users, in respect of the products referred to in paragraph I.1., to cancel all orders relating to the products referred to in paragraph I.1. and to submit to the Court and the Claimant, within the aforementioned period of 30 days following service of the notice pursuant to Rule 118.8(1) of the RoP and, where applicable, the certified translation, to submit written evidence of the measure taken.

III. The defendants are further ordered

- 1. in the event of any breach of the order pursuant to the application under point I, to pay a repeated penalty payment of at least EUR 1,000 per infringing product;
- 2. in the event of any breach of the order pursuant to the application under point II, a recurring penalty payment of at least EUR 1,000 per day for each breach

to the court.

VI. The defendants are ordered to pay the claimant EUR 20,000 as provisional damages, which shall be adjusted if the acts referred to in point I continue.

V. It is hereby held that the defendants are, in substance, obliged to compensate the Claimant for any further loss or damage she has suffered or may suffer in the future as a result of all past and future acts referred to in Section I.

14. In its reply in the infringement proceedings, the claimant states that it is extending its claim as follows:

The defendants are ordered to pay provisional costs of EUR 60,000 to the Claimant within 14 days of service of the judgment.

15. The defendants request:

- I. The infringement claim is dismissed.
- II. The claimant shall bear the costs of the proceedings.
- III. The claimant is ordered to pay provisional costs of EUR 60,000 to the defendants within 14 days of service of the judgment.
- IV. The decision is immediately enforceable.

- V. In the event that the defendants are found liable:

1. The orders are not provisionally enforceable; in the

alternative:

2. the orders shall only be enforceable once the claimant has provided, in favour of the defendant, a written, irrevocable, unconditional and open-ended guarantee in the amount of EUR 1,800,000 from a credit institution authorised to conduct business within the territory of a Member State of the European Union;

in the alternative:

3. the defendant shall be permitted to avert enforcement by providing security in the amount of EUR 1,800,000, unless the Claimant first provides security, in which case the security must be provided in the form of a written, irrevocable, unconditional and open-ended guarantee from a credit institution authorised to conduct business within the territory of a Member State of the European Union.

#### Counterclaim

16. The defendants request: I.

1. On behalf of and with the authority of the defendants and counter-claimants for revocation in 2) to 5), to declare European patent 3 156 843 invalid with effect for the countries in which the European patent was still in force at the time of entry into force of the Agreement on a Unified Patent Court, namely Belgium, Germany, France, Italy and the Netherlands, to the extent of patent claims 1 to 18;
2. on behalf of and with the authority of the defendant and counter-claimant for nullity 1), to declare European patent 3 156 843 invalid with effect for the countries in which the

European patent was still in force at the time of the entry into force of the Agreement on a Unified Patent Court, with the exception of Germany, namely in Belgium, France, Italy and the Netherlands, to the extent of patent claims 1 to 18.

- II. The claimant and counter-defendant in the action for annulment shall bear the costs of the proceedings.
  - III. The claimant and counter-defendant in the action for annulment is ordered to pay provisional costs of EUR 90,000 to the defendants and counter-claimants in the action for annulment within 14 days of service of the judgment.
  - IV. The decision is immediately enforceable.
17. The claimant requests:
- I. The counterclaim for annulment is dismissed.
  - II. The counter-plaintiffs in the action for annulment are ordered to pay the costs of the proceedings.
  - III. The counter-claimants for nullity are ordered to pay provisional costs of EUR 90,000 to the defendant in the nullity proceedings within 14 days of service of the judgment.

#### Application for amendment of the patent

18. The claimant requests:

In the alternative to the application for dismissal of the counterclaim for revocation:

European patent EP 3 156 843 is upheld in Belgium, Germany, France, Italy and the Netherlands, limited to the scope of the patent claims as set out in the auxiliary request.

19. For the wording of the alternative claim, reference is made to the Claimant's document of 28 April 2025.
20. Accordingly, the Claimant submits the following in the infringement proceedings:
- In the alternative, in the event that the patent at issue should be upheld only to a limited extent as a result of the counterclaim for nullity, in place of the previous applications under I.1. and I.2.:
- I. The defendants are ordered to refrain from
    1. offering, placing on the market, or using a device for holding parts of the body in stereophotogrammetry in defined mounting fixtures for use  
  
in Belgium, France, Italy and the Netherlands, to place on the market, or to use, or to import or possess for the aforementioned purposes,

where the defined target distances correspond to at least two predefined different distances, each of which corresponds to a different image reproduction format (A4, A3),

wherein the device comprises: an imaging device (1), a dual-lens system (2) equipped with two sub-lenses (2b, 2c) that enable two simultaneous images to be obtained, each at a different angle, and a distance measurement system (34) designed to signal to the user that the distance between the device and a part of the body to be reproduced corresponds to a defined target shooting distance from at least two predefined different distances, each corresponding to a different image reproduction format (A4, A3).

21. The defendants opposed the Claimant's alternative claim and also sought dismissal of the action in this respect in the infringement proceedings.

FACTUAL AND LEGAL ISSUES:

Scope of protection

22. The defendants essentially argue as follows regarding the scope of protection:
23. Claim 1 requires that the imaging device has a dual optical system comprising no moving parts. The person skilled in the art would recognise from the plain meaning of the claim, according to which its subject-matter is limited to the field of 'stereophotogrammetry', that specific requirements must be imposed on the imaging device or its dual optical system. According to paragraph [0005] of the patent at issue, the required geometric precision of the optics can be achieved solely by the fact that the dual optical system has no moving parts. At this point, the patent at issue does not distinguish itself from the acknowledged state of the art, but rather proceeds from this basic understanding. It can also be inferred from paragraph [0023] that the requirements for the necessary calibration of the optical systems are generally so high that the parts of the optical system must necessarily be fixed. The wording 'generally' indicates that there are no exceptions in this respect.
24. The dual optical system required by the claim, comprising two sub-optical systems, is present only if the dual optical system comprises two separate optical systems, each with its own lens or lenses. Dual optical systems that operate with a single lens or a single lens system, on the other hand, are not covered by the scope of the claim. The requirement for two sub-optical systems is a specific spatial and physical requirement. Sub-claim 13 and the description (see paragraphs [0015], [0023]) also confirm this view. Insofar as other possibilities are mentioned there, these do not relate to the two sub-optics expressly mentioned in the claim. In this respect, the claim has made a selection. The dual optical system also features two separate optical systems in all the figures of the patent at issue. Furthermore, the Claimant had itself confirmed this interpretation during the grant proceedings for the parallel US family member US 10,070,119 B2 (Annex KAP 4, hereinafter: US 119). Finally, the requirement of 'two partial optical systems' alongside the requirement of the 'dual optical system' could not

not be meaningless, which is, however, the case in the Claimant's purely functional view.

25. According to the teaching of the patent at issue, establishing the target-to-body distance and signalling it are two separate steps. The user must first establish the target-to-body distance via the distance-measuring system. Subsequently, in a second step, a signal must be triggered. A mere convergence of light beams, through which the user establishes the distance between the sensor and the target, cannot therefore simultaneously constitute signalling. As can already be inferred from the literal meaning, signalling is a subsequent, independent step. A systematic examination based on sub-claims 3 to 5 as well as 6 and 7 also confirms this understanding. Accordingly, the distance measurement system may be configured in various ways and ensure the establishment of the target-to-sensor distance in different manners (see sub-claims 3 to 5). In the event that the distance measurement system (according to claims 1 to 5) comprises a distance meter (sub-claim 6), this triggers a signal once the shooting-target distance has been established (sub-claim 7). Paragraphs [0016] to [0019] and [0039] to [0043] also confirm this view.
26. Finally, the claim requires that users of a device in accordance with the claim be able to choose between two shooting distances that lie within or adjacent to a depth of field. Since the dual-lens system – as explained – has no moving parts and therefore has a fixed focus with a single focal plane, the two distances correspond to two planes within, or at least close to, the depth of field surrounding the focal planes. According to the teaching of the patent at issue, the imaging target distance is a distance between the imaging device and the body part selected such that the body part is (ideally) within the depth of field during imaging. This is confirmed by sub-claim 2, which expressly stipulates that the two planes lie within the depth of field. The description and figures also confirm this view. Furthermore, in its submissions during the grant proceedings for US 119, the Claimant clearly stated that the teaching was not interpreted as relating to the focal plane and absolute sharpness, but rather utilised the depth of field.
27. The claimant essentially argues as follows regarding the scope of protection:
28. Claim 1 of the patent at issue does not relate to moving parts. In so far as the defendants referred to paragraph [0005] in this context, this constitutes a description of the state of the art which the patent at issue is specifically intended to overcome. As is also apparent from paragraph [0023], the teaching of the patent at issue clearly distinguishes itself from the previously described systems without moving parts and claims a teaching in which the shortcomings of the prior art systems are eliminated by utilising the depth of field.
29. The defendant's restrictive interpretation, according to which the two sub-optics must be separate optical systems, is not justified. The two sub-optics enable two simultaneous exposures from different angles. However, according to the explicit statements in paragraph [0015], it is entirely irrelevant whether the sub-optics consist of lenses, mirrors or combinations thereof. A restrictive interpretation cannot be derived from the sub-claims or the description

derive. Even if one were to draw on the arguments put forward in the US grant proceedings, these too would not lead to a restrictive interpretation. In that case, the arguments concerned a specific configuration from the prior art (Hoffmeier), in which the dual optical system consisted of two separate optical systems. However, contrary to what Hoffmeier apparently discloses, the patent at issue also recognises other designs of a dual-lens system, as explained in detail in paragraph [0015].

30. The defendant's attempts to impose further requirements regarding the timing sequences and the nature of the signalling on the distance measurement system and the signalling of the attainment of the shooting target distance found no support in the patent at issue. On the contrary, from paragraph [0016] of the patent at issue onwards, it is described in detail how the distance-measuring system operates and that the signalling of the attainment of the target shooting distance can also be achieved by the superimposition of light points with (cf. paragraph [0016]) or without (cf. paragraph [0018]) further optical elements. The mere convergence of the light rays at a point corresponding to the shooting target distance is therefore, according to the patent, a signal that the correct distance has been reached. No temporal restriction to a specific sequence of events can be inferred from device claim 1.
31. The defendant's argument, by which it sought to limit what is in fact a self-explanatory feature by invoking a supposed feature of depth of field, is not conclusive. The Claimant had not made any waiver in the US grant proceedings, and certainly not in relation to the patent at issue.

#### Infringement

32. In the claimant's view, the contested embodiment and its operation make direct literal use of patent claims 1 and 14. If interpreted correctly, the features disputed between the parties are also realised in particular.
33. In their submissions, the defendants suggested that, by using moving parts, they focused on a single point and therefore utilised only the 'absolute sharpness' lying within the focal plane. In fact, from a physical point of view, absolute sharpness exists only in theory, as actual sharpness is limited by the imaging performance of the optics. Furthermore, the contested embodiment does not utilise only the focal plane. There is always a depth of field, and this is also utilised in the contested embodiment. The movable parts are intended solely to divide the use of a single depth of field.
34. The contested embodiment necessarily possesses depth of field, and this must also be utilised for the stereophotogrammetry method used by the defendants, because otherwise only the focal plane would be sharply imaged, and facial surfaces lying just in front of or behind it would become blurred.
35. The defendants also directly infringed patent claim 14 by offering support and training for clinical trials. The defendants also used the method according to claim 14 themselves in on-site training sessions.

36. The defendants, on the other hand, argue that the contested embodiment, or rather its operation, does not make use of claims 1 and 14 of the patent at issue if interpreted correctly. They essentially submit as follows:
37. Non-infringement follows, on a correct understanding, from the fact that the optical system of the contested embodiment comprises moving parts.
38. Furthermore, the dual optical system of the contested embodiment does not, as would be required under a correct understanding, comprise two separate optical systems.
39. Furthermore, the contested embodiment does not provide for signalling in accordance with the claims. Neither the Claimant's submission nor the instructions for the contested embodiment indicate that it would trigger a signal once the target distance for the image has been established.
40. Finally, the contested embodiment uses different focus planes for the face and the torso and does not operate with two planes within a single depth of field. It may well be that the contested embodiment cannot manage entirely without using the depth-of-field ranges. However, no camera could do so, because, due to the three-dimensional nature of the object to be imaged on the one hand and the fact that the focus lies in a single plane on the other, there are always points to be imaged both in front of and behind the focal plane. The decisive factor, however, is that, according to the teaching of the patent at issue, the device has only one focal plane with a depth of field, and the object can be placed anywhere within the depth of field. The embodiment at issue can control two focal planes with two different depths of field, whereby the object is always positioned at least within the respective focal plane.

#### Standing to be sued/Territorial limitation

41. The defendants are of the view that the claimant has not established the defendants' 1) standing to be sued. For this, it is necessary that the respective defendant has committed an act of infringement in at least one of the named contracting member states or that there is at least a threat of such an act of infringement. At most, the Claimant's submissions suggest that Defendant 1), as an alleged German distribution company, has committed acts of infringement in Germany. However, since the Claimant has not submitted the question of infringement of the patent at issue in Germany for the court's decision, the court cannot, in this respect, make any finding regarding the infringement of the patent at issue.
42. Furthermore, the applications must be limited territorially, with regard to each defendant, to the respective country in respect of which the Claimant has alleged an infringement (UPC\_CFI\_440/2023 (Paris), decision of 24 April 2025). Article 34 of the UPC Agreement, cited by the Claimant, is contained in the chapter on the jurisdiction of the UPC and concerns the territorial scope of decisions. It is apparent that this provision has nothing to do with the question of the extent to which the Claimant is obliged to set out and prove acts of infringement in individual countries.
43. The claimant, on the other hand, takes the view that, in view of the infringing acts committed by the first defendant in Germany, a claim for an injunction exists under Article 34 of the UPC Agreement for Germany, Belgium, France, Italy and the Netherlands. A 'carve-out' for Germany, effected on purely

procedural grounds (conflicting lis pendens) does not alter this substantive legal position.

#### Validity of the patent

44. In their counterclaim, the defendants challenge the validity of the patent at issue with effect in Belgium, Germany, France, Italy and the Netherlands (Defendants 2) to 5)) and in Belgium, France, Italy and the Netherlands (Defendant 1)), respectively.
45. They argue that the patent at issue is not valid if the Claimant's interpretation is taken as a basis. In that case, there is a lack of inventive step.
46. They base their counterclaim, with regard to claim 1, on the following grounds of invalidity, most of which did not play a role in the German nullity proceedings:
  - Elements of Photogrammetry, With Air Photo Interpretation and Remote Sensing, Second Edition, Paul R. Wolf (Exhibit KAP NWK 10) in combination with US 2006/263081 A1 (Exhibit KAP NWK 11)
  - User Guide of VECTRA H1 entitled: 'vectra® User Guide VECTRA H1' in the 2014 version (Annex KAP NWK 12) and User Guide of VECTRA Software entitled: 'vectra® User Guide (software only)' in the 2014 version (Appendix KAP NWK 13) in conjunction with general technical knowledge
  - WO 2010/012722 A1 (Annex KAP NWK 15) in conjunction with Annex KAP NWK 11
  - WO 2010/097572 (Annex KAP NWK 16) in combination with general technical knowledge
  - Appendix KAP NWK 16 in combination with Appendix KAP NWK 11
  - Three-dimensional digital stereophotogrammetry: a reliable and valid technique for measuring scar surface area, C.M. Stekelenburg et al., Plast. Reconstr. Surg. 2013 Jul; 132(1): 204-11 (Appendix KAP NWK 17) in combination with Appendix KAP NWK 11.
47. The additional features mentioned in the dependent claims could not establish inventive step. Claim 14 merely describes the intended use of the device according to claim 1. This could likewise not establish inventive step.
48. Three patents relating to the same patent family with virtually identical claim wording were deemed invalid by the PTAB (US Patent & Trademark Office Patent Trial and Appeal Board) in the so-called IPR (Inter Partes Review) proceedings in the USA. The prior art assessed in that case corresponds to that in the present counterclaim for nullity, in particular with regard to document US 2011/0175987 A1, which is identical in content to Annex NWK 15.
49. The defendants are entitled to provisional reimbursement of costs amounting to EUR 90,000. The legal and patent attorney's fees calculated in accordance with the German RVG amount to EUR 68,963.60. It is foreseeable that by the time of the first-instance decision

the local division would in fact incur legal representation costs of that amount. In addition, there would be court costs amounting to EUR 20,000.

