Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf local division
UPC_CFI_1927/2025

Order
of the Court of First Instance of the Unified Patent Court
delivered on 7 May 2026
concerning EP 3 001 984 B1

HEADNOTES:

1.
The applicant bears, in principle, the burden of proof regarding the acquisition of knowledge of the existence of the contested embodiment, the potential infringement and its prompt clarification. The relevant period extends from the time of becoming aware of the contested embodiment as a potentially infringing product until all the facts and evidence required to substantiate the full facts of the infringement are available.

2.
It must be assumed that the applicant was aware of the potentially infringing product if, according to conventional understanding and the ordinary course of events, the applicant should have been aware of the potentially infringing characteristics. This is followed by the duty to continue to investigate the facts of the case expeditiously. In this regard, all the circumstances of the individual case are relevant. The respondents bear the burden of presentation and proof regarding the indications from which it can be inferred that they must have had prior knowledge and from which hesitant behaviour can be deduced. If such indications are substantiated by the respondents, it is then up to the applicant to rebut them or to explain why she could not have been aware of them and why she acted with sufficient promptness in this respect.

KEYWORDS:

Provisional measures, necessity, urgency, unreasonable delay, knowledge, constructive knowledge, R. 211.4 RoP

APPLICANT:

Ottobock SE & Co. KGaA, Max-Näder-Straße 15, 37115 Duderstadt, Germany, represented by Ottobock Management SE, at the same address, the latter represented by the managing directors Martin Böhm, Dr Arne Kreitz, Oliver Jakobi and Arne Jörn,

represented by: Sören Dahm, Attorney-at-law; Robert Knaps, Attorney-at-law; Nicole Schopp, Attorney-at-law Christoph Heringlake, Kather Augenstein law firm, Bahnstraße 16, 40212 Düsseldorf, Germany

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and

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RESPONDENTS:

1. **BrainPortfolio Inc.,** represented by its legal representatives, c/o Brian Long, 1826 Kramer Lane, Suite A/B, Austin, TX 78758, United States of America

2. **BrainRobotics Inc.,** represented by its legal representatives, c/o Brian Long, 1826 Kramer Lane, Suite A/B, Austin, TX 78758, United States of America

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m PATENT AT ISSUE:

EUROPEAN PATENT NO. EP 3 001 984 B1

Panel/Chamber:

2nd Panel of the Düsseldorf local division JUDGES:

The order was issued by the presiding judge, Dr Thom, acting as judge-rapporteur, the legally qualified judge Dr Rinken, the legally qualified judge Agergaard and the technically qualified judge Michels.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT: Application for an order for provisional measures

ORAL HEARING: 22 April 2026

BRIEF SUMMARY OF THE FACTS:

1. The applicant is bringing proceedings against the respondents for infringement of European patent EP 3 001 984 B1 (Annex KAP 9, hereinafter: the patent at issue), of which it is the sole proprietor.

2. The patent at issue was filed on 5 November 2008 in the German language of the proceedings. It claims the priority of application DE 102007053389 dated 7 November 2011. The patent application was published on 6 April 2016. The notice of grant of the patent at issue was published on 22 August 2018. The patent at issue is currently in force in the Federal Republic of Germany, the French Republic, the United Kingdom of Great Britain and Northern Ireland, Iceland, the Italian Republic and the Kingdom of the Netherlands. No preliminary objection was filed with the European Patent Office (EPO) against the grant of the patent at issue.

3. The patent at issue relates to a method for controlling an orthopaedic joint. Its claim 1 is worded as follows:

"Method for controlling an orthopaedic joint of a lower limb in at least one degree of freedom using an adjustable actuator to adapt an orthopaedicdevice, which comprises upper connection means to a limb and an orthopaedic element arranged in an articulated manner distal to the connection means, to walking situations that deviate from walking on a flat surface, comprising the following steps:

a) Detecting a plurality of parameters of the orthopaedic device via sensors,

b) comparing the detected parameters with criteria in which multiple parameters and/or parameter profiles have been summarised and which are stored in a computing unit,

c) selecting a criterion that is suitable on the basis of the determined parameters and/or parameter curves, and

d) Adjusting movement resistances, ranges of motion, driving forces and/or their profiles depending on the selected criterion in order to control special functions that deviate from walking on a flat surface, wherein the flexion damping is reduced in the special function."

4. In the course of these proceedings, the applicant has based its application for interim measures on a restricted version of claim 1 (bold added by the court), which reads as follows:

"Method for controlling an orthopaedic joint of a lower limb in at least one degree of freedom using an adjustable actuator to adapt an orthopaedicdevice, ***which is a prosthetic knee joint*** *and comprises proximal connection means to a limb and an orthopaedic element arranged in an articulated manner distal to the connection means,* ***and distal connection means for a prosthetic foot****, to walking situations that deviate from walking on a level surface, comprising the following steps:*

a) *Detecting a plurality of parameters of the orthopaedic device via sensors,*

b) *comparing the detected parameters with criteria in which multiple parameters and/or parameter profiles have been summarised and which are stored in a computing unit,*

c) *selecting a criterion that is suitable on the basis of the determined parameters and/or parameter curves, and*

d) *Adjusting movement resistances, ranges of motion, driving forces and/or their profiles depending on the selected criterion in order to control special functions that deviate from walking on level ground, wherein in the special function the flexion damping is reduced,* ***wherein the special function is alternating stair climbing***."

5. The applicant operates a care network at over 400 locations. Within this care network, companies pursue the primary task of patient care. These include John + Bamberg GmbH & Co. KG and Pohlig GmbH. With regard to patient care, the companies in the Ottobock Care Network are customers of both the applicant and other competitors.

6. With its application, the applicant challenges the artificial knee system 'Kneuro microprocessor [model BR4B/BR4C]' (hereinafter: the contested embodiment). A slightly reduced-size illustration, taken from Annex KAP 2, is shown below.

7. Wilhelm Julius Teufel GmbH (Respondent 1 in the parallel proceedings UPC_CFI_1928/2025; hereinafter 'WJT') markets the contested embodiment in the Federal Republic of Germany (see Annex KAP 2). Respondent 1 is listed as the manufacturer on the product packaging. Respondent 2 is additionally named as the manufacturer in the instructions for use of the contested embodiment. The respondents import the contested embodiment into the European Union.

8. On 6 October 2025, the claimant ordered two contested embodiments via a third-party company, which were delivered on 7 October 2025. Both products arrived at the claimant's premises on 21 October 2025 and 22 October 2025. The installation of the Kneuro app was delayed due to access details not being sent and was finally possible on
4 November 2025. Immediately afterwards, the applicant organised the preparation of measurements in the gait laboratory, for which the relevant sensor technology had to be programmed. The tests in the gait laboratory took place on 18 November 2025 and 19 November 2025 and were carried out for seven potential intellectual property rights. The results were available on 4 December 2025 and were sent to the patent attorney on the same day. The application for provisional measures was filed on 10 December 2025 with the Düsseldorf local division of the Unified Patent Court.

