Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Hamburg - Local Division

UPC_CFI_553/2025
Order of the Court of
First Instance of the Unified Patent Court
delivered on 20/05/2026

HEADNOTES:

1. An obligation to refrain from an act also requires a permanent compliance with effective measurements to ensure that the compliance is uninterrupted and permanent, R. 354.4 RoP.

2. It is a general rule, that a defendant is obliged to control third-parties which it assigns tasks to or which it grants the possibility to execute changes on behalf of the defendant [here: update of a website].

3. If a defendant uses the marketing platform of a third party and provides the content for it, it is the defendant's obligation to make sure that the contents of that platform, even when automatically translated do not lead to a non-compliance with a court order.

4. A disclaimer is not sufficient – regardless of the dispute around its readability – when its content is contradicted by other information on the website or by a subsequent communication.

KEYWORDS:

Art. 82 (4) UPCA; R. 354.4 RoP; Penalty payments; Non-compliance; Disclaimer.

APPLICANT

Occlutech GmbH (Applicant) - Winzerlaer Str. 2 - 08845 - Jena - DE	Represented by Dr. Peter Koch

DEFENDANTS

1)	**Lepu Medcial Technology (Bejing) Co., Ltd.** (Defendant 1) - 37 Chaoqian Road - 102200 - Changping District, Beijing - CN	Represented by Dr. Ralph Nack
2)	**Lepu Medical (Europe) Cooperatief U.A.** (Defendant 2) - Abe Lenstra Boulevard 36 - 8448 JB - Heerenveen - NL	Represented by Dr. Ralph Nack

PATENT AT ISSUE

Patent no.	*Proprietor/s*
EP2387951	**Occlutech GmbH**

SUBJECT-MATTER OF THE PROCEEDINGS

Request for Order of Penalty Payment according to Art. 82 (4) UPCA, R. 354.4 RoP

LANGUAGE OF THE PROCEEDINGS

English

PANEL

Panel of the Local Division in Hamburg

DECIDING JUDGES

This order has been issued by the presiding judge Sabine Klepsch, the legally qualified judge and judge-rapporteur Dr. Stefan Schilling and the legally qualified judge Samuel Granata.

SHORT SUMMARY OF FACTS

1 The Applicant filed an application for preliminary measures against the Defendants for the infringement of its patent EP 2 387 951 on 18 June 2025, after the Defendants had announced CE-mark approval for two occlusion devices in April and May 2025 (for the VSD in the week of 31 March to 4 April and for the ASD mid-May 2025).

2 The Applicant asserted claims against the Defendants for direct infringement of independent claim 1 of the European patent EP 2 387 951 B1 (hereinafter “the patent”) protecting a braided occlusion device. The patent relates to the field of braided

implantable medical devices, as well as methods for manufacturing such devices. More particularly the invention relates to braided occlusion devices (para. [0001]).

3 With its Final Order of 21 October 2025, the Hamburg Local Division found that the attacked embodiments more likely than not infringe the patent in suit and ordered pursuant to operative part I. and II. the following:

> *I. The Defendants are ordered to cease and desist from*
>
> *Offering, placing on the market or using, or importing or storing for those purposes within the territory of Germany, France, Italy, Netherlands and Ireland*
>
> *A medical implantable occlusion device, having a collapsed state and an expanded state and comprising*
>
> *a braiding of at least one thread,*
>
> *a distal end comprised of said braiding,*
>
> *wherein said distal end comprises loops formed by loop strands of said at least one thread, wherein, at least in said expanded state, each loop strand having a curved shape and extending away from a centre point of said distal end, whereby an apex point of each of said loop strands corresponds to the turning point of said curved shape and to the point of each of said loop strands being arranged closest to said centre point, and wherein at least one of said loop strands is displaced from said centre point by a centre distance such that the location of said apex point is different from said centre point, and wherein said apex points lie at a distance from a periphery of said distal end,*
>
> *characterised in that said distal end is closed by a plurality of centre strands of said braiding crossing each other at said centre point.*
>
> *II. If Defendants fail to comply with the order according to item I., the Defendants are ordered to pay to the Court a penalty payment of up to EUR 250.000 for each individual case of non-compliance (R. 354.3 RoP), if need be repeatedly.*

4 On 6 November 2025 the Applicant notified the Court that it intends to enforce the order in full. The enforceable copy of the Final Order has been served on the Defendants on 17 November 2025 (cf. Exhibit 2).