50. The claimant, on the other hand, takes the view that the subject-matter of the patent at issue involves an inventive step.
51. The PTAB proceedings in the USA relate to a US patent which is not identical to the patent at issue here. Furthermore, the PTAB is not an independent court and the proceedings are not comparable overall. Moreover, the PTAB is subject to fierce criticism in the USA, with a rejection rate of 70% in recent cases. Furthermore, the defendants failed to engage substantively with the US decisions.

#### Legal consequences

52. The defendants are of the opinion that the claimant's applications are in part flawed and inadmissible.
53. The claims for an injunction are vague. Even if it were admissible to base the applications for an injunction on the claims of the patent at issue, it would at least be necessary for the Claimant to link these applications to a designation and/or description of the contested embodiment. Furthermore, the 'in particular, if' wording of the sub-claims is alien to the Rules of Procedure and is therefore inadmissible. Furthermore, the claimant links the applications with 'and/or', which constitutes an inadmissible alternative joinder of applications. The wording seeking to prohibit the defendants from 'offering or applying' the process is not covered by Article 25(b) of the UPC Agreement. The wording of the applications also suggests immediate enforceability and thus contravenes Rule 118.8 of the RoP.
54. With regard to the right to information, the 30-day period cited by the Claimant is too short, particularly in view of the defendant group's market position and the fact that several companies in different Member States are being sued. Furthermore, the timeframe must be chosen in such a way that the defendants, who are inexperienced in this regard, have the opportunity to have the information they have prepared reviewed by legal representatives in order to avoid penalty payments. The claimant has no right to a breakdown structured by month. Nor is the information not covered by Article 67 of the UPC Agreement, as set out in Section II.1.d)-f), owed.
55. It must be assumed that the claimant became aware of the contested embodiment, or should have become aware of it, immediately after its market launch in mid-2018. This is because there are few competitors and the defendants had advertised the contested embodiment. Consequently, pursuant to Article 72 of the UPC Agreement, claims for damages and ancillary claims arising more than five years prior to the filing of the action, and thus prior to 26 September 2019. In any event, claims for information against Defendant 1, which was not established until 3 September 2018, could arise at the earliest from that date, and claims for an accounting pursuant to the application under point II.1.d)-f), taking into account a grace period of one month, could arise only from 3 October 2018. In any event, claims for an accounting against Defendants 2) to 5) pursuant to the application under Section II.1.d)-f), taking into account the one-month waiting period, could only arise from 18 May 2018 at the earliest. The one-month waiting period is required due to the fault requirement for the claim for damages

to grant. It would be unrealistic and excessive to expect the defendants to have been aware of the patent infringement immediately upon the grant of the patent.

56. Furthermore, the claim for disclosure should be subject to the condition precedent that either the Düsseldorf local division issues a confidentiality order or the Claimant signs a confidentiality agreement. The information to be disclosed in the context of the disclosure and accounting, particularly in the present context where two competitors are facing each other, constitutes trade secrets requiring confidentiality. It would afford the Claimant insight into the defendants' distribution structure and cost calculations, which they could utilise for their own distribution without the proposed confidentiality obligation. Should the Chamber refrain from issuing such orders, the disclosure of information and accounts must in any event be restricted to the extent that it is to be provided exclusively to an auditor to be appointed by the Claimant, who is bound to confidentiality towards the Claimant.
57. The time limit cited by the Claimant is also disproportionately short with regard to the claims for recall and removal from the distribution channels. Furthermore, the claims are flawed because they impose requirements on the defendants as to how the contested product is to be recalled and removed from the distribution channels. Finally, these claims should also be limited to those products which the defendants placed on the market from 26 September 2019, or alternatively from 3 September 2018 (Defendant 1) or 18 April 2018 (Defendants 2 to 5).
58. The penalty payments for infringements of the orders under points I and II are set too high. Furthermore, the Claimant has not substantiated the amount claimed.
59. There is no basis for granting provisional damages. Such damages are to be granted only in exceptional cases, and the claimant has not substantiated why it should be entitled to such a claim in this exceptional instance. In any event, such a claim should be subject to the suspensive condition that the Claimant actually initiates proceedings to determine the amount of damages or, in the alternative, to the resolute condition that the provisional damages paid must be reimbursed should the Claimant fail to initiate such proceedings.
60. You, the defendants, are entitled to provisional reimbursement of costs pursuant to Rule 150.2 of the RoP. A provisional reimbursement of costs amounting to at least EUR 60,000 is appropriate and proportionate. The lawyers' and patent attorneys' fees calculated in accordance with the German Lawyers' Fees Act (RVG) amount to EUR 57,974.60. It is foreseeable that costs in this amount will in fact be incurred for representation in the infringement proceedings by the time the local division issues its decision at first instance.
61. Immediate enforcement is not justified. The defendants would have to expect catastrophic damage. This applies not only because they would be prevented from distributing the products and supporting clinical trials until a favourable decision is reached on appeal, but also because their reputation would be seriously damaged and they would lose market share to competitors, which they might not be able to regain. In their rejoinder in the infringement proceedings, the defendants further state: There are not all that many competitors in the

relevant market. Given the high level of brand awareness and the associated public perception, a sales ban imposed on the grounds of an alleged patent infringement would be immediately noticed by (potential) customers, deterring them from purchasing the machines and prompting them to buy from another competitor. Given the price of such a device and the longevity of the products, the defendants would lose a large number of customers for at least the next few years. Even after that, customers would not switch to an alternative product from the defendants, as they would now be familiar with the handling of the competitor's product and would therefore opt for subsequent versions from the competitor.

62. In any event, a security deposit in the amount of the value in dispute should be ordered. The claimant has claimed provisional damages. Since such a claim is only justified if the claimant's financial situation so requires, it must be assumed that the claimant's financial situation requires the provision of security. In the alternative, the defendants should be permitted to avert enforcement against provision of security, provided that the claimant has not yet provided security.
63. The claimant considers the defendants' objections to be unfounded.
64. As regards the time limit on the right to information and disclosure, the defendants are making a baseless assertion that the claimant must have been aware of the contested embodiment, without providing even a shred of evidence to support this. In fact, the undersigned and the patent attorney involved, Dr Schulz, had examined the contested embodiment in July 2020 with regard to infringement of the claims of the patent at issue and subsequently issued a warning letter on behalf of the Claimant in August 2020.
65. The defendants' grounds for the sought order of confidentiality regarding the information to be provided are not convincing. Should a judgment be made against them, the information sought is such that it could give the Claimant a clear impression of the extent of the patent infringement. The relevant customer data was generated solely as a result of the patent infringement and is its direct consequence.
66. The claim for provisional damages in the amount sought arises from Article 68 of the UPC Agreement in conjunction with Rule 119 of the RoP. The amount is based on the court's scale of fees and comprises EUR 3,000 for the application for the determination of damages, EUR 13,000 in court fees based on the value in dispute, and EUR 4,000 in legal fees.
67. In its reply in the infringement proceedings, the claimant states that it concurs with the defendant's submissions regarding the provisional reimbursement of costs and is now also submitting an application.
68. Insofar as the defendants objected to immediate enforceability on the basis of an unsubstantiated claim regarding a clinical study, this was contested on the grounds of lack of knowledge. Furthermore, this argument, as well as the alleged damage to reputation, was likely to apply to a large number of unsuccessful parties.

69. The defendants have merely put forward vague assumptions regarding the requested order for security, without providing concrete and verifiable examples.

REASONS:

70. Both the claim and the counterclaim are admissible. The counterclaim is unfounded, whilst the infringement claim is essentially well-founded.

A. Admissibility of the infringement claim and the counterclaim for annulment

I. Action

71. The infringement action is admissible; in particular, the Unified Patent Court (UPC) has international jurisdiction.
72. The UPC is a common court within the meaning of Article 71a(1) of the Brussels Ia Regulation (Article 71a(2)(a) of the Brussels Ia Regulation). The UPC therefore has jurisdiction where the courts of a Contracting State would have jurisdiction under the Brussels Ia Regulation for an action within the meaning of Article 32(1) of the UPC Agreement (Article 71b(1) of the Brussels Ia Regulation). That is the case here.
73. With regard to Defendants 1), 3), 4) and 5), who have their registered offices within the Contracting Member States, this follows from Article 4(1) of the Brussels Ia Regulation.
74. With regard to Defendant 2), jurisdiction is established under Article 8(1) of the Brussels Ia Regulation. Since Defendants 1), 3), 4) and 5) act as distribution companies of Defendant 2) and Defendants 1) to 4) belong to the same group of companies, there is such a close connection between the claims that it appears necessary to hear and determine them jointly in order to avoid the risk of conflicting decisions being issued in separate proceedings.
75. Furthermore, international jurisdiction over all defendants is derived from Article 7(2) of the Brussels Ia Regulation, as this provision, in conjunction with Article 71b(2) of the Brussels Ia Regulation, establishes international jurisdiction for all patent infringements (allegedly) committed in a contracting Member State, irrespective of the defendant's place of business.
76. Furthermore, the jurisdiction of the UPC and the Düsseldorf local division is deemed to have been accepted, as the defendants did not lodge a preliminary objection within the time limit set out in Rule 19.1 of the RoP, Rule 19.7 of the RoP.
77. An opt-out (Art. 83(3) of the UPC Agreement) from the exclusive jurisdiction of the Court in respect of the patent at issue is not in force. In order to avoid lis pendens in respect of the German part of the patent at issue, in relation to which patent infringement proceedings are pending in Germany, the Claimant has, in accordance with Art. 76(1) UPC Agreement, in a manner deemed admissible, excluded it from its applications, a so-called 'carve-out' (see in this regard UPC\_CFI\_230/2023 (Paris), decision of 4 July 2024, para. 9.4 – DexCom v. Abbott).

II. Counterclaim

78. There are no concerns regarding the admissibility of the counterclaim.

79. Pursuant to Article 32(1)(e) of the UPC Agreement, the UPC has exclusive jurisdiction over counterclaims for the invalidity of (European) patents. The UPC – as the common court of the Member States of the UPC Agreement – has international jurisdiction over the present counterclaim pursuant to Articles 24(4), 71a(2)(a) and 71b(1) of the Brussels Ia Regulation.
80. Nor are there any objections to the fact that Defendants 2) to 5) – unlike Defendant 1) – are challenging the validity of the German part of the patent at issue as well. The counterclaim is not precluded by the principle of res judicata (see Article 36(1) of the Brussels I Regulation, paragraph 362 of the RoP), because defendants 2) to 5) were not parties to the national nullity proceedings in Germany. The fact that the Claimant, as already mentioned, excluded the German part of the patent at issue from its applications in the context of the infringement action ('carve-out') does not restrict the defendants' ability to bring a counterclaim in this respect as well (UPC\_CFI\_230/2023 (Paris), decision of 4 July 2024, para. 9.4 – DexCom v. Abbott).

### III. Amendment of the claim in the Reply

81. In so far as the claimant, in its reply in the infringement proceedings, has introduced an application for provisional reimbursement of costs in the amount of EUR 60,000 into the proceedings, this constitutes an amendment to the claim within the meaning of Rule 263.1 of the RoP. However, the conditions for allowing the amendment to the claim are not met.
82. The claimant did not submit an application for leave to amend the claim in the aforementioned document. However, even if one were to regard the wording of the new claim as constituting an implied application under Rule 263.1(1) of the RoP, the statement of reasons required under Rule 263.1(2) of the RoP, as to why the amendment or addition was not already included in the original document. As the sole justification for her request, the claimant stated that she concurred with the defendant's submissions regarding the provisional reimbursement of costs and was now also making a corresponding application. This does not constitute a justification for the fulfilment of the requirements of Rule 263 of the RoP.
83. Furthermore, it is not apparent from the facts of the case that the amendment in question could not have been made earlier had due care been exercised.

### B. Right to bring an infringement action

84. It is undisputed between the parties that the Claimant is the sole proprietor of the Belgian, French, Italian and Dutch parts of the patent at issue. She is therefore entitled to bring proceedings before the court pursuant to Article 47(1) of the UPC Agreement.

### C. Person skilled in the art

85. The person skilled in the art has completed a university degree in a scientific subject, e.g. physics or engineering, and has knowledge of optics and image processing. They have many years' experience in the field of stereophotogrammetry and are involved in the development of devices in this field.

### D. Scope of protection of the patent at issue

86. With regard to the scope of protection of the patent at issue, the following applies:

I. Subject-matter of the patent at issue

87. The patent at issue relates to a preferably portable device for stereo-photogrammetry and a method for capturing, reconstructing and measuring features and changes in three dimensions on the surface of the head and body (para. [0001]).
88. The patent at issue begins by stating that, in plastic surgery, it is necessary to be able to reconstruct the surface of a body in three dimensions. This is done in order to measure the geometric features of the objects, analyse their shapes, simulate surgical procedures and also capture 3D surfaces of the body over time, compare them and measure their geometric changes (para. [0002]). As examples of areas of application, the patent at issue cites the surface of the face for operations such as rhinoplasty or facelifts, and the surface of the torso and breasts for breast surgery. It points out that these different requirements necessitate significant differences in the size of the field of view. For instance, the surface area of a full torso is much larger than that of a face (para. [0003]).
89. The patent at issue then explains that stereophotogrammetry consists of capturing images of an object from at least two different angles using a calibrated imaging device, i.e. a device whose optical geometry is precisely known. When two images are captured simultaneously, these are referred to as a stereoscopic pair or 'stereo pair'. By locating corresponding points between the two images of the stereo pair using correlation-type algorithms, it is possible to reconstruct a dense three-dimensional surface of the object under investigation by means of triangulation (para. [0004]).
90. The patent at issue states that the calibration of the optics is one of the most important steps for accurate three-dimensional reconstruction. The geometric precision required in the manufacture of the optics is such that, in practice, it is not possible to have moving parts within these optical systems. This means that devices for stereo photogrammetry, which are used for the reconstruction of anatomical surfaces, have a fixed focal plane which, by means of an aperture, defines a fixed depth of field around the focal plane. This, in turn, results in a fixed field of view (para. [0005]).
91. According to the patent at issue, the specialist will therefore use two optical systems: for facial images, a first optical system with a focal length corresponding to a field of view of approximately A4 size, and for images of the torso, a second optical system with a field of view of approximately A3 size. In practice, this means the use of two separate devices for capturing faces on the one hand and the torso and breasts on the other (para. [0005]).
92. According to the description of the patent at issue, the imaging system should be equipped with a means for positioning the object at a distance corresponding to the focal plane. As one way of achieving this fixed repositioning distance, the patent at issue cites the use of a portable stereophotogrammetry system, as described in a 1998 publication by Plassmann/Jones. The system described therein is equipped with a pair of light projectors that converge at the focal length of the imaging device (para. [0006]).