9. The contested embodiment had already been exhibited at various trade fairs in the USA in autumn 2024 and early 2025, at which the applicant was either also present as an exhibitor or whose employees took part in a 'technical workshop' (see Annexes QE 12 to QE 16).

10. The contested embodiment had already been advertised in trade journals since February 2025 (in the trade journal for orthopaedic technology; Annex QE 17).

11. The market launch in Europe took place at Expolife from 20 March to 22 March 2025 in Kassel at the WJT stand (see Annexes QE 18, 19). At the trade fair, WJT presented a product video showing the contested embodiment, and two patients demonstrated its use. A discussion took place at the trade fair between WJT staff and an employee of the applicant regarding the contested embodiment.

12. Immediately following the trade fair in Kassel on 25 March 2025, WJT presented the contested embodiment to Pohlig GmbH in Traunstein and explained the function at issue, namely the alternating stair-climbing mechanism.

13. Furthermore, the contested embodiment was presented at the Eqwall Excellence in Motion trade fair in Cannes from 14 April to 16 April 2025, at which the applicant was also represented. The first delivery of the contested embodiment to German customers took place on 24 May 2025 following an order dated 7 April 2025. A review and explanatory video had also been available on YouTube since April 2025. The user manual for the contested embodiment had been freely accessible since May 2025 and could be viewed on the WJT website.

14. A further presentation in Europe took place at the ISPO World Congress in Stockholm from 16 June to 19 June 2025. Here, the employees from from WJT , Head of the Orthopaedic Technology Vienna department at Otto Bock Healthcare Products GmbH, for some time about the contested embodiment. Heis responsible for development processes within the Otto Bock Group and was part of the core team at the applicant company responsible for the development of the alleged direct competitor product, the Genium X4.

15. On 4 July 2025, four specialists from John+Bamberg GmbH & Co.KG in Hanover were certified. On 21 July 2025, an employee of Pohlig GmbH was certified during training in the handling of the contested embodiment for the trial fitting

. A further certification took place on 8 August 2025 at John+Bamberg GmbH & Co.KG, along with an adaptation of the contested embodiment for a female patient. On 29 August 2025, John+Bamberg GmbH & Co.KG ordered two further embodiments, which WJT delivered on 1 September 2025 (Exhibit QE 32).

APPLICATIONS OF THE PARTIES:

16. The applicants finally request:

I. that the respondents be ordered to

refrain from

devices suitable for carrying out a method for controlling an orthopaedic joint of a lower limb in at least one degree of freedom,

in the Federal Republic of Germany, the French Republic, the Italian Republic and/or the Kingdom of the Netherlands for use in the Federal Republic of Germany, the French Republic, the Italian Republic and/or the Kingdom of the Netherlands,

wherein the method comprises at least the following:

an adjustable actuator for adapting an orthopaedic device, which is a prosthetic knee joint, to walking situations that deviate from walking on level ground,

upper attachment means to a limb and an orthopaedic element arranged in an articulated manner distal to the attachment means, and distal attachment means for a prosthetic foot,

comprising the following steps:

detecting a plurality of parameters of the orthopaedic device via sensors,

comparing the detected parameters with criteria in which multiple parameters and/or parameter profiles have been summarised and which are stored in a computing unit,

selecting a criterion that is suitable on the basis of the determined parameters and/or parameter curves, and

adjusting movement resistances, ranges of motion, driving forces and/or their profiles depending on the selected criterion in order to control special functions that deviate from walking on a flat surface, wherein in the special function the flexion damping is reduced, wherein the special function is alternating stair climbing.

(indirect infringement of limited claim 1)

II. For each individual infringement of the above order under Section I, the respondents shall pay a (where applicable, repeated) penalty payment of up to EUR 50,000.00 per device and/or, in the case of ongoing acts such as offers on the internet, of up to EUR 100,000.00 per day to the court.

III. The respondents are further ordered to hand over the devices referred to in Section I, which are suitable for carrying out a procedure to control an orthopaedic joint, to a bailiff for the purpose of safekeeping, which shall continue until a final decision has been made on the existence of a claim for destructionbetween the parties has been finally decided or an amicable settlement has been reached, or the applicant informs the court that custody is no longer required.

IV. The respondents are further ordered to provide the applicant, within three (3) weeks of service of this order, in writing and in electronic form capable of being processed by a computer, with a breakdown structured by month of the calendar year and by patent-infringing products, commencing from 22 August 2018, information regarding the devices referred to in Section I, which are suitable for carrying out a method for controlling an orthopaedic joint,

a) the origin and distribution channels of the devices referred to in Section I, which are suitable for carrying out a method for controlling an orthopaedic joint, specifying

- the names and addresses of the manufacturers, suppliers and other owners;
- the names and addresses of the commercial customers and the points of sale for which the devices suitable for performing a procedure to control an orthopaedic joint were intended;

b) the identity of all third parties involved in the manufacture and distribution of the devices referred to in point I, which are suitable for carrying out a procedure for controlling an orthopaedic joint.

V. The respondents are further ordered, in the event of a breach of and/or failure to comply with any of the orders listed under Section IV, to pay, upon the expiry of a period of three (3) weeks following service of the court order, to pay the court a penalty of up to EUR 50,000.00 per day of delay and/or non-compliance, with any part of a day counting as a full day.

VI. The respondents are ordered to

1. bear the costs and expenses of the proceedings and the ordered measures;

2. to provisionally reimburse the applicant for costs amounting to EUR 47,300.00.

VII. The orders are effective and enforceable immediately.

17. The respondents request that

I. that the application for provisional measures be dismissed,

II. that the costs of the proceedings be borne by the applicant,

III. that the applicant be ordered to pay the respondents provisional costs of EUR 18,150.00 within 30 days of the decision being served on the applicant;

IV. that the order for provisional measures be declared enforceable only if the applicant provides security in favour of the respondents in the form of awith the Unified Patent Court or with an authority competent for such deposits within the EU, or in the form of a bank guarantee governed by the law of an EU Member State and issued by a bank authorised to conduct business within the EU, in the amount of EUR 1,500,000.

