



Düsseldorf local division
UPC_CFI_869/2025

**Procedural order of the Court of First Instance
of the Unified Patent Court
concerning EP 3 805 415
issued on 28 April 2026**

Claimant and defendant in the action for annulment:

Dai Nippon Printing Co., Ltd., represented by its management, the latter represented by its Chairman, Mr Yoshinari Kitajima, 1-1-1, Ichigaya-Kagacho, Shinjuku-ku, Tokyo 162-8001, Japan

represented by:

Dr Soenke Fock, Attorney-at-law; Thorben Strich, Attorney-at-law; Jan-Caspar Maiers, Attorney-at-law; Alex-Christian Lesch, Attorney-at-law; Wildanger Kehrwald Graf von Schwerin & Partner mbB Attorney-at-law, Couvenstraße 8, 40211 Düsseldorf, Germany

Patent Attorney Dr.-Ing. Jochen Kapfenberger, Patent Attorney Georg Tully, Patent Attorney Dr. Frederik Tenholt, Cohausz & Florack Patent- und Attorney-at-law PartG mbB, Bleichstraße 14, 40211 Düsseldorf, Germany

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Defendants and counter-claimants for annulment:

1. **Zapp AG**, represented by the Executive Board, Dr Stefan Seng (Chairman of the Executive Board) and Daniela Scheidsteger, Letmather Straße 69, 58239 Schwerte, Germany
2. **Zapp Precision Metals GmbH**, represented by the managing directors Malte Edward Dotzel, Edo Ollermann, Dr Evelin Ratte and Britta Van Beurden, Letmather Straße 69, 58239 Schwerte, Germany

Defendants 1) and 2) represented by:

, Attorney-at-law Holger Stratmann, , Attorney-at-law Dr Henrik Vocke, Attorney-at-law Philipp Zambelli, HOFFMANN EITLE Patent and Law Firm mbB, Arabellastraße 30, 81925 Munich, Germany

PATENT AT ISSUE:

EUROPEAN PATENT NO. 3 805 415

PANEL/CHAMBER: Panel 1 of the Düsseldorf local division

JUDGES: This order was issued by the legally qualified judge and judge-rapporteur, Dr Zhilova.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: Rule 9.2 of the RoP – Failure to take evidence or arguments into account Rule 36 of the RoP – Further exchange of pleadings

SUMMARY OF THE FACTS:

1. In a document dated 23 April 2026, the Claimant raised an objection to the late filing pursuant to Rule 9.2 of the RoP, together with a precautionary application for permission to exchange further pleadings pursuant to Rule 36 of the RoP.
2. The claimant and counter-defendant has argued that the defendants and counter-claimants for invalidity included, in their rejoinder to the amendment application in the invalidity proceedings dated 13 April 2026, an entirely new and extensive statement of facts relating to the infringement claim and the principal claim for a declaration of invalidity of the patent. This applies, on the one hand, to the defendants' entire statement in sections B and C of the 'reply' to the amendment, i.e. in paragraphs 14 to 149, as this statement relates specifically to the patent as claimed in the main claim but not to the auxiliary claims, whereby the defendants attempted to obscure this fact with their headings for section B ("Lack of enforceability of the subsidiary claims") and Section C. ("Lack of patentability of the subsidiary claims") attempted to mislead the court on this point. Secondly, this applies in particular to the following parts of Sections B. and C., which in any event contain new arguments not previously – as far as can be seen – included in the file:
 - Section B. concerning ascent speeds and ChatGPT calculations, paras. 15–20,
 - Section C.I.1. concerning raw data and redactions in paragraphs 24–28, including Explanatory Note 158,
 - Section C.I.2.a) (i) concerning 'no explicit confidentiality agreement with Ever-Display Optronics' in paragraphs 39–42, including HE 159,
 - Section C.I.2.a) (iii) concerning material numbers in lines 46–50,
 - Section C.I.2.aa) (ii) concerning "special stress relieved vs. relaxed" in para. 58,

- Section C.I.2.ab) (i) regarding the “reflecting” surface in para. 64,
- Section C.I.2.ab) (ii) regarding material number in line 66,
- Section C.I.2.ab) (iii) regarding weight in lines 70–72,
- Section C.I.2.ab) (iv) regarding storage locations in line 74,
- Section C.I.2.ac) concerning “reflecting” and “special stress-relieved” surfaces, lines 77–78,
- Section C.I.2.b) concerning Invar foil for production order number in paras. 84–85,
- Section C.I.2.bb) concerning deliveries to LG Innotek Co. Ltd. in paras. 104–106, including HE 160,
- Section C.I.3.a) concerning ‘analysis results plausible’ in paras. 109–113,
- Section C.I.3.b) regarding “measurement results reliable” in lines 115–121, including HE 158,
- Section C.I.3.c) concerning “Statistical significance of the analysis results” in paras. 123–130, including HE 161,
- Section C.II.1. concerning characteristic 1 in paragraphs 135–140, including HE 162,
- Section C.II.2. concerning feature group 3 in paragraphs 144–149.

MOTIONS BY THE PARTIES:

3. The claimant requests that

- 1) that this new statement of facts, based on Rule 9.2 of the RoP, should not be admitted or taken into account in the decision-making process (objection on the grounds of late submission),

as a precautionary measure

- 2) to allow the Claimant, pursuant to Rule 36 of the RoP, to submit a further written submission within a period of three weeks.

REASONS FOR THE ORDER

4. The admissibility of the documents and arguments put forward by the parties is a question of fact and not a matter of procedural management. Whether the defendant’s submissions in its rejoinder to the amendment are relevant to the decision in the present case, and whether they were submitted late and must therefore be disregarded, requires a detailed analysis. As regards the first instance,

such an assessment can only be made with certainty at the end of the oral hearing (see UPC_CFI_850/2024, Mannheim Division, Order of 13 January 2026, ZTE v Samsung; UPC_CoA_298/2024, UPC_CoA_299/2024, UPC_CoA_300/2024, Order of 24 September 2024, OPPO OPORE v Panasonic).

5. Consequently, the admissibility of the defendant's submissions in its rejoinder to the amendment does not fall within the procedural powers of the judge-rapporteur and must be decided by the full panel. For these reasons, the judge-rapporteur considers it appropriate, in accordance with Rule 102.1 of the RoP, to defer the decision on the Claimant's objection to the late filing, so that the full panel may decide on the matter during or after the oral hearing.
6. However, in accordance with the principle of equality of arms, and as a precautionary measure without prejudice to the question of whether the defendant's further submissions are to be admitted, the claimant should be granted a further opportunity to comment on the defendant's statement of facts. As the oral hearing has been scheduled for 17 September 2026, the three-week period granted for comments does not lead to an unnecessary delay in the proceedings and is to be regarded as reasonable.
7. Upon expiry of the period for submitting comments, the written procedure shall be deemed concluded,
Rule 36(2) of the RoP.

Order

1. The decision on the Claimant's objection to the late filing of 23 April 2026 pursuant to Rule 9.2 of the RoP is deferred. The full bench shall, if necessary, decide on this matter during or following the oral hearing.
2. The claimant has **until 19 May 2026** to respond to the defendant's submissions referred to in paragraph 2 of this order. Upon expiry of this period, the written procedure shall be deemed to have been concluded.

NAME AND SIGNATURE:

Dr Tatyana Zhilova
legally qualified judge
and judge-rapporteur