93. The patent at issue then explains that, in the case of a curved anatomical surface such as the face or torso, certain key areas are not simultaneously visible to both lenses of the stereophotogrammetry system due to the curvature, regardless of the device's field of view. Consequently, these areas cannot be reconstructed in three dimensions from a single stereo image. For this reason, static systems with multiple heads have been developed, capable of taking several different stereo images of the same object at the same time to cover blind spots. By calibrating the position of the various heads using test patterns, it is possible to stitch the various reconstructed surfaces together to obtain a single surface without any hidden parts of the head or fuselage ('stitching'). This delicate and difficult-to-execute method was initially used to stitch together various conventional two-dimensional photographs to reconstruct panoramas from multiple shots. It was then extended to 3D surfaces and their respective textures to create a single representation of the 3D surface from several different parts. Depending on the application, these static multi-camera systems typically used three to four stereo cameras (para. [0007]).
94. According to the claims of the patent at issue, the state of the art is represented by the LifeViz II portable stereophotogrammetry device described in paragraph [0008]. This device is said to have resolved the difficulty of merging different images taken at different times and from angles that are not precisely known. However, it is limited by the fact that, at the time of manufacture, it must be optimised for a fixed shooting distance. Thus, there are models of stereophotogrammetry devices optimised for facial reconstruction with a field of view of approximately A4 format, and others optimised for torso reconstruction with a field of view of approximately A3 format (para. [0008]).
95. The patent at issue states that, with a capture area of approximately A4 size, the face can be captured in three or four shots. For use on the torso, however, too many different A4-sized images would be required, which would also be difficult to position relative to one another in the room. With a system having a capture field of approximately A3 format, on the other hand, the surface of a torso could be covered with three to five images with a relatively simple definition of positioning (para. [0009]). On the other hand, with a portable device having an A3 imaging field, the resolution of the image would be much lower when capturing images for facial reconstruction than when using a system designed for the face. This is because the area used in the image would be very small and many unnecessary pixels would be lost (para. [0010]).
96. In summary, the patent at issue states that currently developed portable stereophotogrammetry devices have only a single nominal shooting distance, which is optimised either for the face or the torso, but not for both applications simultaneously (para. [0011]).
97. On this basis, the patent at issue states that its objective is to provide a preferably portable stereophotogrammetric device and a method optimised for two different shooting distances (para. [0012]).
98. To solve this problem, Patent Claim 1 protects a device and Patent Claim 14 protects a method for capturing parts of the body using stereophotogrammetry. These can be reproduced in a structured form as follows:

Claim 1:

1. Apparatus for capturing parts of the body using stereophotogrammetry, comprising a recording device (1) and a dual-lens system (2),
  - 1.1 the dual optical system is equipped with two sub-optics (2b, 2c),
  - 1.2 the sub-optics (2b, 2c) enable two simultaneous images to be obtained, each at a different angle,  
characterised in that
    - 1.3 the device comprises a distance measurement system (34);
    - 1.4 the distance measurement system (34) is configured to signal to the user that the distance between the device and a part of the body to be imaged corresponds to a defined target imaging distance;
      - 1.4.1 the target capture distance corresponds to a distance selected from at least two predefined different distances,
      - 1.4.2 each of the at least two predefined different distances corresponds to a different image reproduction format (A4, A3).

Claim 14:

14. A method comprising the use of a device according to any one of claims 1 to 13, comprising the following steps:
  - 14.1 selecting (100) the target distance
  - 14.2 relatively positioning (200) the imaging device and a subject at the target distance by means of the measuring system (34)
  - 14.3 signalling by a measuring system (34) that the distance between the device and a part of the body to be reproduced corresponds to the target distance.
  - 14.4 The target distance is one of at least two predefined shooting distances.
  - 14.5 The recording distances each correspond to a different image reproduction format (A4, A3)
  - 14.6 followed by the capture (300) of one or more images at the target distance.

II. Interpretation

99. Some features require explanation:

## 1. Principles of interpretation

100. Pursuant to Article 69 EPC, read in conjunction with the Protocol on its interpretation, the patent claim is not merely the starting point but the decisive basis for determining the scope of protection of a European patent. The interpretation of a patent claim does not depend solely on its exact wording in the linguistic sense. Rather, the description and the drawings must always be taken into account as aids to the interpretation of the patent claim and should not be used merely to resolve any ambiguities in the patent claim. However, this does not mean that the patent claim serves merely as a guideline and that its subject-matter also extends to what, upon examination of the description and the drawings, appears to be the patent proprietor's claim for protection. In applying these principles, appropriate protection for the patent proprietor should be combined with sufficient legal certainty for third parties. The patent claim must be interpreted from the perspective of a person skilled in the art. These principles for the interpretation of a patent claim apply equally to the assessment of infringement and the validity of a European patent (UPC\_CoA\_335/2023, Order of 26 February 2024, Headnote 2 and p. 26)
- f. – 10x Genomics v. NanoString; UPC\_CoA\_1/2024, Order of 13 May 2024, para. 26 – VusionGroup v. Hanshow; UPC\_CoA\_182/2024, Order of 25 September 2024, para. 82 – Mammut v. Ortovox).

## 2. Interpretation in the present case

101. That being said, the following comments apply, explaining the features of claim 1 that are in dispute between the parties. With regard to the interpretation of claim 14, the parties refer only to the discussions concerning claim 1, so separate comments on this point are unnecessary.
- a) *No exclusion of movable parts (see feature 1)*
102. According to feature 1, the invention relates to a device “for capturing parts of the body in stereo photogrammetry”.
103. It cannot be inferred from this requirement that such a device must not have moving parts, as the defendants contend. Nor does any other part of the patent claim stipulate that moving parts would be excluded from a device as claimed.
104. The defendants base their argument primarily on the fact that, according to the statement of purpose contained in claim 1, the claimed device must be suitable for positioning parts of the body in ‘stereophotogrammetry’.
105. What the patent at issue means by ‘stereophotogrammetry’ is apparent from the introductory remarks in paragraph [0004], which reads as follows:

*‘Stereophotogrammetry consists of capturing images of an object from at least two different angles using a calibrated imaging device, i.e. a device whose optical geometry is precisely known. When two images are captured simultaneously, they are referred to as a stereoscopic pair or ‘stereo pair’, and by locating corresponding points between the two images of the stereo pair using correlation-type algorithms, it is possible to reconstruct a dense three-dimensional representation of the surface of the object under investigation by means of triangulation.’*

106. No exclusion of moving parts can be inferred from this.
107. Nor does such a restriction follow from the assessment of devices for stereophotogrammetry known in the prior art in the introductory remarks of the patent at issue. Paragraph [0005] states:

*“The calibration of the optics is one of the most important steps required for an accurate three-dimensional reconstruction. **The geometric precision required in the manufacture of the optics is such that, in practice, it is not possible to have moving parts in these optics,** which means that devices for stereophotogrammetry used for the reconstruction of anatomical surfaces have a fixed focal plane that defines a fixed depth of field around the focal plane by means of an aperture. ...”*

*(emphasis added)*

108. The cited description merely states that, at the time in question, it was not considered possible to design the optics with moving parts. However, no indication can be gleaned from the description that the patent at issue regards the avoidance of moving parts as advantageous and intends to retain this feature.
109. The defendants emphasise that the patent at issue does not solve its problem by equipping the dual-lens system with moving parts to provide two focal planes. Rather, it makes use of the depth of field around the focal plane. However, as will be explained below, the use of the depth of field has not been included in the claim.
110. Against this background, there is also no technical objection to forming the two distances mentioned in claim 1 by means of two focal planes. The focal planes are altered, for example, by changing the distance between the lens elements, so that the image of an object in the respective focal plane is rendered sharp (i.e. point-like) on the respective sensor. Accordingly, in this embodiment, moving parts are required to switch back and forth between the two focal planes for capturing the head and the torso respectively. However, it is not apparent that this would impair the quality of the stereo images. In each of the two settings, whether for the head or the torso, the optical elements are fixed and precisely ordered in relation to one another. Only when the user switches, for example, from head to torso shots are the lens distances adjusted or switched between the two settings. When the torso shots are then taken, the optical elements are again in the same order as they were before.
111. Furthermore, the fact that the patent at issue does not expressly distinguish itself from the prior art described by providing movable parts does not mean that this configuration must be retained.
112. Furthermore, the defendants refer to paragraph [0023] of the patent at issue. It states:

*‘One of the technological challenges in the case of the present invention is to produce a stereophotogrammetry device whose depth of field, i.e. the*

*distance separating the two planes between which the image of the object is in focus, is capable of covering at least two predefined shooting distances. In fact, as noted in the introduction, **the accuracy of the calibration of the optical systems required for stereo photogrammetry is generally so high that the parts of the optical system are necessarily fixed**, resulting in a fixed position of the device's focal plane. ...."*

*(Emphasis added)*

113. However, even in this respect, this is merely a description of the technical circumstances existing at the priority date, as is also made clear by the reference to the introductory remarks, i.e. paragraph [0005]. Furthermore, through the wording in paragraph [0023], according to which the accuracy of the calibration is 'generally' (généralement) so high that the parts of the optical system are necessarily fixed, the patent at issue qualifies the statement to the effect that exceptions appear possible. The Board does not share the defendant's view that, on the contrary, this wording suggests that exceptions are precisely not possible.
114. It is therefore sufficient, but also necessary, that a claimed device possesses the capability, referred to in feature 1, to capture parts of the body in stereophotogrammetry. Whether this capability is achieved by providing only fixed parts or also movable parts is irrelevant for the fulfilment of the feature.
- b) No restriction of the capture-target distance to the depth of field (cf. feature 1.4)*
115. According to feature 1.4.1, the capture-target distance corresponds to a distance from at least two predefined different distances. Feature 1.4.2 further stipulates that each of the at least two predefined different distances corresponds to a different image reproduction format.
116. No further requirements regarding the at least two predefined different distances can be inferred from the claim. In particular, contrary to the defendant's view, the claim does not stipulate that the at least two predefined shooting-target distances must lie within the so-called depth of field.
117. In the German translation of the patent at issue, the French term 'champ de profondeur' – which is decisive under Article 70(1) EPC – is translated as 'Feldtiefe' or 'Tiefenfeld'. However, the parties agree that 'depth of field' is the correct translation. The patent at issue defines this as the distance separating the two planes between which the image of the object is in focus (paragraphs [0023], [0038]).
118. Admittedly, the patent at issue describes it as particularly advantageous if the at least two predefined different distances lie within the depth of field. Thus, paragraph [0014] of the patent at issue states, with regard to the aforementioned at least two predefined different distances for capturing images, that these are advantageously located within the depth of field:

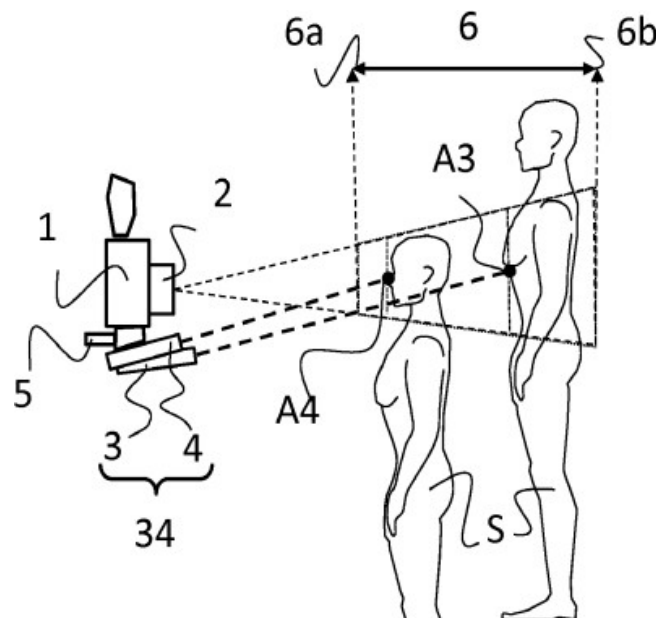
**'Advantageously, these two predefined distances lie within the part of the space for which the image is brought into focus, i.e. the positions for repositioning the object within the depth of field of the stereophotogrammetry device.'**

*(emphasis added)*

119. With regard to the figures of the patent at issue, paragraph [0038] also describes it as advantageous for the positions to lie within the depth of field:

*"For the design of the device, it is **advantageous if positions (A3) and (A4) lie between plane (6a) and plane (6b), which define the depth of field (6)**, i.e. the distance from the space for which the images of the stereo pair are in focus, where (6a) is the plane closest to the stereophotogrammetric device for which the image begins to come into focus, and (6b) is the plane furthest from the stereophotogrammetric system for which the image is still in focus."*

120. The depth of field 6 between planes 6a and 6b is illustrated in Figure 1 shown below:



**FIG. 1**

121. However, no restriction of the broader claim, in which the use of the depth of field range is not reflected, can be inferred from this. Furthermore, both in the passage in paragraph [0014] belonging to the general description and in the description of the embodiments in paragraph [0038], it is expressly emphasised that this is an advantageous embodiment.

122. The fact that the at least two predefined different distances are located within the depth of field is only the subject of sub-claim 2. This reads:

*"Device according to claim 1, characterised in that the at least two predefined different distances (A4, A3) are contained within a space corresponding to the depth of field (6) of the device."*

123. Consequently, claim 1 does not specify how, during operation of a device according to the invention, it is ensured that sufficiently sharp images are obtained at the at least two predefined different distances. Nor is the use of two focal planes therefore excluded. For this purpose, as already explained under (a), movable parts may be provided.
124. Finally, the defendants cite extensively from the US Inter Partes Review (IPR) proceedings concerning the parallel US 119 patent. They contend that the claimant argued in those proceedings that the at least two predefined shooting target distances must lie within the depth of field of the device. In doing so, it had indicated that it was foregoing the use of two focal planes and accepting less than perfect focus by placing the planes for capturing the face and the body within the depth of field. However, no such waiver can be inferred from the statements cited by the defendants. Nor do the defendants explain in detail in which of the passages they cite they see the waiver declared by the Claimant, or on what grounds this is supposed to constitute such a waiver.
- c) *The dual-lens system is equipped with two sub-lenses (feature 1.1)*
125. The double lens system claimed is, according to feature 1.1, equipped with two sub-lenses.
126. The specialist can deduce the purpose of equipping the dual-lens system with two sub-lenses from the requirement itself. According to feature 1.2, the sub-optics enable two simultaneous images to be obtained, each from a different angle. In this way, the images taken simultaneously from two different angles required for stereo photogrammetry can be obtained, known as a stereoscopic pair or stereo pair (cf. para. [0004]; see also para. [0037]).
127. This configuration makes it possible to capture two images of the same object from slightly different perspectives. This is comparable to spatial vision using the left and right eyes. The eyes are spaced apart, meaning that the object is viewed simultaneously from different angles. The brain combines the two images to form a three-dimensional impression.
128. By stipulating that the dual optical system is equipped with 'two sub-optics', the patent at issue addresses precisely this suitability for obtaining two simultaneous images. A dual optical system necessarily consists of sub-optics. The significance of feature 1.1, in view of stereophotogrammetry as the purpose of the invention (feature 1) and the consequent necessity of generating a stereo pair, lies in the requirement that there are two sub-optics.
129. However, no further restriction can be inferred from this requirement. In particular, it cannot be inferred from the claim that the two sub-optics of the dual-optics system must have two separate lens systems.
130. Paragraph [0015] describes possible configurations of the dual optical system and makes it clear at the outset that the dual optical system is not limited to any particular configuration, provided that a large depth of field is ensured:

*“The dual-lens configuration of the stereophotogrammetry system can **be achieved in various ways without detracting from the nature of the invention, provided that it ensures a large depth of field.** ...”*

*(emphasis added)*

131. Paragraph [0015] below describes various possible configurations of a dual optical system and explicitly mentions the possibility of a configuration as a single-lens system. Paragraph [0015] explicitly refers to the provision of two separate optical systems as a variant (“Alternatively, the dual optical system ...”):

*“The dual optical system may comprise a system of lenses and an image splitter formed from a set of mirrors. In this case, it is advantageous to have a set of two secondary mirrors, each of which can capture an image from a slightly different angle and each of which directs its image of the object onto a corresponding and opposite set of two primary mirrors, each of which directs its image through a lens system onto a photosensitive surface. **This lens system may be single or double, with a separate lens subsystem for each of the images of the stereo pair, or a single lens system that receives both images from primary mirrors. Alternatively, the double optics may comprise two separate optical systems, such as two different lenses, each of which redirects an image captured at a different angle onto a single or double photosensitive surface.**”*

*(Emphasis added)*

132. The fact that paragraph [0015] refers only to a dual optical system, and not explicitly to the two sub-optical systems as components of the dual optical system, does not preclude reliance on that passage of the description. The single-lens system referred to in paragraph [0015] receives both images from primary mirrors. It therefore possesses the necessary capability to obtain two simultaneous images.