FACTUAL AND LEGAL ISSUES:

I. Scope of protection

18. The applicant submits that the parameters listed in the description of the patent at issue are merely illustrative.

19. Feature 1.2b) (see the breakdown of features in Section II. 1. b) aa)) requires a comparison of the recorded parameters with criteria. The criteria in question are trigger criteria for special functions of the invention. Paragraph [0011] of the patent at issue refers to trigger actions that deviate from a natural sequence of movements, not to trigger criteria. However, the patent at issue makes no specifications regarding the recorded parameters (= trigger actions). A person skilled in the art would recognise that several measured values of a single parameter, recorded over a specific period of time, represent a single parameter curve. Within a criterion for several parameters, a specific range of values is defined and this is compared with the parameters recorded by the sensors (paragraphs [0017], [0022] and [0023] of the patent at issue). The predefined values or value ranges against which the recorded parameters/sensor data are compared are stored. There is no restriction on the initiation of the special function whilst walking or standing.

20. A criterion is selected from among several criteria and the special function is initiated whenever the respective detected parameters reach the specified values and value ranges of the criterion.

21. The claim contains no restriction to specific movement situations, so that artificial movements are also covered. Even if this solution leads to a less than optimal implementation, it is covered by the scope of protection of the patent at issue. The

patent at issue acknowledges in several places that a backward movement can provide reliable parameters for initiating the special function. The movement of the foot backwards and then upwards also corresponds to a natural movement pattern for lifting the foot straight up and not getting it caught on the step. For if the prosthetic leg were raised solely by hip flexion, the foot would be moved forwards, as the passive knee joint cannot be actively controlled and would buckle. Therefore, the prior horizontal movement of the prosthetic leg backwards is natural and conducive to safely ascending a step.

22. Furthermore, feature 1.3 should not be understood to mean that the damping of flexion must be reduced overall across the entire range of flexion angles compared to walking on level ground.

23. The respondents argue that the skilled person would infer from the patent at issue that the special function is not activated by unusual or artificial movements. In this respect, the patent at issue is intended to distinguish itself from the prior art. It is intended to enable automatic control without a conscious activation action.

24. Feature 1.2b) requires a comparison of the detected parameters with criteria.

25. The teaching of the patent in suit is based not only on a plurality of parameters summarised in a single criterion, but also on a plurality of criteria from which the appropriate criterion is selected following the comparison (feature 1 c). According to the patent, this is in the same functional context as the plurality of parameters, as is apparent from paragraph [0047] of the patent at issue. The plurality of parameters and the plurality of criteria increase the certainty regarding the estimation of the impending movement sequence and the subsequent adjustment to be made, because the human movement pattern and the corresponding indicative deviations are thereby described more precisely.

26. The selection from among several criteria requires a decision between several alternatives available for selection at the same time. In this context, the selection constitutes a separate step in the method.

II. Infringement

27. The applicant submits that, in any event, the contested embodiment would, for the mode of alternating stair climbing, record joint angle, extension and flexion resistance, load on the product and spatial position. The special function “alternating stair climbing or step-over-step” is triggered by the rapid hip extension followed by the rapid hip movement. Logically, the selection can only take place by comparing the measured parameters with the requirements of the criterion. To this end, the criteria must be stored in the computing unit and an adjustment must be made in the special function, as flexion damping must occur during the swing phase in order to enable flexion of the prosthetic knee joint at all.

28. For the realisation of feature 1.2(b), it is sufficient that the contested embodiment provides for a sequential IF function, by means of which three parameters are compared against a corresponding threshold value and combined via a logical AND operator. The IF function thus combines several parameters. The threshold values defined therein are predetermined, which necessitates storage. Both sequential comparison and simultaneous comparison are covered by the patent at issue.

29. The parameters covered are also compared against several criteria, as there are a number of special functions (walking to running, anti-stumble protection, descending stairs, etc.).

30. Alternating stair climbing does not require any unusual movement sequences. Furthermore, the so-called “donkey step” is expressly described in paragraph [0038] of the patent at issue. Moreover, it follows from the instructions for use that the special function can also be initiated from a natural walking movement, because each subsequent step requires less effort to initiate the special function.

31. Furthermore, it is not the case that the “stance mode”, as an allegedly necessary intermediate step, means that stair climbing can only be initiated from a standing position. The statement that the user must be in the stance phase for at least 0.5 seconds as a starting position merely means that the stance phase of the gait cycle alternates with the swing phase with every step. This simply means that the stair-climbing function cannot be initiated from the swing phase.

32. The respondents argue that the contested embodiment does not infringe features 1.2(a) and (b).

33. The sequence of movements to initiate the stair-climbing function – which is undisputed as such – first involves the stance mode, in which the knee, thigh and calf are positioned almost vertically, followed by two successive partial movements (a gliding movement backwards that extends the hip and a rapid forward movement that flexes the hip (rapid high-knee)). These recorded parameters are compared with the device’s database by means of an ‘if-yes-and’ comparison. Logically linked individual comparisons of different parameters with threshold values for each parameter would be carried out.

34. If all the recorded parameters matched the respective stored threshold values, the contested embodiment would assume that the described and necessary combination of movements had been performed, so that the special function would subsequently be activated (via a then-link).

35. A realisation of feature 1.2 b) is also ruled out because no comparison with multiple criteria takes place. As described, various parameters (such as calf angle, calf acceleration and others) are recorded to determine these movement elements; these parameters, recorded by sensors, are then sequentially compared with stored threshold values (whose values represent the unnatural movement sequence just described); if

the test result for each of the parameters used is positive, the special function of the *'Step-Over-Step Stair* Ascent' is triggered. No comparison with further criteria takes place.

36. In the absence of the use of a criterion within the meaning of feature 1.2.b), no criterion in accordance with the patent in suit is selected pursuant to procedural steps 1.2.c) and 1.2.d).

37. No selection in accordance with the contested patent takes place. The algorithm checks, one after the other, conjunctive sets of conditions, each different, which are assigned to a specific special mode. Only a single criterion is ever checked.

38. Feature 1.3 is not fulfilled because the damping of flexion is not reduced overall across the entire range of flexion angles compared to walking on a flat surface. However, in the swing phase of the stair-climbing mode, which begins with hip flexion, the flexion damping is not reduced at all in the contested embodiment; rather, the onset of hip flexion is one of the triggers for increasing the flexion damping to 85%. In the contested embodiment, the reduction is triggered by the 'donkey kick', i.e. the reduction occurs as soon as the foot is moved backwards at a corresponding speed. If the foot and thigh are subsequently moved forwards (i.e. towards the stairs), the flexion damping is in any case increased again as soon as hip flexion begins. The flexion damping values achieved in this process are always at least as high as the maximum values during walking on level ground and – with the maximum flexion damping value of 99% rapidly reached during hip flexion – are even higher than these. The high flexion damping is intended to prepare the foot for stepping onto the step, so that the corresponding load on the knee prosthesis caused by the prosthesis wearer's weight does not lead to the prosthetic knee buckling.