5 With submission 2 March 2026 the Applicant requests the ordering of a penalty payment due to non-compliance in at least three proven individual cases with the Final Order of 21 October 2025.

6 The Applicant asserts that the Defendants continue to advertise (i.e. offer) their occlusion devices via their website (in English), through a B2B-marketplace, and directly via email, all of which would constitute an “offering” within the meaning of Art. 25(a) UPCA. According to the Applicant these actions qualify as contempt of the Court and its Order (R. 354.4 RoP).

7 An Appeal against the Final Order was lodged by the Defendants on 6 November 2025, but subsequently a withdrawal was filed on 30 April 2026 and the appeals case was closed on 6 May 2026.

8 Upon request by the judge-rapporteur after it has become known to the Court of First Instance that the Defendants have withdrawn their Appeal against the Final Order of 21 October 2025, the Applicant clarified that it maintains its request for the ordering of a penalty.

POINTS AT DISPUTE

The parties disagree on the legal consequences for the three asserted cases of non-compliance. The main issues to be assessed are whether (i) a temporary disabling of a disclaimer on the homepage, (ii) the fact that a third party platform (MedicalExpo) provides for automatic translation into German, and (iii) the fact that a possibly the order infringing communication was initiated by an inquiry on behalf of the Applicant itself infringe the Final Order of 21 October 2025.

The Applicant's position

9 As a first act of non-compliance, the Applicant asserts that Defendant 1 was continuously offering through its company website its „MemoCarna® Atrial Septal Defect (ASD) Occluder" on its publicly accessible website in English, accessible within inter alia in Germany (cf. Screenshot of the website as accessed on 2 March 2026, as Exhibit 3).

10 Based on the Defendant's response the Applicant considers it being an undisputed fact, that the Defendants have offered the infringing products in non-compliance with the Order through their company website at least in the period of 2 December 2025 to 2 March 2026 (filing of Penalty Application), thus for several months. The explanation that a disclaimer was removed because of an alleged update of the website by the service provider, where no cause or apparent reason for the update was presented, is deemed by the Applicant being highly questionable, in particular if the excuse for non-compliance is shifted on a third party, however under the instruction and control of the Defendants.

11 The Applicant is of the opinion that the product page constitutes an offering in the meaning of the Order. That is because it presents the device under its commercial name, highlights technical features, describes its composition, specifies medical indications, and provides detailed ordering information including catalogue numbers and size dimensions. Crucially, the website contains a prominently placed "Enquire Now" function and contact form through which interested customers can directly submit inquiries, combined with an express invitation to email the company for further information. The website further contains "Ordering Information".

12 As a second act of non-compliance, the Applicant refers to the fact that Defendants participate in the "B2B-platform Medical Expo Connect". MedicalExpo is a platform designed for medical manufacturers and distributors to showcase their expertise in the

industry. By accessing the respective advertisement for the „MemoCarna“-products through the link https://www.medicalexpo.com/prod/lepu-medical/product-95737-987424.html, potential customers are brought into contact with the Defendants.

13 In addition, which according to the Applicant constitutes the third act of non-compliance, the Defendants are also offering their products directly via email as they are actively seeking distribution partners in Europe. That is because, upon engagement through the marketplace “MedicalEXPO”, the Key Account Manager covering Europe of Defendant 1 responded to the Applicant’s representative and expressed that the Defendant 1 is actively seeking partner across Europe. According to the Applicant this was creating the impression that its CE-marked products (including the “MemoCarna ASD/VSD”) can be sold in Europe (without restrictions). In a further response, the Defendant 1 even confirmed that both Memo Carna ASD & VSD would be commercially available in Europe.

14 The Applicant is of the opinion that the Defendants have not disputed to have engaged in active sales communication with the Applicant’s representative, actively seeking distributors for the infringing products in Europe, without excluding any countries whatsoever in their communication. That they are disputing the nature of the offer and claiming an alleged “bad faith” inquiry, is at best a misinterpretation of the law. Where a German language website is showing and advertising the infringing products (in German) it is inviting users to obtain prices and offers. Without immediately blocking the request, such a measure is not sufficient. In fact, use of such a request has led to the correspondence with the Key Account Manager of the Defendant as described.