133. Paragraph [0023] also explicitly describes the provision of two separate sets of lenses merely as one variant of the invention:

*“... In order to achieve a depth of field sufficient to obtain a sharp image at a distance corresponding to the equivalent field of view in A4 format, whilst at the same time obtaining a sharp image at a distance corresponding to the equivalent field of view in A3 format, **a variant of the invention advantageously employs two separate sets of lenses, with a separate lens set for each sub-optics of the dual-optics system,** wherein each lens set consists of three aligned lenses corresponding to the optical path of the light rays entering the imaging device: a plano-convex lens, a double-concave lens and a lens forming an achromatic doublet. In the present experiments, **this lens configuration proved particularly advantageous** for achieving a depth of field compatible with both views close to A4 format and views close to A3 format.”*

*(Emphasis added)*

134. Nor does the embodiment shown in Figure 6 imply a restriction to a configuration in which the two sub-optics each have their own lens system. Figure 6 shows two sub-optics 2b, 2c, each comprising its own mirror system 12b, 13b; 12c, 13c, and having its own lens system consisting of three lenses 14b, 15b, 16b; 14c, 15c, 16c:

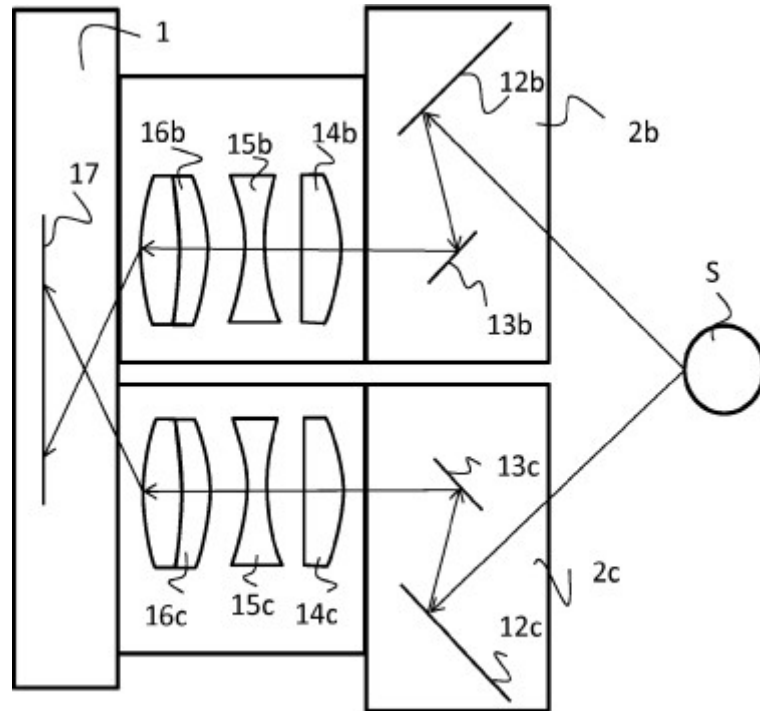


FIG. 6

135. Paragraph [0047] describes the embodiment shown in Figure 6, which comprises three lenses per sub-optical unit, as follows:

*“According to a particularly advantageous embodiment of the invention, as illustrated in Figure 6, which enables the realisation of an optical system with a very large depth of field (6), the stereophotogrammetry device may be based on a light separator, **such that each of the sub-optics (2b, 2c) is equipped with a set of two opposing mirrors and three aligned lenses**, such that an outer mirror, referred to as a secondary mirror (12b, 12c), receives the image of an object (S) in order to reflect it onto an opposing inner mirror, called the primary mirrors (13b, 13c), which in turn reflect the image through a first plano-convex lens (14b, 14c), then through a second double-concave lens (15b, 15c) and then through a third lens of the achromatic doublet type (16b, 16c), so that this image reaches a photosensitive surface (17) located inside the housing of the recording device (1), wherein the two images of the object (S) captured by the two sub-optics (2b, 2c) form the stereo pair captured by the device.”*

136. However, the embodiment does not limit the broader claim in which such a configuration is not reflected. Rather, the configuration shown in Figure 6 and described in paragraph [0047] is the subject of sub-claim 13.
137. In the Board’s view, the defendant’s argument that sub-claim 13, in line with claim 1, provides that the sub-optics must be two separate optical systems and merely specifies that these two separate optical systems each comprise three lenses, does not hold water. Neither claim 1 nor sub-claim 13 refers to two separate optical systems. The fact that the two sub-optics under sub-claim 13 are separate optical systems because they each comprise three lenses

does not lead to an understanding that every sub-optical unit not configured in accordance with sub-claim 13 must also have a separate lens system.

138. Even if one were to infer from the other figures of the patent at issue that both sub-optics are provided with separate optical systems, as the defendants argue, this would not lead to a restriction of the broader claim 1.
139. Various configurations of a sub-optical system with two double optical systems are therefore possible, provided that these allow for the two simultaneous exposures mentioned in feature 1.2, each at a different angle, and provided that a large depth of field is ensured.
140. Nothing to the contrary follows from the statement cited by the defendants in the grant proceedings relating to US 119.
141. The Court of Appeal has not yet reached a definitive conclusion on whether statements made by the patent proprietor during the grant proceedings relating to the patent at issue may have the effect of limiting the scope of protection.
142. However, statements made by the applicant during the grant proceedings may serve as an indication of the understanding of a person skilled in the art on the filing date (CoA\_534/2024, decision of 3 October 2025, para. 67 – Belkin v. Philips; UPC\_CoA\_405/2024, order of 20 December 2024, para. 43 – Alexion v. Amgen). This is based on the notion that the applicant themselves usually has the best understanding of their invention (UPC\_CFI\_180/2025 (LD Munich), decision of 11 March 2026, para. 120 – BFexaQC v. NVIDIA). It appears doubtful whether this case law can be extended to statements made during the grant proceedings concerning a patent other than the patent at issue. In any event, nothing can be inferred from such statements if no specific understanding of the scope of protection of the patent at issue can be derived from them. This is the case here.
143. In its submission of 13 April 2018 (Annex KAP 5) in the grant proceedings for US 119, the Claimant made the following statement regarding the citation US 2011/0175987 A1 (hereinafter: Hoffmeier) (emphasis added in accordance with the defendant's presentation):

*“Hoffmeier describes a standard stereophotogrammetry camera system in which **two separate optical systems** with two separate photosensitive surfaces are used. It is **strictly equivalent to elements 1 and 2 (or 2b and 2c) in Figures 1 and 2 of our own application** 15/289,981 (hereinafter ‘981). More precisely, 8 and 9 in FIG. 3 of Hoffmeier **correspond exactly to 2b and 2c** in FIG. 2 of ‘981.”*

144. In German translation:

*“Hoffmeier is the term used to describe a standard stereo photogrammetry camera system in which **two separate optical systems** with two separate light-sensitive surfaces are used. It **corresponds exactly to elements 1 and 2 (or 2b and 2c), Fig. 1 and Fig. 2** in our own application 15/289,981 (hereinafter ‘981). More specifically, 8 and 9 in Fig. 3 of Hoffmeier **correspond exactly to 2b and 2c** in Fig. 2 of ‘981.”*

145. The referenced Figure 3 is shown below:

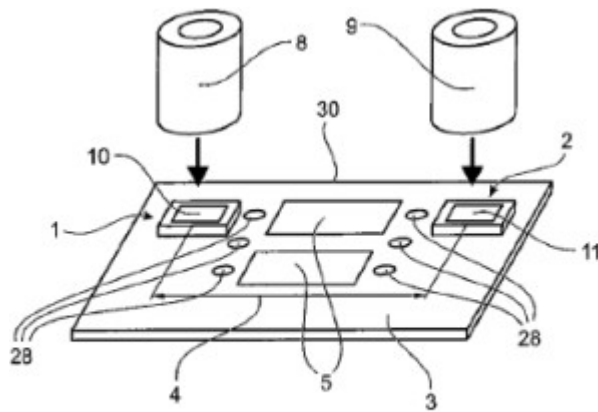


FIG. 3

146. No specific understanding on the part of the claimant regarding the scope of protection of the patent at issue can be inferred from the cited statement. The claimant draws a comparison between Figures 1 and 2 of the patent at issue and Figure 3 of Hoffmeier. The description as “two separate optical systems with two separate light-sensitive surfaces” also refers only to Figures 1 and 2. The Claimant’s statement readily permits an understanding that claim 1 of the patent at issue is broader in scope than its embodiments according to Figures 1 and 2.

d) *No specification of the order of establishing the recording-target distance and signalling (cf. feature 1.4)*

147. According to feature 1.4, the distance measurement system is designed to signal to the user that the distance between the device and a part of the body to be reproduced corresponds to a defined capture-target distance.

148. The distance measurement system must therefore be designed in such a way that it can provide a specific signal to the user, namely the signal that the distance between the device and a part of the body to be reproduced corresponds to a defined target distance. The feature does not address the establishment of the target distance.

149. The signal may be configured in any manner, as emphasised in paragraph [0019]. It may coincide with the triggering of the recording. Paragraph [0019] reads:

*“... The range-finding system may also include a programming system that enables a signal to be triggered when one of at least two predefined distances is reached. This signal is to be understood in the broadest sense and may be an acoustic signal and/or a visual signal, or even an electromagnetic signal that may be used to trigger the recording when the desired predefined distance is reached. The visual signal may be the switching on or off of a light, or the flashing or non-flashing of the measurement displayed by the rangefinder, or any other visual signal.”*

150. The signalling may be effected by the convergence of light beams. The defendants do not dispute this in principle. Rather, they argue that

convergence of light beams, via which the user establishes the target distance for the shot, cannot simultaneously constitute signalling.

151. This view is incorrect for the simple reason that patent claim 1 is not a method claim and feature 1.4 is not a method-related feature. Requirements for the range-finding system are described.
152. Apart from that, the distance measurement system need not, according to feature 1.4, be configured to establish a defined shooting-target distance. The claim merely stipulates that the distance measurement system is configured to signal to the user that the distance described in more detail corresponds to the shooting-target distance.
153. However, even if one regards the production of the invention in question as a 'step' to be carried out separately, the claim does not in any event preclude this from coinciding with the signalling. The defendant's argument that, from this perspective, there would have been no need to include the signalling in the feature does not hold water. Various configurations are possible, and it is left to the person skilled in the art to decide whether the device is designed to emit an additional (for example, acoustic) signal upon reaching the defined distance, or whether this is not the case.
154. Contrary to the defendant's view, no other interpretation can be derived from sub-claims 3 to 7 and the corresponding description (see paras. [0016] et seq., [0039] et seq.). Sub-claims 3 to 5 claim a device in which the measuring system comprises one or more pairs of light projectors. In the case of sub-claim 3, the first pair of light projectors converges at a first predefined distance and the second pair of light projectors at a second predefined distance. It cannot be inferred from the sub-claim that this cannot be the signalling configuration generally referred to in claim 1.
155. Subclaims 6 and 7 describe a preferred configuration with a rangefinder which, in the case of subclaim 7, is designed to emit a visual and/or acoustic signal indicating that the target distance has been reached. No conclusions regarding the defendants' interpretation can be drawn from this. In particular, it cannot be inferred from sub-claim 7 that the device may only be configured for signalling in precisely this manner. On the contrary, the configuration according to the sub-claim is a preferred variant with an additional feature (rangefinder), and the signalling configuration required in claim 1 must also be achievable by other means.

#### E. (Un)merit of the counterclaim

156. The defendant's counterclaim, based on a lack of inventive step, is unfounded.

#### I. Standard

157. Pursuant to Article 56 EPC, an invention is deemed to involve an inventive step if

it does not follow in an obvious manner from the prior art for a person skilled in the art.

158. According to the case law of the Court of Appeal, the following procedure should be followed when assessing inventive step (see UPC\_CoA\_464/2024, decision of 25 November 2025, Headnotes 7 et seq., para. 131 et seq. – Meril v. Edwards; UPC\_CoA\_528/2024, decision of 25 November 2025, Headnotes 10 et seq., para. 126 et seq. – Amgen v. Sanofi; see also UPC\_CoA\_335/2024, Order of 26 February 2024, pp. 34 et seq. – Nanostring v. 10x Genomics):
159. First, it must be established what the subject-matter of the invention is; in other words, the objective problem (the objective technical problem) must be identified. This must be assessed from the perspective of a person skilled in the art, drawing on their general technical knowledge as at the filing date or priority date of the patent (the relevant date). To this end, it must be determined what contribution the invention makes to the state of the art, not by considering the individual features of the claim, but by comparing the claim as a whole in conjunction with the description and the drawings, whilst also taking into account the inventive concept underlying the invention (the technical teaching), which must be based on the technical effect or effects that the person skilled in the art understands to have been achieved by the claimed invention on the basis of the application.
160. To avoid a retrospective assessment, the objective problem should not contain any references to the claimed solution.
161. The claimed solution is obvious if, at the relevant time, the person skilled in the art, starting from a realistic point in the prior art in the relevant technical field and with the aim of solving the objective problem, would have arrived at the claimed solution and not merely could have arrived at it.
162. The relevant field of technology is the specific field relevant to the objective problem to be solved, as well as any field in which the same or a similar problem arises and which the person skilled in the art in the specific technical field can reasonably be expected to be familiar with.
163. A starting point is realistic if its teaching would have been of interest to a person skilled in the art seeking to solve the objective problem at the relevant time. This may be the case, for example, where the relevant prior art already discloses several features similar to those of the claimed invention and/or addresses the same or a similar underlying problem as that of the claimed invention. There may be more than one realistic starting point, and the claimed invention must be inventive in relation to each of these starting points.
164. The person skilled in the art lacks inventive ability and imagination and requires a starting point or motivation which, based on a realistic starting point, prompts them to take the next step towards the claimed invention. As a rule, a claimed solution is to be regarded as non-inventive/obvious if the person skilled in the art would take the next step on the basis of the starting point or as a matter of routine and arrive at the claimed invention.