III. State of the art

39. The respondents are of the opinion that the patent at issue, in its granted form, is not novel in relation to WO 2007/128299 A1 (D1) or EP 1 494 626 B1 (D2), but is in any event suggested by D2. Furthermore, the patent at issue is also inadmissibly broadened.

40. In the restricted version, the patent at issue is unclear and inadmissibly extended. Furthermore, it is still not novel in relation to D1. In any event, the additional features are obvious to a person skilled in the art on the basis of D2 and/or on the basis of US 2005/0283257 A1 (D3).

IV. Necessity of provisional measures

41. The applicant submits that it only became fully aware of the facts of the infringement on 4 December 2025.

42. The product on the Chinese market is irrelevant, as it has not been able to prove any infringement in a contracting member state. Nor was the technical correspondence established for Fener.

43. The applicant states that the contested product could not be acquired without further ado, but was only available to trained, manufacturer-certified orthopaedic technicians within a medical supply shop. Acquisition without a real patient connection is not possible within the healthcare system without considerable effort. Creating a 'fake profile' is time-consuming and requires third parties to ultimately lie on the applicant's behalf. The person who agreed to do so, and whose identity the applicant does not wish to disclose, has suffered disadvantages in their business activities as a result.

44. Whether the statements in the user manual were in fact correct could only be validated through the applicant's own tests. The tests were necessary because essential movement parameters (lower leg orientation and knee angle) could only be determined in this way. Two test systems were used in parallel, and carrying out the tests was organisationally complex and therefore took a corresponding amount of time (see Annex KAP 38).

45. The respondents argue that the claimant had had access to all relevant information since 2024, as it was familiar with the predecessor model on the Chinese market and had also purchased one. In any event, since May 2025, it could have obtained all the information relating to the alleged infringement from the user manual.

46. The respondents claim that the certification is merely an introduction to the product's functionality, which could also be carried out by WJT as a distributor.

47. The respondents further argue that a contact had already been arranged via Innteo GmbH, which had been founded by a former employee of Ottobock Health Care Deutschland GmbH, at the end of March 2025, and that the test purchase was only initiated six months later. Even for this purchase, no certified orthopaedic technician was required, and none was available at Innteo GmbH in October 2025 either. Furthermore, it follows from an undated calendar entry relating to the measurements (Annex KAP 44) that the contested embodiment had already been acquired/was already available in Göttingen prior to this purchase.

48. The creation of a detailed patient profile is irrelevant to the acquisition of the contested embodiment.

49. The respondents contend that the tests carried out by the applicant in the walk laboratory were not necessary for the submission of an allegation of infringement. The fact of the reduction in flexion damping was already apparent from the YouTube video submitted as Annex KAP 17. Furthermore, the applicant's measurements did not provide any greater insight.

50. Furthermore, the claimant had also acted hesitantly, as there had been a further four-week interval between the distribution of the products on 23 October 2025 and the start of the tests.

51. The respondents dispute the applicant's arguments regarding the effort, organisation and conduct of the tests, essentially on the grounds of lack of knowledge, and ultimately also dispute that any measurements were taken on certain days at all. Furthermore, the respondents object that various parts of the measurements did not relate to the alleged infringement but to other functionalities.

52. The applicant further submits that an order is objectively necessary, as the contested embodiment competes with the Genium X4 prosthesis it markets and significantly undercuts its price, thereby causing price erosion and irreparable damage. The presentation of the contested embodiment is expected to take place at a further trade fair in Germany in May 2026, meaning that the applicant is reliant on the granting of a preliminary injunction.

V. Legal consequences and security

53. The applicant submits that the first respondent has, in any event, culpably created the legal appearance that the second respondent is acting as an independent undertaking. The second respondent is named as the manufacturer in the instructions for use (Annex KAP 12, p. 70) and has also provided an address (Suite A/B) which led to a delay in service. The applicant therefore has a legitimate interest in a decision also against the second respondent.

54. The respondents argue that the first and second respondents are one and the same legal entity. 'Brain Robotics' is merely another name (DBA = doing business as) under which it operates in commercial transactions. Furthermore, there is no dual territorial connection in the case of the respondents. Moreover, an absolute ban is not justified, as the contested embodiment has other, uncontested modes.

55. The applicant is of the view that it is entitled to claims for the surrender of funds and the provision of information in the proceedings for provisional measures.

56. The respondents contend that, in the event of an order for interim measures, security in the amount of the value in dispute must in any event be provided.

57. For the parties' full submissions, reference is made to the pleadings and annexes filed with the court, as well as to the minutes of the oral hearing.

KEY PROCEDURAL STEPS:

58. In her defence to the respondents' preliminary objection dated 9 March 2026, the applicant, in the alternative, supported its application for a limited form of claim 1, which it made the main application during the oral hearing.

59. In their rejoinder of 23 March 2026, the respondents proposed amending the heading of the claim.

REASONS:

60. The admissible application for an order for provisional measures is not successful on the merits. On the one hand, the infringement cannot be established with the requisite certainty; on the other hand, the applicant's hesitant conduct in enforcing the patent at issue cannot be ruled out, which removes the need for an order for provisional measures.

I. Admissibility

61. The application for an order for provisional measures is admissible.

1. Jurisdiction

62. The Düsseldorf local division has jurisdiction in any event pursuant to Art. 32(1)(c) and Art. 33(1)(a) of the UPC Agreement. The contested embodiment is offered and supplied within the territory of the Federal Republic of Germany. The question of what specific role the respondents play in the alleged infringement is not relevant to the admissibility of the order, but must be clarified in the context of the infringement assessment on the merits.

2. Admissibility of the new application

63. According to the case law of the Court of Appeal, the unconditional conversion of the original alternative claim into a principal claim is admissible in any event (see UPC_CoA_898/2025, order of 27 March 2026, ONWARD v Niche Biomedical, para. 38). In this respect, there are no concerns regarding the admissibility of the main claim originally filed as an auxiliary claim.

II. Infringement of the patent at issue

64. It cannot be established with sufficient certainty (Rule 211(2) of the RoP) that the contested embodiment infringes the patent at issue.