15 In addition, the Defendants are (still) using a German language website (MedicalExpo) to create a demand for the infringing products and create opportunity for a non-public communication, that has led – proven through the Email correspondence – to an active sales/marketing discussion. The disclaimer provided is according to the Applicant not suitable seen in context with the overall offer. Based on at least German national case law, “an effective disclaimer must be clear and unambiguous in its wording and, based on its presentation, must be perceived as sincere. Furthermore, the disclaimer is only relevant if the advertiser actually complies with it”. These conditions are not met in the present case. The disclaimer is clearly not meant to be taken seriously, as the overall listing on MedicalExpo clearly contradicts the disclaimer, as a display of the product and description in German and the active invitation to potential distributors to request ‘information, prices or an offer’, in German show. In addition, no immediate geo-blocking was provided, but instead it was provided to provide a query for an offer.

16 Furthermore, contrary to the Defendants’ assertion no instruction to erase certain information was made or is apparent from the Exhibit D-P 5. Instead, Exhibit D-P 5 clearly shows that the content on MedicalExpo was created and uploaded by the Defendant.

17 The Applicant is of the opinion that there should be no question that the conduct of the Defendants qualifies as “offering”, which the CoA had clarified that it must be interpreted autonomously and understood in an economic sense. It regards the nature and scope of the infringement to weigh heavily and the degree of fault being significant.

18 Balancing all relevant factors — the high economic value of the patent, the structured and intentional character of the infringement, the significant competitive risk, and the need to preserve the market status quo — the Applicant considers a penalty close to the statutory maximum being proportionate.

The Defendant's position

19 The Defendants assert to have immediately after service of the Order, instituted comprehensive compliance mechanisms. An internal compliance circular was issued, expressly banning all MemoCarna marketing, sales, or shipment to Germany, France, Italy, the Netherlands, or Ireland. They point out that not a single unit of MemoCarna products has been shipped, sold, offered to or otherwise provided within the five countries, nor to any other European country.

20 They argue that the company website run by Defendant 2 and MedicalExpo pages were amended to include disclaimers clarifying that the Memocarna products are not available in the five countries. With respect to their own website, they argue to have promptly activated a disclaimer and catalogue notice on their website stating that MemoCarna products are "NOT AVAILABLE in DE/FR/IT/NL/IE", which, effective from 7 November 2025, informed and continues to inform users that MemoCarna products are not available to customers in the five countries (exhibit D-P-3). In addition, online ordering functions were geo-blocked for IP addresses originating from these territories. In particular, Defendants implemented geo-blocking for any purchase options on third party platforms with regard to MemoCarna products, e.g., alibaba.com.

21 According to the Defendants, due to interference of a misaligned third-party service provider, the disclaimer from the website was intermittently removed without any error on the side of Defendants. On 2 December 2025, Defendant 2's website received an update through the third-party web development services provider. Unaware of the Defendants' previous manual upload of the disclaimer on 7 November 2025 the update re-instated the original data without a disclaimer (Exhibit D-P 7). They are of the opinion that there is no reason to assume that future removal of the disclaimer is likely, as the temporary removal was due to a one-time misalignment with a third-party service provider that has now been cleared.

22 Defendants claim to have issued a formal written instruction to MedicalExpo on 27 January 2026 to erase any reference to MemoCarna sales into Europe and rely on exhibit D-P-5. They are of the opinion that a carve-out of any German-language version would effectively mean that Defendants need to leave MedicalExpo in full, given its fixed architecture with automated translations based on the origin of the IP-address of the respective user. Given the market power of MedicalExpo this would again mean to give up very significant portions of the world market, far exceeding the scope of the patent protected countries.

23 As far as the Applicant further invokes the MedicalExpo listing shown in Exhibit C 4 this listing was not created by the Defendants, but by MedicalExpo's automatic content enrichment team based on information provided by the Defendants (Exhibit D-P-2 and

5). The disclaimer is visible even in the Applicant's exhibit C 4 and only blurry due to the poor quality of the copy provided by Applicant, which may or may not be intentional. The disclaimer, however, was uploaded and implemented on the MedicalExpo platform on 7 November 2025. The purchase option on this platform has been disabled for all Five States through geo-blocking.

24 With respect to the communication initiated through the MedicalExpo platform the correspondence the Defendants claim that this is rooted in a bad faith inquiry. The relevant listing and its automated confirmation contain an explicit disclaimer that the MemoCarna products are not available in any of the five States. The subsequent behaviour by Defendant 2's key account manager does not counteract the disclaimer. That is because, she supplied a catalogue for MemoPart products, which are not covered by the Order. As the correspondence started with the disclaimer, the following statements cannot be understood to mean that "cardiac occluders" would include MemoCarna products or that "CE certifications" would confirm availability of MemoCarne products in the five countries.