165. To establish inventive step, it is not necessary to demonstrate an improvement in the claimed technical teaching over the prior art. Inventive step may also be present if the patent claims disclose a non-obvious alternative to the solutions known in the prior art.

II. Examination on a case-by-case basis

166. Measured against this, it cannot be established on the basis of the defendant's submissions that there is a lack of inventive step.

1. Objective technical problem

167. The objective task of the patent at issue is to provide a device optimised for two different shooting distances, thereby enabling the device to capture both the face and the upper body.

2. Based on NWK 10 (Kelsh camera) in combination with NWK 11 (US 081)

a) *Revelation content of the NWK 10*

168. NWK 10 discloses the Kelsh K-490 stereometric camera (see p. 484 of NWK 10). This is shown below for illustrative purposes:

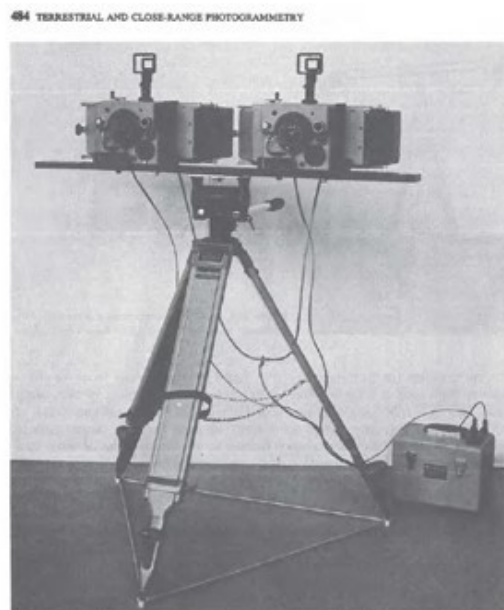
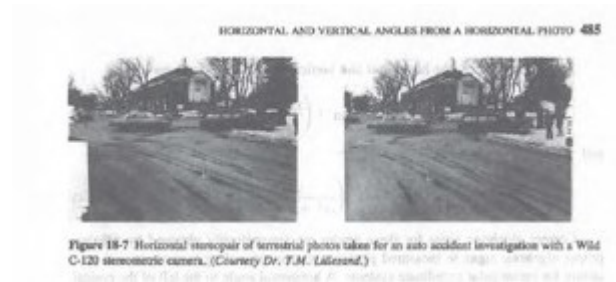


Figure 18-4 Kelsh K-490 Stereometric Camera. (Courtesy Kelsh Instrument Division, Danco Arlington, Inc.)

169. Such a camera can be used, for example, for terrestrial photography. One example of its use is photographing a road traffic accident. The illustration shown below for illustrative purposes was taken, following the disclosure of NWK 10, with another stereometric camera (Wild C-120), which is described in the same section as the Kelsh K-490:



170. The camera's distance can be varied within a continuous range from 2 ft (60.1 cm) to infinity with a sharp focus setting (p. 438 of NKW 10).

171. The camera disclosed in NKW 10 does not have a distance measuring system within the meaning of feature 1.3 and feature group 1.4.

b) *Realistic starting point*

172. NKW 10 is not a realistic starting point for assessing inventive step. Given the fundamentally different technical field, it is not apparent that NKW 10 and the Kelsh K-490 disclosed therein would have been of interest to a person skilled in the art seeking to solve the objective problem of the patent at issue at the relevant time.

c) *Indication/motivation*

173. Furthermore, starting from the NWK, there is no starting point or motivation for the person skilled in the art to refer to the NWK 11 in order to select at least two predefined different distances corresponding to the distance between the camera and parts of the human body to be reproduced.

d) *Obviousness*

174. Even if the person skilled in the art had referred to NWK 11 on the basis of NWK 10, it cannot be established that they would have arrived at the teaching of the patent at issue in an obvious manner.

175. NWK 11 discloses a diffuser attachment which can also be used with a conventional camera that is not suitable for taking stereo photographs.

176. This is evident, for example, from Figure 4 of NWK 11, which shows the use of a conventional camera with which two images cannot be captured simultaneously:

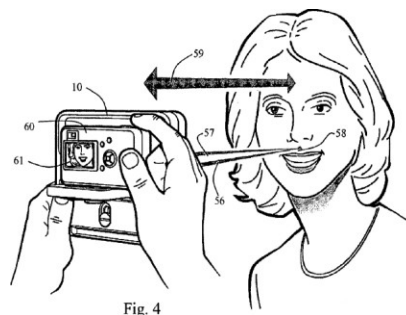


Fig. 4

177. Although the use of stereophotography cameras is not expressly excluded, the bulky Kelsh K-490, as described in NWK 10, cannot be fitted into the portable diffuser attachment of US 081 (NWK 11) without substantial modification of its design. The necessity of such extensive structural alterations therefore makes the combination appear unlikely.

178. Although NWK 11 further discloses that the diffuser attachment can be equipped with a rangefinder, so that the object to be photographed can be ordered at a repeatable distance from the diffuser attachment (see, for example, claim 14 of NWK 11). In paragraph [0039], NWK 11 discloses that the diffuser attachment with the rangefinder improves the use of close-up images, e.g. for medical purposes, by providing reproducible scalability. However, there is no indication that the distance measurement system can be used independently of the diffuser attachment or that it is suitable for use with stereo photogrammetry cameras.

3. Based on the NWK 12 (Vectra H1 User Guide) in conjunction with the NWK 13 (Software Guide) and general technical knowledge

a) Content of NWK 12 (Vectra H1 User Guide)

179. The Vectra H1 is a stereo photogrammetry camera featuring a distance measurement system that allows images of the head to be captured at a preset distance with a fixed field of view. NWK 12 is the user guide for the Vectra H1 in the 2014 version.

180. Two illustrations taken from the NWK 12 are shown below (see pages 1–2 and 3–6 of the NWK 12):

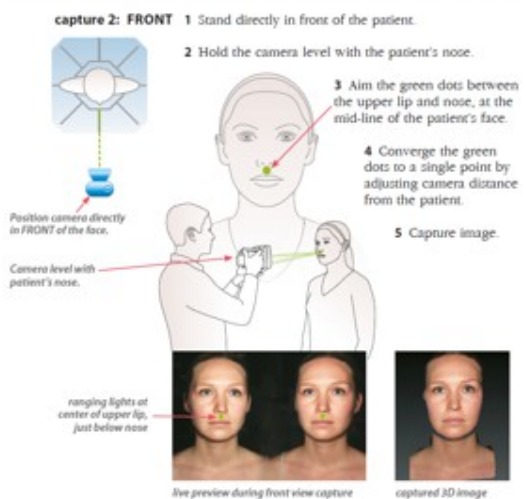
1.2 VECTRA H1 TECHNICAL SPECIFICATIONS & REQUIREMENTS

- system components**
- VECTRA H1 capture system, including
    - H1 3D camera with stereo optics
    - ranging lights for easy patient positioning
    - on-board modular, intelligent flash unit
    - 4 rechargeable batteries
    - 2 battery chargers
    - SD memory card
    - soft carrying case
  - VECTRA software for capturing and managing images
  - VECTRA Analysis Module (VAM) for analyzing 3D images
  - Mirror\* software for manipulating 2D images—3 seats
  - Face Sculptor\* 3D aesthetic simulation software (if purchased) with RBX\* image processing
  - Calibration installer disc
  - software license key
  - VECTRA Marketing Kit
- options**
- Face Sculptor\* 3D aesthetic simulation software with RBX\* image processing
  - laptop computer

1-2 VECTRA User Guide

Chapter 3 • Capturing Images with H1 Tethered to Computer

THE PATIENT SHOULD REMAIN COMPLETELY STILL THROUGHOUT THE 3 IMAGE CAPTURES.



181. The NWK 12 does not disclose that at least two predefined different distances can be set, so that images of at least two

different body parts can be taken with the same camera using a different image reproduction format (cf. features 1.4.1 and 1.4.2 of claim 1 of the patent at issue). To take a stereophotograph of a body part other than the head in a different field of view, a second stereophotogrammetry camera must be used.

b) *Disclosure of NWK 13*

182. NWK 13 is the software guide for the Vectra software referred to above.

183. The Face Sculptor® software module is an image processing system that can be used to edit photos and prepare them, for example, for doctor-patient communication:

**CHAPTER 5**  
**Face Sculptor®**

**5.1 GETTING STARTED**

Face Sculptor 3D aesthetic simulation software assists the surgeon during consultations enabling prospective patients to visualize the possibilities of their anticipated facial aesthetic procedures. This software module provides tools to assess the patient's face and enables the user to quickly make realistic surface and three-dimensional changes to the facial features of the patient's own 3D image. The results can then be reviewed with the patient to ensure mutually understood expectations between the surgeon and the patient. The pre-op and post-simulated images can also be used as references during surgery.

**open a 3D image in  
Face Sculptor**


A newly captured 3D image of your patient's face is automatically displayed in Face Sculptor software after processing is complete (see *Chapter 4: Capturing Images*).

To open a previously captured image, open the patient chart and double-click a 3D face image (see *Chapter 3: The VECTRA Patient Chart*).

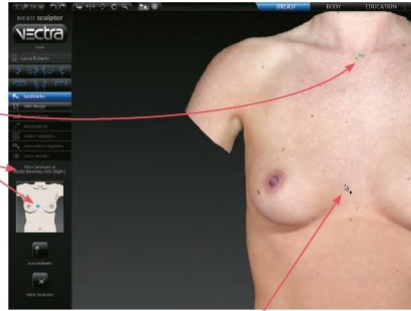
184. The additional modules are explained on pages 6-4 and 7-5:

7.2 Landmarks

**placing user-identified landmarks (optional)**

1 Click  delete landmarks (on the left side of the screen) if you wish to delete all of the previously set landmarks and have the software guide you through each landmark location with instructions (words and picture) on the left side of the screen.

- A green dot shows that the landmark is placed.
- Updated instructions show the next location to place a landmark.



2 Position the tip of the cursor arrow over the appropriate anatomical location as described on the left side of the screen. Click once to place the landmark. As each location is clicked, the image rotates automatically to facilitate placement of the next landmark.

3 Repeat until each of the requested landmarks has been placed. When the final landmark has been placed, the image automatically rotates to frontal view.

4 Review landmark placement. If you wish to change the position of a landmark, see *Adjusting Landmarks* (previous pages).




c) *Realistic starting point*

185. In the Board’s view, NWK 12 constitutes a realistic starting point for assessing inventive step. The Board further considers that the defendants have sufficiently demonstrated the public availability of NWK 13.

d) *Basis/Motivation*

186. NWK 12 (User Guide) refers to the Software Guide (NWK 13) on page 6-5 as follows:

6.2 Toolbars

	Face Sculptor®	switch to Face Sculptor 3D aesthetic simulation
	Body Sculptor®	switch to Body Sculptor 3D aesthetic simulation
	Breast Sculptor®	switch to Breast Sculptor 3D aesthetic simulation

187. Whether this constitutes a starting point for the person skilled in the art to take a step towards the invention, based on NWK 12, can be left open.

e) *Obviousness*

188. In any event, it cannot be established that the person skilled in the art would have arrived at the claimed invention by combining NWK 12 and NWK 13.

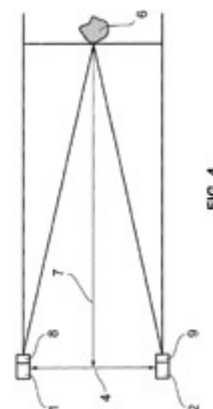
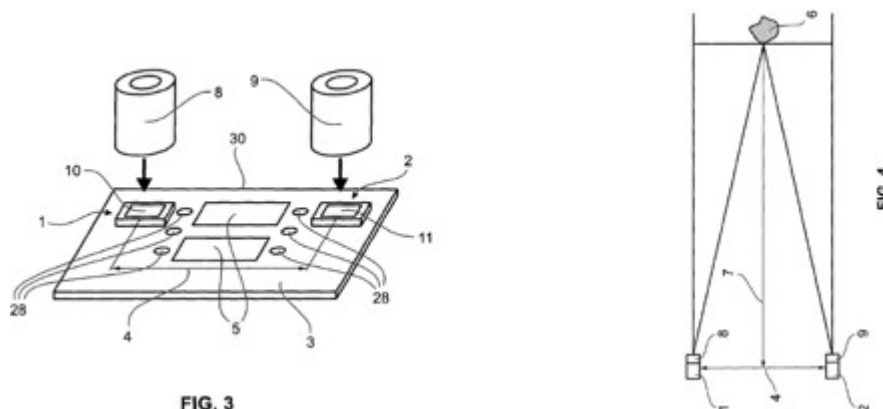
189. The possibility of image processing referred to in NWK 13 for body parts other than the face has nothing to do with the taking of stereo photographs.

190. NWK 13 is a software package that can be used with multiple cameras. Provided that photographs of other body parts have been taken with such other cameras, these can be processed using the additional image processing programmes according to NWK 13.
191. The existence of image-editing software capable of processing stereophotographs such as e.g. of the breasts or other parts of the torso, provides no indication as to how a camera must be designed to enable images of the head and parts of the torso to be captured with a single camera.
192. Even taking general technical knowledge into account, it was therefore not obvious to a person skilled in the art to modify the Vectra H1's distance measurement system—which is designed for measurement at a preset distance—in such a way that at least two predefined distances could be set so that images of different parts of the body could be captured with a camera at those distances.
193. The defendant's representative argued at the oral hearing that NWK 21 reveals that body images can be taken using the Vectra H1 camera described in NWK 12 by using the image format for facial images for the body and taking a corresponding (large) number of images. Section 3.1 of NWK 21, on page 78 at the bottom right, states that 59 partial scans with the Vectra H1 were required to map the body surface of a living body, whilst according to Section 3.2 on page 79 at the top left, approximately 100 images per body were required for cadavers, with a scanning time of approximately 20–30 minutes. The subsequent processing of the images required up to 10 hours of computing time (p. 77, Abstract).
194. This corresponds to the disclosure in paragraph [0009] in the background section of the patent at issue, according to which, with an imaging field the size of an A4 sheet, too many different images are required to cover the torso, which are also difficult to position in the room. From this, the patent at issue concludes that a system with an A4 image format is not suitable for body imaging. A system with an A3 image format is required for this purpose. The final sentence of paragraph [0009] of the patent at issue states:  
“Using a system with a capture field corresponding to the A3 format, and to avoid hidden parts, the surface of a torso can be covered with three to five images with a relatively simple definition of positioning.”
195. Accordingly, NKW 21 states in section 7, ‘Conclusion’, on p. 85: ‘For full-body documentation, however, the time constraints may not be completely justifiable.’
196. Thus, no suitability of the Vectra H1 for body imaging can be inferred from the disclosure of NKW 21. Nor, however, was it obvious, based on NKW 21, to configure the Vectra H1 for two predefined different distances with two different imaging formats for capturing different parts of the body. This is already apparent from the title of NKW 21, which reads: “Testing photogrammetry-based techniques for three-dimensional surface documentation in forensic pathology.” Accordingly, NKW 21 is specifically not concerned with the further development of conventional stereophotogrammetry devices.

4. Based on NWK 15 (WO 722) in combination with NWK 11 (US 081)

a) *Disclosure of NWK 15*

197. NWK 15 discloses a stereo camera system that enables stereophotogrammetric imaging. Figures 3 and 4 of NWK 15 are shown below:



198. According to the teaching of NWK 15, the use of the camera system for capturing images of objects at a great distance is particularly preferred. However, the capture of body parts using the 3D camera disclosed in NWK 15 is not excluded.