1. Implementation of the features

65. Upon summary examination, the Court is not convinced with the requisite certainty that the contested embodiment (indirectly) carries out the method claimed in the limited version of claim 1 of the patent at issue.

a) Relevant person skilled in the art

66. The court is satisfied that the person skilled in the art comprises a team consisting of the following persons: A person with a university degree in mechanical engineering or mechatronics, specialising in biomedical or medical technology, and with several years' practical experience in the development and manufacture of prostheses or comparable biomechanical joints; and a person with a university degree in computer science/software engineering and with several years' practical experience in the processing of sensor data from prostheses or comparable biomechanical joints. As the claimed teaching is directed in particular at details of data processing, it appears appropriate that the skilled person is constituted as a team that also includes a person with relevant knowledge of data processing. In this context, it is also appropriate that the computer scientist/software engineer has specific experience in data processing relating to prostheses and comparable biomechanical joints.

b) Determination of the scope of protection

67. Pursuant to Article 69 EPC 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, following an 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 (UPC_CoA_335/2023, Order of 26 February 2024, Headnote 2 and p. 26 et seq. – 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).

aa) Subject matter of the patent at issue

68. The patent at issue relates generally to a method for controlling an orthopaedic joint of a lower limb, wherein an adjustable actuator is used to adapt an orthopaedic device to walking situations that differ from walking on level ground. The orthopaedic device comprises, on its upper side, means for attachment to a limb and an orthopaedic element arranged in a hinged manner distal to the attachment means

(see paragraph [0001] of the patent at issue; hereinafter, paragraphs (para.) without a source reference are those of the patent at issue).

69. The control of a passive prosthetic joint with adjustable damping is known from the prior art, specifically from the subsequently published DE 10 2006 021 802, which adapts the prosthesis to stair climbing. In this case, the momentary lifting of the prosthetic foot is detected and subsequently the flexion damping is reduced during the lifting phase to below a level suitable for walking on level ground (para. [0002].

70. US 2006/0224246 A1 and US 2007/0050047 A1 each describe a method for controlling an orthopaedic joint, in which parameters capable of providing information about the respective movement of the joint are measured, and the data thus obtained is used to control the joint and to recognise different movement sequences. The same applies to WO 2006/069264 A1 [para. [0003]).

71. Methods for detecting different phases of a gait cycle are known from WO 01/72245 A2, WO 2006/024876 A2 and EP 0 549 855 A2. The information determined in this way can be used to control flexion and extension damping and to release the knee for free pivoting (para. [0004]). DE 198 59 931 A1, US 2003/0120183 A1 and GB 2 367 753
A also deal with methods for controlling an artificial knee joint, in which, amongst other things, the damping of the knee joint can be adjusted on the basis of measured parameters (para. [0005]).

72. Based on this prior art, the invention is directed to providing a method for controlling an orthopaedic joint, which makes it possible to take specific walking situations into account and to ensure appropriate behaviour of the orthopaedic device (para. [0006]).

73. To solve this problem, the patent at issue provides a method having the features of claim 1, which the applicant asserts in the following limited version:

Claim 1

1. A method for controlling an orthopaedic joint of a lower limb in at least one degree of freedom using an adjustable actuator to adapt an orthopaedic device to walking situations that deviate from walking on a flat surface,

1.1. the orthopaedic device is a prosthetic knee joint and comprises upper connection means to a limb and an orthopaedic element arranged in an articulated manner distal to the connection means, and distal connection means for a prosthetic foot,

1.2 comprising the following steps:

a) Detecting a plurality of parameters of the orthopaedic device via sensors,

b) comparing the detected parameters with criteria in which several parameters and/or parameter profiles have been summarised and which are stored in a computing unit,

c) selecting a criterion that is suitable on the basis of the determined parameters and/or parameter curves, and

d) adjusting movement resistances, ranges of motion, driving forces and/or their profiles depending on the selected criterion,

1.3 to control special functions that differ from walking on a flat surface, wherein the flexion damping is reduced in the special function, wherein the special function is alternating stair climbing.

bb) Interpretation

74. The court is of the opinion that the skilled person understands the parameters taken into account in the criteria to be those based on the natural movement pattern of a person with healthy limbs. This also covers movement patterns that are typical for wearers of (knee joint) prostheses and therefore deviate slightly from the natural pattern, because the natural movement cannot be replicated exactly due to the lack of existing musculature/joints. However, no unusual movement sequences are recorded which, arising from walking, constitute deliberate activation movements and are thus foreign to the movement sequence that occurs when deviating from walking on level ground.

75. This understanding of the skilled person is fundamentally covered by the broad wording of the claim. Feature 1.2b) requires a comparison of the parameters recorded by the sensors (Feature 1.2a) with criteria in which several parameters and/or parameter curves have been summarised and which are stored in a computer unit. When considered together with feature 1, the person skilled in the art understands that one purpose of the method is to adapt the orthopaedic device (the prosthetic knee joint) to walking situations that deviate from walking on level ground. In feature 1.3, as claimed in its restricted form, this deviation is characterised as a special function, namely alternating stair climbing. The person skilled in the art understands the walking situation of alternating stair climbing to be a normal sequence of movements of a prosthesis wearer, which approximates the stair climbing of a person with healthy limbs.

76. Even if the wording of the claim is broader per se, the person skilled in the art finds this understanding confirmed when considering the claim in conjunction with the further description of the patent specification in dispute and the figures. In this respect, there is no interpretation of the claim that falls short of its wording (in the sense of the literal meaning); rather, the patent specification as a whole shows that the claimed criteria include movement sequences that enable the prosthesis wearer to control their movements unconsciously.

77. Thus, right at the outset, the person skilled in the art learns from the general part of the description that the claimed criteria assign specific movement or load conditions of the

orthopaedic device to specific walking situations (see para. [0009]). Paragraph [0009] further states:

> *'[…] The sensors determine the parameters whilst walking, preferably whilst walking on level ground, so that the user of the orthopaedic device has the opportunity to initiate the special functions without having to perform movements that do not correspond to the natural pattern. By recording minor deviations in individual parameters and evaluating them during walking in correlation with other parameters and deviations that have been summarised into criteria, it is possible to estimate impending movement sequences, so that the special function can be initiated whilst walking. Whilst it is known from the prior art to activate special functions through unusual movement sequences whilst standing, e.g. by repeatedly and rapidly loading the forefoot or performing a wave-like movement through an atypical, alternating loading of the heel and forefoot, the method according to the invention allows switching to take place whilst walking, resulting in 'intuitive' control that requires no conscious activation actions. This leads to increased wearing comfort and enhanced safety, particularly for prosthesis wearers, as operational errors are minimised or eliminated."*

78. The specification of the contested patent thus distinguishes itself from the prior art precisely in that special functions could previously only be triggered by distinctive movements that do not occur in a normal gait pattern. The patent at issue emphasises that, using the method of the invention, the user can intuitively control the special function whilst walking, and that no conscious activation action is required. The advantages of the invention are increased wearing comfort and greater safety, as the risk of incorrect operation is reduced or eliminated.

79. The automatic control is then emphasised again in paragraph [0011], which states:

> *"[…] This enables automatic control of the joint as a whole, without the user of the orthopaedic device having to consciously perform an action that deviates from a natural sequence of movements."*

80. Paragraph [0012] emphasises that the prosthesis/orthosis wearer receives an orthopaedic device that adapts to the respective situation without the need for a lengthy period of adjustment to the extended functionality. In doing so, the patent at issue makes use of the fact that the relevant starting positions and walking situations exhibit a specific, significant load or sequence of loads, or sequence of parameters, which are suitable for forming criteria to activate special functions and to effect a corresponding change in the degrees of freedom, in particular in damping such as flexion damping and/or extension damping (para. [0012]).