199. However, NWK 15 does not disclose a distance measurement system. The distance between the objects to be photographed and the camera is determined retrospectively from the captured photos using an image processing programme, rather than in advance using a distance measurement system. According to the teachings of NWK 15, the retrospective determination of distance from the image data is necessary in order to detect, track and measure objects.

b) *Realistic starting point*

200. NWK 15 is not a realistic starting point for assessing inventive step.

c) *Starting point/motivation*

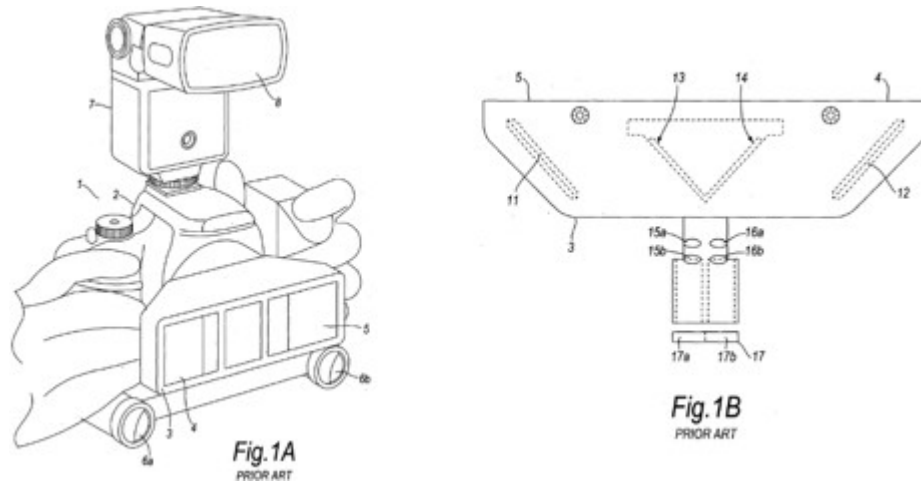
201. In any event, given the described mode of operation of the NWK 15, there is no basis for the person skilled in the art to proceed from the NWK 15 towards the invention and, in particular, to provide a distance measurement system. The subsequent determination of distance is fundamental to the teaching of NWK 15. It is not apparent that the person skilled in the art would have had any motivation to deviate from this.

5. Starting from NWK 16 (WO 572) in combination with general technical knowledge or NWK 11 (US 081)

a) *Disclosure content of NWK 16*

202. NWK 16 corresponds to D3, which was examined by the Federal Court of Justice in the German nullity proceedings.

203. Figures 1A and 1B show, according to the defendant's submission, the MAVIS stereo-photogrammetry system already described in paragraph [0006] of the patent at issue. This is a standard SLR camera, to the front of which an adapter 3 is attached (Figure 1A), comprising two sub-optics, each with two double mirrors (Figure 1B):



204. The two sub-optics allow two images to be captured simultaneously from different angles. Two LEDs 6a and 6b are provided, the function of which is described on page 12, lines 12–13 of NWK 16 as follows:

*“... The apparatus is fitted with a standard flash unit 7, which has a light-emitting element 8; the flash unit is mounted onto the body using a standard hot shoe (not labelled). The apparatus is also provided with two low-powered light-emitting diodes (LEDs) 6a, 6b, each provided with a focusing lens to produce a beam of light and arranged so that the beams converge and meet at a point at a fixed and desired distance from the apparatus, this distance corresponding to the distance at which the camera lens is focused. ...”*

205. The NWK 16 does not disclose a second predefined different distance and thus does not disclose features 1.4.1 and 1.4.2 of claim 2 of the patent at issue.

*b) Realistic starting point*

206. The question of whether NWK 16 constitutes a realistic starting point for assessing inventive step can be left open.

*c) Basis/Motivation*

207. In any event, there is no motivation for the person skilled in the art to provide a further pair of LEDs for determining and signalling a second predefined distance with a (sufficiently) sharp image of the body part. In D3, the focus is not on focusing but on illumination. The person skilled in the art finds no indication whatsoever in it to additionally address the question of how an image can be captured from more than one predefined distance.

208. The fact that a person skilled in the art would always try out such a camera in different directions ('play around with it'), as argued by the defendant's representative at the oral hearing, does not constitute sufficient evidence.

d) *Obviousness*

209. Furthermore, the skilled person would not have arrived at the claimed invention in an obvious manner by combining NWK 16 with NWK 11. It would have required an abstract consideration that the advantage of a repeatable scale in close-range photographs, achievable with the distance indicator according to NWK 11, could be utilised independently of the diffuser proposed in NWK 11.

210. These considerations apply mutatis mutandis to a combination with general technical knowledge.

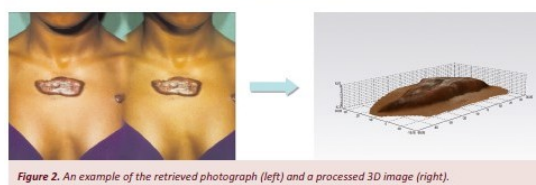
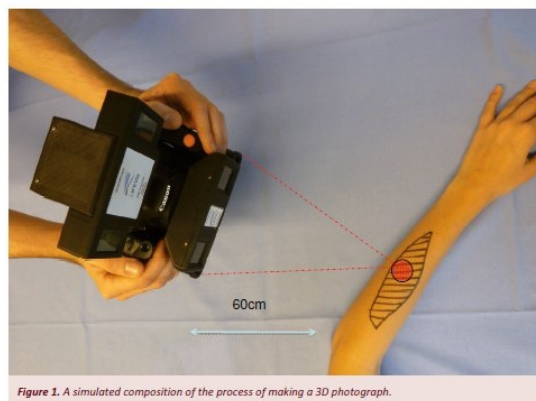
6. Based on NWK 17 in conjunction with NWK 11

a) *Disclosure content of NWK 17*

211. According to the defendant's submission, the '3D LifeViz™' stereophotogrammetry system is described on page 38 of NWK 17 in the section 'The 3D camera'.

212. The camera consists of a standard high-resolution SLR camera fitted with a lens and a beam splitter, through which the camera captures a pair of stereo images taken from different angles. The camera has a dual light indicator. The latter is used, in accordance with the NWK 17 guidelines, to ensure that the photograph is taken at the correct distance ("to ensure that the photograph is taken at the appropriate distance.").

213. This is illustrated in the following figures:



*b) Realistic starting point*

214. Whether NWK 17 constitutes a realistic starting point for assessing inventive step can be left open.

*c) Basis/motivation*

215. In any case, there is no motivation for the person skilled in the art to provide for different shooting formats based on the teaching of NWK 17. NWK 17 specifically refers, on page 28, second paragraph, and on page 34, second paragraph, to providing for the correct distance (“... to ensure that the photograph is taken at the appropriate distance.”/“... the standardised distance of 60 cm ...”). This leads the person skilled in the art away from providing at least a second predefined and predetermined distance for a further sharp photograph, each with a different image reproduction format.

7. Newly submitted documents

216. Insofar as the defendants, in their document of 11 March 2026, submitted Annexes KAP NWK 23 and KAP NWK 24 to the file as evidence of general technical knowledge regarding distance-measuring systems with intersecting light beams in the field of dermatology, these are disregarded pursuant to Rule 9.2 of the RoP. The defendants have not provided any explanation as to why the annexes were only submitted on the day before the oral hearing.

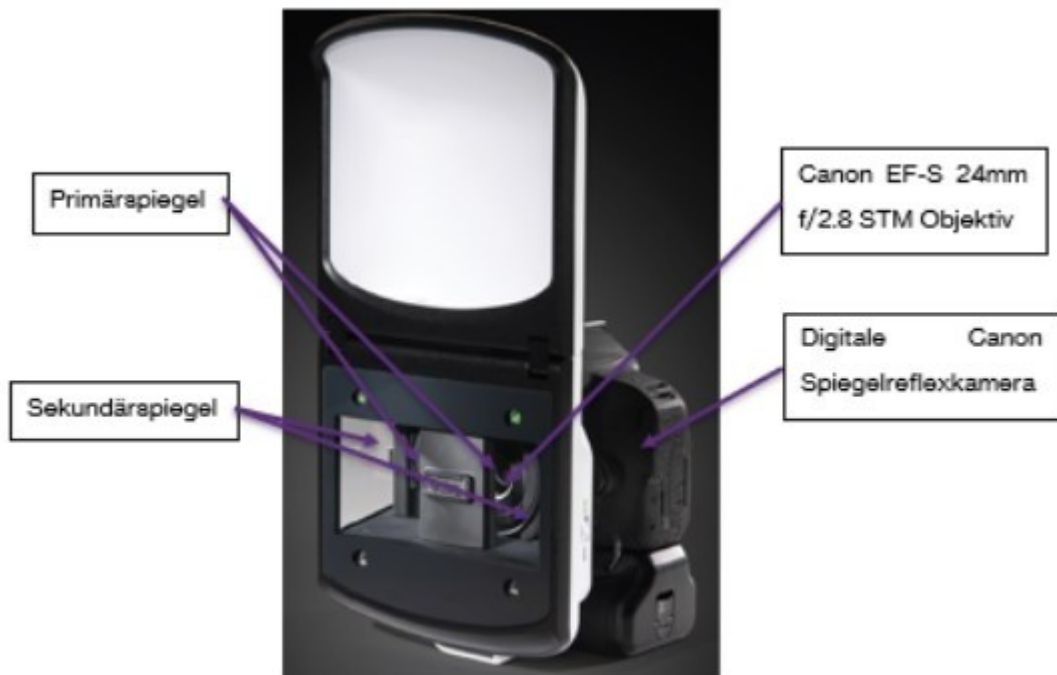
F. Merits of the infringement claim

217. The infringement claim is well founded.

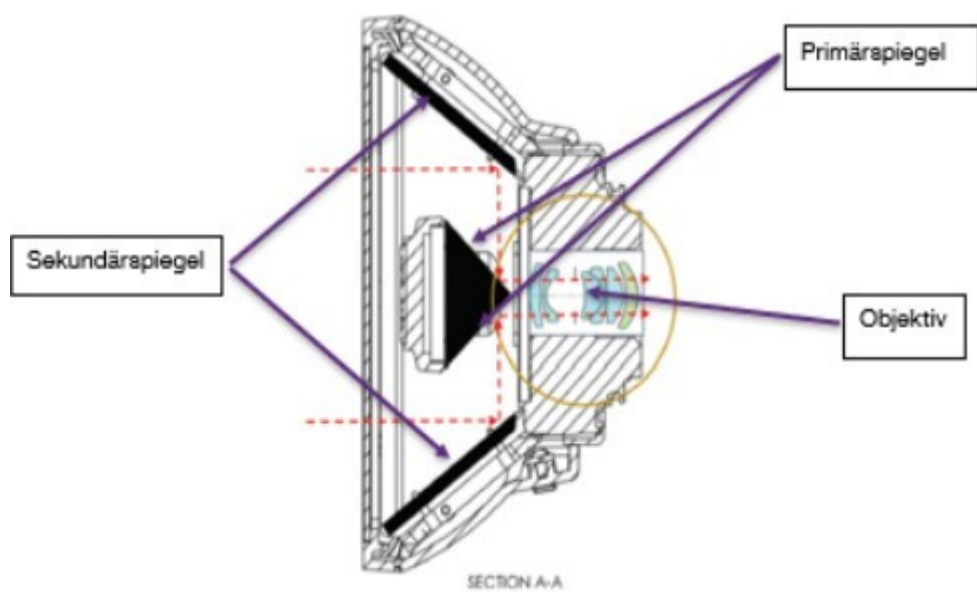
I. Structure of the contested embodiment

218. The recording device of the contested embodiment is a freely available Canon digital SLR camera. A conventional Canon EF-S 24 mm f/2.8 STM lens is mounted on it.

219. For illustrative purposes, an illustration of the contested embodiment, annotated by the defendants, is shown below:



220. An attachment is ordered in front of the camera and the lens. The following drawing illustrates the internal structure of the attachment and the path of light in the contested embodiment:



221. The light rays emitted by the body part strike the two oblique secondary mirrors provided at the edges of the attachment. These reflect the rays onto two oblique primary mirrors of a pyramid-shaped component in the centre of the

guided by the lens. These, in turn, reflect the light rays towards the (single) lens and then towards a sensor.

II. Direct infringement of claim 1

222. The defendants make direct use of the teaching of claim 1 of the patent at issue, both in letter and in spirit.

1. Literal implementation of all features

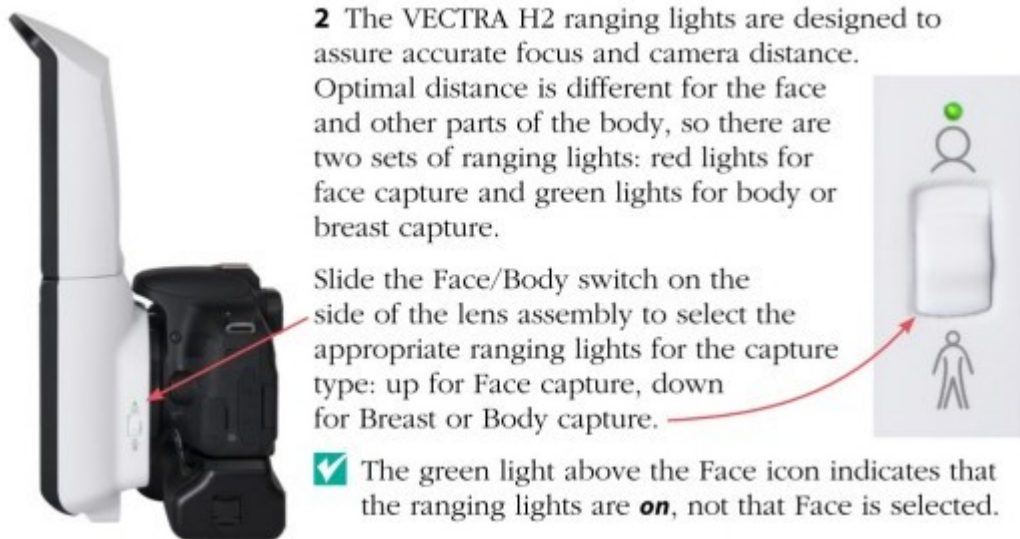
a) *Apparatus for capturing parts of the body in stereophotogrammetry (feature 1)*

223. The contested embodiment is a device for capturing parts of the body in stereo photogrammetry within the meaning of feature 1.

224. The fact that the contested embodiment comprises a lens comprising movable lenses does not preclude infringement. According to the above interpretation, it is not necessary for a device as claimed to comprise exclusively non-movable parts.

b) *The capture target distance corresponds to one of at least two predefined different distances (feature 1.4.1)*

225. The contested embodiment is designed such that the user can choose between two predefined different distances, namely a distance for the face and a distance for the chest/body. On page 26 of the User Guide (Annex LR 9) the following description is found:



226. As described there, the optimal distance for capturing the face and other parts of the body differs, which is why there are two sets of positioning lights.

227. The defendants argue that the lens of the contested embodiment has a different focal plane and a different depth of field in each of the two configurations. Accordingly, the contested

This embodiment uses different focal planes for the face and the torso and does not operate with two planes within a single depth of field.