81. Paragraph [0018] specifically addresses the different walking situation of climbing stairs with an orthopaedic device. It states:

> *"[…] When climbing stairs with an orthopaedic device, it has been shown that during walking, the lower leg provides reliable signals directed backwards, i.e. against the direction of walking*

provides reliable signals. In this case, the knee is positioned significantly ahead of the ankle joint in the direction of travel."

82. It is clear here that the patent at issue deals in particular with walking situations of prosthesis wearers, i.e. it does not merely summarise parameters of walking situations as they occur in people who do not use an orthopaedic device. Even though the movement patterns of prosthesis wearers cannot be equated entirely with those of people without this disability, due to the loss of certain muscle groups, it can nevertheless be inferred from the specification of the contested patent that, when determining parameters, it is based as closely as possible on normal movement patterns. Thus, paragraph [0019] states, regarding the purpose of summarising several parameters, that this is intended to take account of the fact that alternating stair climbing may involve different walking speeds, positions, or may begin with either the prosthetic or non-prosthetic leg. This reflects various everyday conditions, which are intended to enable the user to achieve automatic control or movement.

83. This understanding also runs through the specific part of the description.

84. Paragraph [0048] states:

"[…] Whereas previously the solution involved performing particularly distinctive movements to activate a special function S—for example, rocking the forefoot several times—the present method allows the damping behaviour to be automatically adapted to the current walking situation."

85. The embodiment described in paragraph [0038] also deals with climbing stairs. Provided that active hip flexion supports passive knee flexion here, as indicated by arrow 7 in Figure 2, whereby a (slight) backward movement of the prosthetic foot is also mentioned here as a suitable detection parameter, this embodiment captures the natural sequence of movements of a prosthesis wearer upon reaching the next higher step. The slight backward movement is due to the fact that, in the absence of existing musculature in the passive knee joint, this could buckle as a result of the hip movement. However, neither the arrow movements in Figure 2 nor the descriptions in paragraph [0038] indicate that this is a conscious and distinct activation movement or even a swinging/stepping movement. The movement depicted falls within the natural range of motion possible for a prosthesis wearer.

86. All the descriptions in the patent at issue therefore show that the criteria correspond to a natural pattern and, in contrast to the prior art, emphasise in various places that no unusual movement sequences are necessary to activate the special function, but rather that 'intuitive control', 'automatic control' or 'automatic adjustment' takes place. The

summary of the parameters into criteria for comparison with the recorded parameters is, after all, not described as optional anywhere.

cc) Infringement

87. On the basis of such an understanding, the Court is currently unable to establish with the certainty required for the granting of a provisional order that the contested embodiment constitutes an essential means which is objectively suitable for carrying out the limited claim 1 of the patent at issue. The court cannot establish that the contested embodiment performs the process step in feature 1.2b). It is not apparent that criteria are stored in the computer unit of the contested embodiment which summarise parameters reflecting a sequence of movements that is typical for prosthesis wearers and is oriented as closely as possible to a natural movement pattern of climbing stairs.

88. To initiate the alternating stair-climbing function, the stance mode is first provided, in which the knee, thigh and calf are positioned almost vertically; following this, two successive partial movements must occur: a gliding movement backwards that extends the hip, and a rapid forward movement that flexes the hip (rapid high-knee). These movements are referred to as a ‘donkey kick’ and trigger the flexion of the knee joint in the embodiment described. The video submitted to the file (Annex KAP 32) shows that this movement appears like a kick backwards before the supported leg can be lifted onto the step. This is a deliberate and distinctive initial movement which does not suggest intuitive control by the wearer. An infringement is therefore ruled out.

89. Insofar as the applicant further relies on the fact that the instructions for use (Annex KAP 12) of the contested embodiment indicate that each subsequent step requires less effort to initiate the ascent of the stairs step by step, this argument also fails to support her application.

90. She submitted the video as Annex KAP 33 to illustrate the alternating ascent of several steps. The respondents objected that these triggering movements did not differ qualitatively from the initial triggering movements. Triggering movements occurring in close succession still required rapid backward movements of the foot. Rather, the only requirement waived is that the user must remain in the stance phase for 0.5 seconds. Furthermore, experienced users are more likely to conceal movements that are unusual in this respect. Taking into account the documents and videos submitted, the Board cannot determine whether the summarised movement parameters for alternating stair climbing, once commenced, constitute movements typical for prosthesis wearers. A backward movement of the foot, comparable to a kick, is still discernible. In particular, the Board is unable to establish with the conviction required for the issuance of an order whether this already constitutes a typical movement of a prosthesis wearer, which thereby already enables intuitive control of the knee joint and therefore merely represents a poorer execution of the method step according to the contested patent.

2. Further discussion of infringement and the legal position

91. As it is not relevant to the decision, no further comments are required on the interpretation and implementation of the remaining features of the limited method claim 1 or on the legal position.

III. Necessity of provisional measures and balancing of interests

92. Pursuant to Art. 62(2) of the UPC Agreement and R. 211.3 of the RoP, the court shall, at its discretion, weigh up the interests of the parties against one another, taking into account in particular the potential damage that would be caused to one of the parties by the granting or refusal of interim measures.

93. According to the RoP, both temporal and factual circumstances are relevant to the necessity of ordering provisional measures. The relevance of temporal circumstances arises from Rule 209.2(b) of the RoP ('Urgency') and, in particular, from Rule 211.4 of the RoP, according to which the court takes into account any undue delay in applying for interim measures. The fact that factual circumstances must also be taken into account in the decision on the order of interim measures follows, for example, from Rule 211.3 of the RoP, according to which, when deciding on the application for an order, particular consideration must also be given to the potential damage that may be incurred by the applicant. By contrast, potential harm to the defendant must be taken into account in the balancing of interests (UPC_CFI_2/2023 (LD Munich), Order of 19 September 2023, p. 84 – Nanostring v. 10x Genomics; UPC_CFI_452/2023 (LD Düsseldorf), Order of 9 April 2024, p. 27 – Ortovox v. Mammut).

1. Unreasonable delay

94. In the present case, it cannot be ruled out that the applicant has waited an unreasonable amount of time before submitting its application, thereby removing the urgency, which – for the reasons explained in more detail below – is to the detriment of the applicant.

a) Principles

95. When balancing the interests, the court takes into account any undue delay in applying for interim measures pursuant to Rule 211.4 of the RoP in conjunction with Rule 209.1(b) of the RoP. This is based on the fact that the patent holder, through his conduct, demonstrates that the enforcement of his rights is no longer urgent for him. In such a situation, there is no need to order provisional measures.

96. The temporal urgency required for the ordering of provisional measures is lacking only if the injured party has pursued its claims so negligently and hesitantly that it can objectively be assumed that it has no interest in the rapid enforcement of its rights and it therefore does not appear appropriate to order provisional measures (UPC_CFI_347/2024 (LD Düsseldorf), Order of 31 October 2024, p. 42 – Magna v. Valeo; see also UPC_CFI 2/2023 (Munich Division), Order of 19 September 2023 – 10x Genomics v. Nanostring; UPC_CFI_452/2024 (LD Düsseldorf), Order of 9 April 2024, p. 27, para. 126 – Ortovox v. Mammut; UPC_CFI_151/2024 (LD Hamburg), order of 3 June 2024 – Ballinno v. UEFA).

97. Pursuant to Rule 213.2 of the RoP, the Court may, in the course of its decision-making, request the applicant to submit all evidence at its disposal in order to satisfy itself that the applicant is entitled to initiate proceedings under Article 47 of the UPC Agreement, that the patent in question is valid, and that its rights are being infringed or are at risk of being infringed. In summary proceedings, the applicant must generally respond to such an order within a short time limit, which requires adequate preparation for the proceedings. The applicant must therefore only apply to the court if he has reliable knowledge of all the facts that make legal action in the proceedings for interim measures appear promising, and if he can substantiate these facts. They may prepare for all possible procedural scenarios that may arise from the circumstances in such a way that, upon the court's order, they can submit the requested information and documents and successfully rebut the opposing party's arguments. In principle, the applicant cannot be required to conduct the necessary investigations only during the course of the proceedings and, where necessary, to obtain the required documents retrospectively. On the other hand, the applicant must not unnecessarily delay the proceedings. As soon as he becomes aware of the alleged infringement, he must investigate it, take the necessary steps to clarify the matter and obtain the documents required to substantiate his claims. In doing so, they must carefully initiate and complete the necessary steps at every stage (UPC_CFI_452/2023 (LD Düsseldorf), Order of 9 April 2024, para. 128 – Ortovox v. Mammut; UPC_CFI_151/2024 (Hamburg LD), Order of 3 June 2024 – Ballinno v. UEFA; UPC_CFI_347/2024 (Düsseldorf LD), Order of 31 October 2024, p. 42 – Magna v. Valeo).

98. On this basis, the time limit within the meaning of Rule 211.4 of the RoP is to be calculated from the date on which the applicant knew or ought to have known of the infringement, which would have enabled the applicant to file a promising application for provisional measures pursuant to Rule 206.2 of the RoP. Whether a delay within the meaning of Rule 211.4 of the RoP is unreasonable depends on the circumstances of the individual case (UPC_CoA_182/2024, Order of 25 September 2024, paras. 228 and 232 – Mammut v. Ortovox; UPC_CFI_347/2024 (LD Düsseldorf), Order of 31 October 2024, p. 42 – Magna v. Va-leo). Ultimately, it must always be examined whether the applicant's conduct as a whole justifies the conclusion that the enforcement of their rights is not urgent.

b) Application to the present case

99. On the basis of these principles, it cannot be ruled out that the applicant's conduct in the present case was unduly hesitant, because, given all the circumstances, she should have known at an earlier stage that the contested embodiment could potentially infringe the patent at issue, and she could therefore have made more prompt efforts to clarify the facts of the case.

100. The applicant generally bears the burden of proving that it became aware of the existence of the contested embodiment, the potential infringement, and that it acted promptly to investigate the matter. The relevant period extends from the time of becoming aware of the contested embodiment as a potentially infringing product until all the facts and evidence required to substantiate the full facts of the infringement have been obtained. It must be assumed that the applicant should have been aware of the potentially infringing product if, according to the conventional understanding

and the ordinary course of events, the applicant should have been aware of the potentially infringing characteristics. This is followed by the duty to continue to investigate the facts of the case expeditiously. In this regard, all the circumstances of the individual case are relevant. The respondents bear the burden of proof and presentation regarding the indications from which it can be inferred that they must have been aware of the matter at an earlier stage and from which hesitant conduct can be inferred. If such indications are substantiated by the respondents, it is then up to the applicant to rebut them or to explain why she could not have been aware of them and why she acted with sufficient speed in this respect. The applicant has not succeeded in doing the latter.

101. The applicant had been monitoring the market since the beginning of 2025. It is true that the applicant rightly argues that any product launches in China and the presentations in the USA at the end of 2024/beginning of 2025 are not relevant to the design of the contested embodiment, as these products were not available on the European market until spring 2025. However, this does not alter the fact that the applicant had already developed an awareness of the contested embodiment. This is also evidenced by the written statement from Mr [Name] (Annex KAP 37), an employee of Otto Bock Healthcare Products GmbH who is entrusted with the Ottobock Group's entire lower limb prosthetics portfolio. Thus, an initial internal enquiry regarding the procurement of the contested embodiment had already been made to Ottobock Health Care Germany in January 2025. Ottobock Health Care Germany is the sales organisation within the Ottobock Group responsible for purchasing and sales. This attempt at procurement was unsuccessful.

102. The applicant had been aware of the launch of the contested embodiment in Europe since the Expolife trade fair in Kassel in March 2025. It is undisputed that a discussion took place between Mr [Name], who was responsible for strategic purchasing of the prosthetics product group at the applicant, and the employees of the respondents regarding the contested embodiment. In favour of the applicant, it may be assumed here that Mr

did not report any technical details to the applicant (see Annex KAP 40). In response to the respondents' justified objection that Mr [Name] certainly reports his observations of new products at trade fairs to the applicant, the applicant has not commented either on any reporting obligations or on the flow of information to the relevant organisational units within its corporate structure.

103. At the latest, however, following the trade fair in Stockholm in June 2025, at which an exchange took place between WJT and the Ottobock employee , the applicant must have obtained sufficient technical information to further investigate the potential infringement and to commence the procurement of an infringed embodiment.