228. However, according to the interpretation set out above, this mode of operation does not lead out of the infringement. This is because it is precisely not the case that the at least two predefined different shooting target distances must be within the depth of field of the device. Furthermore, the use of different focal planes is, according to the teaching of the patent at issue, rather in accordance with the claims.

c) *The dual optical system is equipped with two sub-optics (feature 1.2)*

229. The contested embodiment also features a double optical system as claimed, which is equipped with two sub-optics within the meaning of feature 1.2.

230. The attachment of the contested embodiment comprises two sub-optics, each with a secondary and a primary mirror. These enable two simultaneous images to be captured, each at a different angle. Although the optical axes of the two sub-optics run parallel to one another, they are spaced apart along the length of the attachment, resulting in the two different imaging angles. Two different images are also obtained.

231. The fact that the dual-optics system of the two sub-optics of the contested embodiment comprises only a single (unified) objective and thus a single-lens system does not, according to the interpretation set out above, preclude infringement.

d) *The distance measurement system is designed to signal to the user that the distance between the device and a part of the body to be reproduced corresponds to a defined target distance (feature 1.4)*

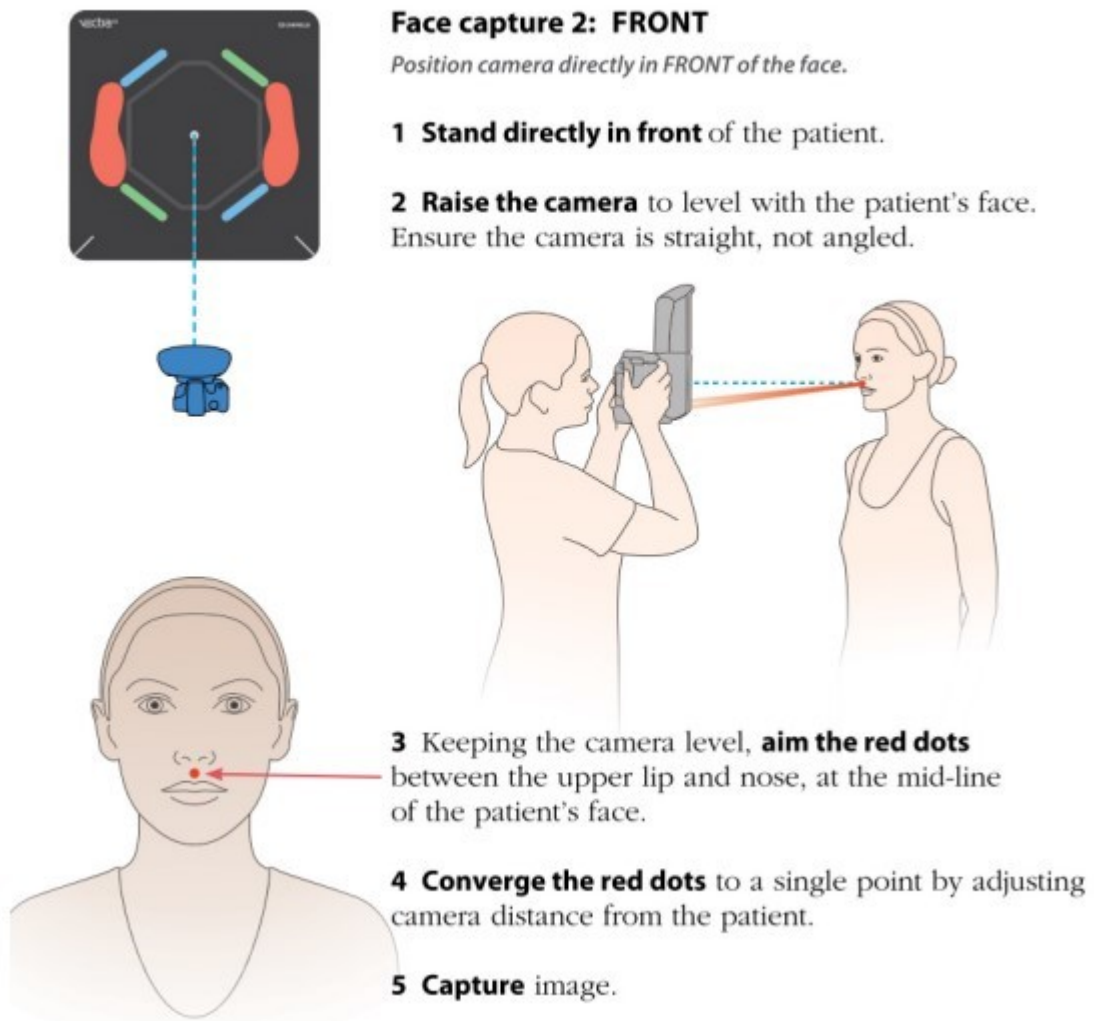
232. The distance measurement system of the contested embodiment is, within the meaning of feature 1.4, is designed to signal to the user that the distance between the device and a part of the body to be reproduced corresponds to a defined target distance for capture.

233. Page 26 of the User Guide (Annex LR 9) states:

*“When the ranging lights are converted and the target area is centred on the left side of the split-screen preview, press the shutter release to capture the image.”*

234. On page 28 of the User Guide (Annex LR 9), the process of taking a facial image is illustrated as follows:

**THE PATIENT SHOULD REMAIN COMPLETELY STILL THROUGHOUT THE 3 FACE CAPTURES**



**Face capture 2: FRONT**  
*Position camera directly in FRONT of the face.*

- 1 Stand directly in front** of the patient.
- 2 Raise the camera** to level with the patient's face. Ensure the camera is straight, not angled.
- Keeping the camera level, **aim the red dots** between the upper lip and nose, at the mid-line of the patient's face.
- Converge the red dots** to a single point by adjusting camera distance from the patient.
- Capture** image.

235. The contested embodiment thus indicates the correct positioning of the patient by the convergence of the two red light beams at a point between the patient's upper lip and nose. This also serves as the signal for triggering the scan. Green light is used for chest/body scans.

236. Whether the establishment of the target distance for the image and the signalling constitute two separate, consecutive steps is, as explained in the interpretation, irrelevant.

*e) Further features*

237. The realisation of the remaining features is rightly undisputed.

2. Acts of use under Article 25(a) of the UPC Agreement

238. It is undisputed that all the defendants have committed acts of use within the meaning of Article 25(a) of the UPC Agreement in at least one contracting member state.

239. The finding of an act of use in one Contracting Member State is sufficient to issue an order in respect of the other Contracting Member States as well. This follows from Article 34 of the UPC Agreement, according to which, in the case of a European patent, the decisions of the Court apply to the territory of those Contracting Member States in which the European patent has effect (see UPC\_CFI\_15/2023 (Munich), decision of 15 November 2024, p. 58 – Edwards v. Meril; see, however, UPC\_CFI\_440/2023 (LD Paris), decision of 24 April 2025, para. 103 et seq. – Seoul Viosys v. Laser Components).
240. Nor does the fact that the claimant, with regard to the first defendant, relies solely on appeals for infringement in Germany preclude an order covering all Member States of the Agreement in which the patent at issue is in force and in respect of which the infringement action is brought. The Claimant has excluded Germany from the infringement action for procedural reasons, namely the patent infringement proceedings already pending there, and is not asserting any claims in that respect ('carve out'). However, it cannot be inferred from this that such acts of use do not fall within the scope of Article 34 of the UPC Agreement and could permit orders in respect of other Contracting Member States. No justification for such a restriction can be found in the UPC Agreement.

III. Direct infringement of claim 14

241. The defendants also make direct use of the subject-matter of claim 14 of the patent at issue in accordance with its literal meaning.

1. Literal realisation of all features

242. The operation of the contested embodiment also embodies all the features of claim 14. Since the parties do not discuss the features of method claim 14 independently of those of device claim 1, reference may be made to the above considerations.

2. Acts of use under Article 25(b) of the UPC Agreement

243. It is undisputed that the defendants have applied the method according to patent claim 14 within the meaning of Article 25(b) of the UPC Agreement, for example in on-site training courses, within the territory of the contracting member states.
244. Consequently, the defendants may in principle also be prohibited from using the method within the territory of the contracting member states within the meaning of Article 25(b) of the UPC Agreement. No distinction should be made between individual acts of use (see UPC\_CFI\_316/2024 (LD), para. 290 – M-A-S v Altech; see also UPC\_CFI\_712/2025 (LD), para. 386 – Roche v Menarini).
245. The question of whether different rules apply where an act of use is subject to specific subjective conditions can be left open. In any event, it can be established that the defendants carried out the process even though – as required by Article 25(b) of the UPC Agreement – they knew or ought to have known that the use of the process without the patent holder's consent is prohibited. As specialist companies, the defendants were obliged to monitor the intellectual property situation. Furthermore, at the latest since the warning letter issued in 2020 and subsequently and , they had positive knowledge of the allegations brought against them in the German

patent infringement proceedings, positive knowledge of the allegations brought against them. Nor can the defendants successfully appeal to the fact that the Federal Patent Court has since declared the patent at issue invalid. The defendants themselves do not claim that they only engaged in acts of use during the period between the first-instance judgment of the Federal Patent Court and the dismissal of the German invalidity action by the Federal Court of Justice.

246. The defendants are, however, correct in pointing out that the claimant's formulation of the claim regarding the act of use consisting of offering the process does not correspond to the wording of Article 25(b) of the UPC Agreement. It was therefore necessary to clarify in the operative part of the decision that the defendants are not prohibited from offering the process per se, but only from offering it for use within the territory of the contracting member states in which the patent at issue is in force. Since the claimant has excluded Germany from the infringement action, this restriction also applies here in accordance with Article 76(1) of the UPC Agreement.

G. Legal consequences

247. With regard to the legal consequences, the following applies:

I. Injunction

248. Taking into account the circumstances of the case, the claimant is entitled to an injunction against the continuation of the infringement pursuant to Article 25(a) of the UPC Agreement in conjunction with Article 63(1) of the UPC Agreement.
249. The fact that the claimant based its claim for an injunction on the wording of the patent claims is not objectionable (see UPC\_CFI\_2/2023 (LD), decision of 19 September 2023, p. 82 et seq. – Nanostring v. 10x Genomics on Art. 62(1) of the UPC Agreement). It was not necessary to specify the contested embodiment in the application.
250. Since no decision has been made on the claimant's 'in particular where' applications in the operative part, the defendant's objections raised against them are irrelevant.
251. In any event, the Chamber was not required to set a time limit in the injunction order of its own motion. The Claimant did not request such a time limit.

II. Determination of liability for damages on the merits

252. A determination of liability for damages on the merits is possible on the basis of Section 68(1) of the UPC Agreement. As already mentioned, the defendants must in any event have known that their actions infringed the patent at issue.

*No limitation period*

253. The limitation period has not expired.
254. Under Article 72 of the UPC Agreement – without prejudice to Article 24(2) and (3) of the UPC Agreement – actions relating to all forms of financial compensation must be brought no later than five years after the claimant became aware, or ought reasonably to have become aware, of the last event giving rise to the action.

255. Under Section 72 of the UPC Agreement, the limitation period begins to run upon the occurrence of the last event giving rise to the cause of action. In particular, acts of patent infringement by the defendant may be considered as such an event. Pursuant to Article 72 of the UPC Agreement, the claimant – in this case the plaintiff – must have become aware of these acts or should reasonably have become aware of them. Unless this subjective condition is met, the limitation period does not commence.
256. It cannot be sufficiently inferred from the defendant's submissions that the claimant had knowledge of, or was negligently unaware of, the defendant's patent-infringing acts more than five years prior to the bringing of the action. The fact that the market in question is relatively small and that the contested embodiment was extensively advertised is not sufficient for this purpose.

*Liability for damages commences only on 18 May 2018*

257. Liability for damages for Defendants 2) to 5) commences only from 18 May 2018. The Defendants have argued that, in any event, they could not reasonably have been expected to provide information on the intellectual property rights situation before the expiry of one month following the grant of the patent. The Claimant has not contested this.

*Claim against Defendant 1 only from 3 October 2018*

258. With regard to Defendant 1), it must also be taken into account that it was undisputedly only established on 3. September 2018. The defendants have also appealed to the granting of one month to examine the intellectual property rights situation in this regard, without the Claimant contesting this.

III. Provision of information and transmission of data

259. The claimant is entitled to information pursuant to Article 25(a) of the UPC Agreement in conjunction with Article 67 of the UPC Agreement. There are no objections regarding the manner in which the information is to be provided.

*Scope of the information*

260. Furthermore, pursuant to Article 68(3)(a), (b) UPC Agreement in conjunction with Rule 191(1), second alternative, of the RoP, request such information as it reasonably requires for the purposes of its legal proceedings and which also enables it to verify the accuracy of the information provided and to obtain evidence for its calculation of damages (UPC\_CFI\_7/2023 (LD Düsseldorf), judgment of 3 July 2024, p. 29 – Kaldewei v. Bette; UPC\_CFI\_16/2024 (LD Düsseldorf), judgment of 14 January 2025, p. 36 – Ortovox v. Mammüt; UPC\_CFI\_11/2024 (LD Düsseldorf), judgment of 8 May 2025, para. 164 – Grundfos v. Hefei Xinhui; UPC\_CFI\_210/2023 (LD Mannheim), judgment of 22 November 2024, para. 179 – Panasonic v. OPPO). This also includes the information contested by the Claimant pursuant to the Claimant's application under II.1.d) to f).
261. The claimant may also request supporting documents for the information under Article 67(1) of the UPC Agreement. This also includes the evidence requested by the claimant. For, apart from the interest in the information itself, which the patent holder receives under Article 67(1) The UPC Agreement, the patent proprietor's interest in being able to verify the accuracy of this information, at least on a random basis, is also worthy of recognition (UPC\_CFI\_7/2023 (LD), decision of 3 July 2024, p. 29 – Kaldewei v. Bette; UPC\_CFI\_16/2024 (LD), decision

of 14 January 2025, p. 36 – Ortovox v. Mammut; UPC\_CFI\_210/2023 (LD Mannheim), decision of 22 November 2024, para. 179 – Panasonic v. OPPO).

262. As noted by the Claimant in her statement of claim, the time limit running from the date of the notification pursuant to Rule 118.8(1) of the RoP must be included in the decision (UPC\_CoA\_845/2024, Order of 30 May 2025, Headnote 1 and para. 40 – Belkin v. Philips; UPC\_CoA\_534/2024, decision of 3 October 2025, headnote 7 and para. 240 – Belkin v. Philips). The time limit of 30 days following service of the notice referred to by the Claimant under Rule 118.8(1) of the RoP appears reasonable. The objections raised by the defendants against this, on the grounds that they required more time for examination, remain general in nature.
263. Contrary to the defendants' view, the claimant may also request a breakdown structured by month. In the Chamber's view, this constitutes a sensible variation on the structuring that is in any case necessary for clarity. Nor have the defendants explained what type of structuring they would employ instead.

*Timing of the submission of accounts*

264. The information under II.1.d) to f) serves to prepare claims for damages and must therefore be limited in time in the same way.

*Confidentiality order as a condition precedent to the right to information*

265. The defendants seek to make the claim for disclosure and an accounting subject to the condition precedent that
1. the Chamber issues a confidentiality order whereby
    - a) the circle of persons with access to the information is restricted to the Claimant's legal representatives in the present proceedings and to one person within the Claimant's company who is not employed in sales, and
    - b) the use of the information is restricted to the calculation of any claims for damages against the defendants and the identification of further infringers
  - or
  2. the claimant signs a confidentiality agreement corresponding in substance to the above.
266. The claimant has already refused to sign such a confidentiality agreement.
267. There is no basis for ordering the disclosure of information solely subject to a confidentiality order with the content set out in 1.a). Such a far-reaching restriction on the patent holder's access would render the disclosure of information meaningless.