104. Herr (name) is Head of the Orthopaedic Technology Vienna department at Ottobock Healthcare Products GmbH. The latter is a subsidiary of the applicant,where the Ottobock Group's IP-related activities and development processes are based. At the oral hearing, the applicant neither objected to this description of the company's business, which the court had set out for the parties in its introduction, on the grounds that it was incorrect, nor did it comment on it in any other way. Mr Her (name) at, as a member of the research and development team who was also entrusted with the development of the allegedly directly competing product (Genium X4), saw the contested embodiment

at the trade fair. Even though, according to his witness statement (Exhibit QE 49), no technical implementation of individual functions was discussed and he could not recall any discussion of a 'walk-to-run' function (which is not at issue here), he essentially took note of the technical design of the contested embodiment at the time. Even if one assumes, in favour of the applicant, that not all functionalities were discussed in detail, it stands to reason that he he (also) passed on his understanding of the contested embodiment to those responsible for intellectual property. The applicant makes no submissions on this point. In particular, it does not explain why, from that point onwards, it did not have sufficient information to investigate the suspected infringement of the patent at issue further and to initiate a purchase. It does not specify any date or period from which it specifically attempted again to procure the contested embodiment (following the unsuccessful attempt in January 2025).

105. In this context, the respondents have provided further evidence as to why the applicant must have been aware of the full alleged facts of the infringement at an earlier stage and acted hesitantly in this respect:

106. The user manual, which explains the function of alternating stair climbing at issue and which the claimant submitted as Annex KAP 12, was available on the WJT website from May 2025. The claimant has not commented on this either, as to whether, when or how it became aware of this.

107. Furthermore, the respondents have demonstrated that, in the period from early July 2025 to late August 2025, various certifications of specialists for the contested embodiment took place in companies belonging to the applicant's own supply network. In August 2025, an adjustment was even carried out on a patient. In this respect, the applicant could have undertaken or attempted to obtain or conduct further investigations within its own network.

108. The applicant is unable to demonstrate whether it attempted this at all and, if so, when or why any such attempts failed. Her initial objection that the acquisition of the contested embodiment was not readily possible, but could only be carried out by trained, manufacturer-certified orthopaedic technicians within a medical supply centre, does not hold water in this respect, because such trained specialists were available within her own supply network. The applicant further unsuccessfully falls back on the general argument that acquisition without a genuine patient connection within the healthcare system is not possible without considerable effort. Creating a fake profile is said to be time-consuming and requires third parties to ultimately lie on the applicant's behalf. However, the applicant does not specify when and how she undertook such efforts. Rather, it can be inferred from the written witness statement of Mr [Name] (Annex KAP 37) that the 'procurement' process only began on 22 September 2026.

109. Insofar as the applicant withdrew during the oral hearing, stating that she would not disclose the identity and details of the person who ultimately organised the procurement for her because that person had suffered disadvantages in their business activities as a result, this is not strictly necessary. Firstly, for a substantiated counter-argument as to why she was unable to acquire and further examine the contested embodiment between June 2025 and September 2025, it would have sufficed merely to describe her efforts and why these failed. This has not

not been done. Even if a specific third party would have had to be named in the event of further denial by the respondents, the Rules of Procedure provide for corresponding confidentiality Rules which can reduce the circle of persons with access to confidential information among the respondents to a minimum. In this respect, the applicant's silence works to its disadvantage.

110. After all, she no longer disputed that the acquisition via Innteo GmbH took place in October 2025 and that, at that time, no orthopaedic technician was certified there for the contested embodiment, which in any case undermines the persuasiveness of her argument based on the necessity of certification.

111. The applicant was therefore unable, on the whole, to explain why it should not already have been aware of the potentially infringing characteristics at the beginning of July 2025 and should have sought to acquire the licence from that point onwards. It does not state what steps it took, nor why – if it did not act during the summer months – it was not required to do so. In view of all the circumstances as a whole, the court cannot rule out that the applicant should have attempted, from the beginning of July 2025, to further clarify the potential infringement or to acquire a contested embodiment. Even if one assumes, in the applicant's favour, that further investigations were necessary after acquisition and were also carried out promptly, the applicant could and should have filed the application with the court by mid- to late October 2025 at the latest, not only in mid-December 2025. Therefore, hesitant conduct cannot be ruled out.

2. Objective necessity and balancing of interests in the strict sense

112. In the absence of a finding of infringement and of time pressure, no further comments are required regarding objective necessity and the balancing of interests in the strict sense.

IV. No correction of the heading

113. The court sees no grounds for a correction of the heading.

114. The claimant rightly appeals that, taking all the circumstances into account, the respondents have, in the course of legal transactions, created the legal impression that the second respondent is a separate legal entity. Thus, the first respondent appears as the manufacturer with its address on the product packaging, whilst the name of the second respondent is marked only as TM (trademark) (Exhibit KAP 3). Both respondents are listed in the instructions for use (Annex KAP 12) and the address details are not entirely identical (Suite A; Suite A/B). All in all, the overall circumstances weigh against the respondents, as the (legal) identity of both is not clearly apparent in legal transactions. There is therefore no scope for a correction of the heading.

V. Provisional reimbursement of costs

115. Pursuant to Art. 69 of the UPC Agreement in conjunction with Rule 211.1(d) of the RoP, the respondents may request a provisional reimbursement of costs.

116. A provisional order for costs in favour of the defendant may also be made. The fact that Rule 211.1(d) of the RoP, unlike Rule 150.2 RoP, does not expressly provide for a provisional order for costs in favour of the successful party does not preclude this, but is justified on grounds of equality of arms. This enables the successful party to provisionally recover at least part of the costs incurred from the unsuccessful party until the subsequent separate proceedings for a decision on costs pursuant to R. 150 et seq. RoP has commenced and been finally concluded (see UPC_CoA_317/2025, Order of 28 November 2025, Barco v Yealink, para. 96 et seq.).

117. The respondents have calculated their provisionally claimed costs in accordance with the Lawyers' Fees Act. There are no objections to this.

VI. Costs

118. A decision on the basis for costs must be made. This follows the guidelines of the Court of Appeal, according to which a decision on the basis for costs is to be issued in proceedings for the granting of provisional measures conducted inter partes (UPC_CoA_523/2024, Order of 3 March 2025, para. 117 – Sumi Agro v. Syngenta). Pursuant to Article 69(1) of the UPC Agreement, the reasonable and proportionate costs of the proceedings and other expenses of the successful party are, in principle, to be borne by the unsuccessful party, unless equity dictates otherwise. Therefore, in the present case, the applicant is liable for the costs.

ORDER:

I. The application for provisional measures is dismissed.

II. The costs of the proceedings are to be borne by the applicant.

III. The applicant shall pay provisional costs of €18,150.00 to the respondents within 30 days of service of the order on the applicant.

IV. The value in dispute is set at €1,500,000.00.

Düsseldorf, 7 May 2026 NAMES

AND SIGNATURES

Presiding Judge Dr Thom	
Legally qualified judge Dr Rinken	
Legally qualified judge Agergaard	
Technically qualified judge Michels	
For the Deputy-Registrar	

Information regarding the appeal:

The unsuccessful party may appeal against this order within 15 days of its service (Art. 73(2)(a), 62 UPC Agreement, R. 220.1(c), 224.2(b) RoP).

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

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