268. However, the Chamber did not include the restriction on the intended use referred to in 1.b) in the operative part of the decision as a suspensive condition, but merely for the sake of clarification. The Court of Appeal has already ruled that there is no *implicit* restriction on the use of information provided as a result of court orders pursuant to Article 67 of the UPC Agreement and Rule 191 of the RoP (UPC\_CoA\_930/2025, Order of 18 March 2026, para. 25 et seq. – EOFlow v. Insulet). For this reason, a corresponding clarification in response to the defendant's objection appears justified. Nor has the claimant appealed to any necessity to use the information for purposes other than those specified by the defendants.
269. In any event, the auditor's reservation sought by the defendant in the alternative cannot be granted in the general form requested. It would have been for the defendant to define the terms of such an auditor's reservation and, in particular, to describe the conditions under which and the form in which the auditor is to disclose the required information to the Claimant.
270. As regards details requiring confidentiality beyond the data subject to disclosure, the defendants are protected by the possibility of redaction, which the Claimant has already taken into account in drafting its application.

#### IV. Recall and removal from distribution channels

271. The order to recall from the distribution channels those products directly infringing claim 1 is justified under Article 25(a) of the UPC Agreement in conjunction with Article 64(2)(b) and (4) of the UPC Agreement.
272. The same applies with regard to the permanent removal from the channels of distribution of products that directly infringe claim 1. In this respect, the sought order is based on Article 25(a) of the UPC Agreement in conjunction with Article 64(2)(d) and (4) of the UPC Agreement. According to the wording of the UPC Agreement, permanent removal from the distribution channels is an independent measure to be distinguished from a recall. It accompanies the recall, although removal is only to be considered if the infringer has the factual and legal means to do so. The claimant has formulated specific measures in this regard, to which the defendants have not specifically objected.
273. The defendants' objection that the claimant may not dictate the 'how' of the recall and removal from the distribution channels does not hold water. Rather, the specification of certain measures increases legal certainty for the defendant as well and facilitates enforcement (see also UPC\_CoA\_699/2025, Order of 14 October 2025, para. 44 – Kodak v. Fujifilm).
274. As regards the disproportionate nature of the order for the recall and the definitive removal of the products from the distribution channels within the meaning of Article 64(4) UPC Agreement. The defendant, who bears the burden of proof in this regard (see UPC\_CoA\_534/2025 et al., decision of 3 October 2025 – Belkin v. Philips), has not appealed on this issue.
275. The time limit running from the notification pursuant to Rule 118.8(1) of the RoP was, as the Claimant also requested, to be included in the decision with regard to the order for recall and removal from the distribution channels (UPC\_CoA\_534/2024, decision of 3 October 2025, Headnote 7 and para. 240 – Belkin v. Philips). The relief sought by the Claimant

A period of 30 days following service of the notice within the meaning of Rule 118(8), first sentence, of the RoP appears reasonable. However, as regards the removal from the distribution channels, the Board considers a period of six weeks to be reasonable for the submission of written evidence of the cancellation having taken place.

276. In response to the defendant's objection, it was necessary to clarify in the operative part of the decision that only products placed on the market since the grant of the patent (Defendant 2) to 5)) or since incorporation (Defendant 1)) are to be recalled and permanently removed from the distribution channels. As the claims are not based on fault, the consideration of an additional period for examining the intellectual property rights situation is not applicable in this respect.

#### V. Provisional damages

277. Pursuant to Rule 119 of the RoP, the court may award provisional damages to the successful party, subject to conditions determined by the court, which are intended to cover at least the provisional costs of the damages and compensation proceedings incurred by the successful party.
278. The claimant is seeking payment of EUR 20,000 as provisional damages. In support of her claim, she appeals to the fact that this sum is the minimum required to prepare a claim for damages by analysing the defendant's extensive information regarding the scope of the infringing acts. In its reply, the claimant specified that the amount is based on the court's scale of fees and comprises EUR 3,000 for the application to determine damages, EUR 13,000 in court fees based on the value of the claim, and EUR 4,000 in legal fees.
279. The defendant's objection to this, namely that the award of provisional damages is only to be considered in exceptional circumstances, in particular where the claimant is effectively prevented by its financial circumstances from conducting separate proceedings to determine the amount of damages, does not hold water. This view is already contradicted by the fact that, pursuant to Rule 119(2) of the RoP, provisional damages are intended to cover at least the provisional costs of the proceedings for damages and compensation.
280. Since the defendants did not raise any specific objections to the amount of the anticipated costs claimed by the Claimant, provisional damages could be awarded in the amount sought.
281. However, the addition sought by the Claimant, whereby the provisional damages would be adjusted if the acts referred to in paragraph I were to continue, could not be included due to the lack of a corresponding legal basis.
282. Nor is there any apparent basis for the wording sought by the defendants, whereby the provisional damages are made subject to the suspensive condition that the Claimant actually initiates proceedings to determine the amount of damages, or to the resolute condition that she does not initiate such proceedings.

#### VI. Provisional reimbursement of costs for the counterclaim

283. The provisional reimbursement of costs for the counterclaim in the amount of EUR 90,000 sought by the Claimant is justified under Article 69(1) of the UPC Agreement and Rule 150.2 of the RoP.

284. In principle, it can be assumed that the claimant will be entitled to reimbursement of costs amounting to 50% of the reimbursement ceiling, and provisional reimbursement of costs may be ordered in this amount (see UPC\_CoA\_464/2024, decision of 25 November 2025, para. 203 – Meril v. Edwards). This amount will not be exceeded (see immediately under K.). Nor have the defendants specifically contested the Claimant's application.

#### VII. Threat of coercive measures

285. The imposition of a penalty payment in connection with the prohibition (Article 63(2) of the UPC Agreement) does not give rise to any concerns. This remains the case even when proportionality considerations are taken into account. The imposition of penalties for measures relating to the provision of information, the transmission of information, recall and removal is based on Art. 82(1) and (4) of the UPC Agreement, R. 354.3 of the RoP.

286. The Chamber cannot find that the amounts of the penalty payments cited by the Claimant are already too high even at the minimum amount (EUR 1,000), as the defendants object in general terms.

#### H. Security/Provisional enforceability

287. Pursuant to Article 82(2) of the UPC Agreement, Rule 118.8(2), Rule 352.1 of the RoP, the court may make any order or measure subject to the provision of security, the amount of which it is to determine. However, the defendants have not put forward any circumstances that might give rise to this.

288. Insofar as the defendants base their argument on the fact that the claimant has claimed provisional damages, which they contend is only justified if the Claimant's financial circumstances so require, this argument, as already mentioned, does not hold water.

289. The defendants further appeal that they would have to expect catastrophic damage. This is not only because they would be prevented from marketing the products and supporting clinical trials until a favourable decision is reached on appeal, but also because their reputation would be seriously damaged and they would lose market share to competitors, which they might not be able to regain. In their rejoinder in the infringement proceedings, the defendants further argued that there were not too many competitors in the relevant market. Due to the high level of brand awareness and the associated public perception, a sales ban resulting from an alleged patent infringement would be immediately noticed by (potential) customers and would deter them from purchasing the machines, prompting them to buy from another competitor. Given the price of such a device and the longevity of the products, the defendants would lose a large number of customers, at least for the next few years. Even after that, however, customers would not switch to an alternative product from the defendants, as they would now be familiar with handling the competitor's product and would therefore opt for subsequent versions from the competitor.

290. However, these arguments remain general in nature. In particular, the defendants do not cite any specific figures or further facts, such as examples of clinical studies that would support them in the future. With their general arguments, they do not demonstrate any disadvantages that go beyond the usual consequences of an injunction.

291. Accordingly, the request to avert enforcement by providing security is also unfounded.

I. Decision on costs

292. Pursuant to Article 69(2) of the UPC Agreement in conjunction with Rule 118.5 of the RoP, a decision on costs must be made.

293. Since the claimant has been unsuccessful with part of her action for infringement, namely in particular with the sought-after extension of the claim to include reimbursement of costs for the action in the amount of EUR 60,000, as well as with certain periods relating to the claims for damages and preparatory information, it is justified to order her to bear part of the costs of the infringement action and, for the remainder, to order the defendants to bear the costs.

294. The defendants' counterclaim has been unsuccessful. The defendants must therefore bear the costs thereof.

J. Value of the claim

295. In accordance with the parties' agreed submissions, the value of the claim in the infringement action is to be set at EUR 1,800,000 and that of the counterclaim at EUR 2,250,000. In this regard, particular account had to be taken of the fact that, unlike the infringement action, the counterclaim brought by Defendants 2) to 5) is also directed against the German part of the patent at issue.

K. Reimbursement ceiling

296. The setting of the upper limit for reimbursable legal representation costs is based on the Administrative Committee's decision on the upper limits for reimbursable costs dated 24 April 2023 (D-AC/10/24042023\_D) in conjunction with the decision of the Administrative Committee of 24 April 2023 on the guidelines for determining court fees and the upper limit for recoverable costs of the successful party (D-AC/09/24042023\_D). Pursuant to Section II.2, paragraph 4 of the aforementioned decision, the value of the infringement action and the value of the counterclaim for annulment, both of which are pending before the same Chamber, must be added together to determine the amount of recoverable costs. Consequently, the determination of the reimbursement ceiling in the present case must be based on a total value in dispute of EUR 4,050,000, resulting in a total reimbursement ceiling of EUR 600,000.

DECISION:

- I. The defendants are prohibited from
  1. to offer, place on the market or use a device for capturing parts of the body in stereophotogrammetry  
  
in Belgium, France, Italy and the Netherlands, or to import or possess it for the aforementioned purposes,  
  
where the device for capturing parts of the body in stereophotogrammetry comprises a recording device (1) and a dual optical system (2) equipped with two sub-optics (2b, 2c) which enable two simultaneous images, each at a different angle, and where it comprises a distance measurement system (34) designed to signal to the user that the distance between the device and a part of the body to be reproduced corresponds to a defined target recording distance from at least two predefined different distances, each corresponding to a different image reproduction format (A4, A3);
  2. a method comprising the use of a device according to point I.1  
  
to be used in Belgium, France, Italy and the Netherlands, or to be offered for use in those countries,  
  
wherein the method comprises the following steps: selecting (100) the target distance; positioning (200) the imaging device and a subject at the target distance using the measurement system (34); followed by taking (300) one or more photographs at the target distance, wherein the target distance is one of at least two predefined shooting distances, each corresponding to a different image reproduction format (A4, A3), and the measuring system (34) indicates that the distance between the device and a part of the body to be reproduced corresponds to the target distance (Claim 14).
- II. The defendants are ordered, within a period of 30 days following service of the notice pursuant to Rule 118.8(1) of the RoP and, where applicable, the certified translation,
  1. to provide the Claimant with information as to the extent to which they have committed the acts described in sections I.1. and I.2. since 18 April 2018, in the form of a statement structured for each month of a calendar year and according to the infringing acts described in sections I.1. and I.2., containing the following information:
    - a) the origin and distribution channels of the infringing products and the distribution channels of the processes offered;

- b) the quantities delivered, received or ordered and the prices paid for the infringing products or the applications of the process;
- c) the identity of all third parties involved in the manufacture or distribution of the infringing products or in the application of the process;
- d) the number and dates of the products or processes offered;
- e) the advertising carried out, broken down by advertising medium, its reach, the period of distribution and the distribution area; including evidence of these advertising activities;
- f) the costs, broken down by individual cost factors, and the profits made,

whereby copies of the relevant purchase documents (namely invoices, or alternatively delivery notes) must be submitted as evidence of the information, with details requiring confidentiality being redacted from the data subject to disclosure and notification;

whereby the information under d) to f) is to be provided only in respect of acts from 18 May 2018 (Defendants 2) to 5)) or from 3 October 2018 (Defendant 1)) respectively;

and it is hereby clarified that the purpose of the information is limited to the calculation of potential claims for damages against the defendants and the identification of further infringers;

2. to recall the infringing products referred to in paragraph I.1, which have been placed on the market since 18 April 2018 (Defendant 2) to 5)) and since 3 September 2018 (Defendant 1)), by informing the third parties from whom the infringing products are to be recalled that this Court has found that the products infringe European Patent EP 3 156 843 B1, whereby the defendants must give a binding undertaking to the third parties to reimburse the costs incurred, to bear the packaging and transport costs incurred, to reimburse the customs and storage costs associated with the return of the products, and to take the products back;
3. to permanently remove from the distribution channels the infringing products referred to in paragraph I.1, which have been placed on the market since 18 April 2018 (Defendant 2) to 5)) and since 3 September 2018 (Defendant 1)), by instructing the defendants, on the basis that this court has found that the products infringe European Patent EP 3 156 843 B1, request third parties who are commercial customers but not end users, with regard to the products referred to in paragraph I.1, to cancel all orders relating to the products referred to in paragraph I.1 and to submit to the court and the Claimant, within six weeks of service of the notice pursuant to R.

118.8(1) of the RoP and, where applicable, the certified translation, to submit written evidence of the action taken.

- III. The defendants are ordered
1. in the event of any breach of the orders under Section I, a repeated penalty payment of at least EUR 1,000 per infringing product;
  2. in the event of any breach of the orders under Section II, a recurring penalty payment of at least EUR 1,000 per day for each breach
- to the court.
- VI. The defendants are ordered to pay the claimant EUR 20,000 as provisional damages.
- V. It is hereby declared that the defendants are, in substance, obliged to compensate the Claimant for any further loss incurred or to be incurred as a result of all acts referred to in paragraph I which have been committed since 18 May 2018 (Defendants 2) to 5) or since 3 October 2018 (Defendant 1) have been or will be committed, or which has arisen or will arise in the future.
- VI. In all other respects, the action for infringement is dismissed.
- VII. The counterclaim for annulment is dismissed.
- VIII. The defendants are ordered to pay the claimant provisional costs of EUR 90,000 for the counterclaim within 14 days of service of the judgment.
- VIII. The claimant shall bear 10% and the defendants 90% of the costs of the infringement proceedings.
- The defendants shall bear the costs of the counterclaim.
- IX. The value in dispute for the action is set at EUR 1,800,000.
- The value in dispute for the counterclaim for annulment is set at EUR 2,250,000.
- X. The upper limit on recoverable legal representation costs for the claim and the counterclaim for annulment is set at a total of EUR 600,000.
- XI. The orders under I, II, IV and VIII are enforceable only once the Claimant has notified the court of which part of the orders it intends to enforce and, where necessary, has submitted a certified translation of the orders into the official language of the Member State in which enforcement is to take place, and once the relevant defendant has been served with the notification and the (relevant) certified translation.

Düsseldorf, 23 April 2026 NAMES  
AND SIGNATURES

Presiding Judge Thomas	
Legally qualified judge Dr Schumacher	
Legally qualified judge Agergaard	
Technically qualified judge Dr Wilhelm	
For the Deputy-Registrar	

INFORMATION ON APPEALS:

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

Information on enforcement (Art. 82 UPC Agreement, Art. 37(2) UPC S, R. 118.8, 158.2, 354, 355.4 RoP):

A certified copy of the enforceable decision shall be issued by the Deputy-Registrar on application by the party seeking enforcement, Rule 69 of the Rules of Procedure.

This decision was announced at a public hearing on 23 April 2026.

Presiding Judge Thomas