25 Finally, the Defendants argue that even if the Court were to find some technical lapse, there have been zero sales of MemoCarna products to Europe, let alone the five States, since the Order was rendered.

26 Regarding any additional arguments brought forward by the parties' reference is made to the submissions of the parties.

REQUESTS BY THE PARTIES

27 The Applicant requests

A. The Defendants are held in contempt of the Final Order of this Court dated 21 October 2025, UPC_CFI_553/2025 (hereinafter "the Order") for non-compliance with the requirements set by this Court in I. and II. of the Order.

B. The Defendants are ordered to pay to the Court a penalty in the amount of up to EUR 250.000 for non-compliance with the Order pursuant to R. 354.4 RoP, the exact amount to be determined at the Court's discretion, payable to the Court within two weeks from the date of service of this order.

C. The Defendants are ordered to pay to the Court a recurring penalty of up to EUR 25.000 per day for any further non-compliance with the Order pursuant to R. 354.3 RoP, the exact amount to be determined at the Court's discretion.

D. The Defendants are ordered to pay the costs of the proceedings.

E. These orders are immediately effective and enforceable.

28 The Defendants request

I. The Request for an Order of Penalty Payment is dismissed.

II. Applicant bears Defendants' reasonable and proportionate legal costs and other expenses in connection with the present proceedings. This order is directly enforceable.

III. In the alternative: a date for an oral hearing on Applicant's Request for Order of Penalty Payment is set.

GROUNDS FOR THE ORDER

29 The application is successful on the merits.

1. General rules of enforcement

30 Pursuant to Rule 354.3 RoP, decisions and orders of the Court may, in the event that a party fails to comply with the provisions of the order or a previous order, provide for repeated penalty payments payable to the Court. The amount of these payments is to be determined by the Court in light of the significance of the order in question (Court of Appeal, UPC_CoA_845/2024, order of 30 May 2025, para. 31 – Belkin v. Philips).

31 If a claimant alleges that a defendant has not or not timely complied with a penalty-reinforced order, a penalty does not become automatically payable, but the claimant must request the Court who issued such order, to order the defendant to pay the penalty sum forfeited (Court of Appeal, UPC_CoA_699/2025, order of 14 October 2025, para. 42 – Kodak v. Fujifilm).

32 Notwithstanding the fact that Rule 118(8), first sentence, RoP does not apply to proceedings for the granting of preliminary measures (Court of Appeal, UPC_CoA_699/2025, order of 14 October 2025, para. 38 – Kodak v. Fujifilm), these proceedings also require the prior imposition of coercive measures. It follows from the wording 'determination of the penalty payments provided for in the court order' in Rule 354.4 RoP that any court order for the payment of a penalty payment in enforcement proceedings under this rule must be based on a prior warning contained either in the operative part of the main decision or order or in a separate order or decision on this matter (Court of Appeal, UPC_CoA_699/2025, Order of 14 October 2025, para. 41 – Kodak v Fujifilm).

33 In the present proceedings for provisional measures such a warning had already been included in section II. of the operative part of the Final Order of 21 October 2025. If the penalty reinforced order is contained in an order for provisional measures, like in the present case, according to the case law of the CoA R. 118.8 RoP does not apply, and thus the time period for compliance with such a penalty reinforced order starts upon service of the order for provisional measures on the defendant (Court of Appeal, UPC_CoA_699/2025, Order of 14 October 2025, para. 46 – Kodak v Fujifilm). The enforcement was not made subject to a security pursuant to R. 211.5 RoP in the present case, either. Hence, the time period for compliance commenced on 21 October 2025, which is the date of the upload of the Final Order into the CMS.

2. Non-compliance

34 The Defendants did not comply to the Final Order in the extend necessary, which is a full and permanent compliance, until the order is lifted or otherwise becomes ineffective.

35 The burden of proof that a penalty reinforced order has been fully and timely complied with lies with the defendant, since the evidence concerns information within the defendant's own sphere which is not accessible to the claimant (Court of Appeal, UPC_CoA_699/2025, Order of 14 October 2025, para. 43 – Kodak v Fujifilm). In the absence of any indication to the contrary, the obligation to refrain from an act which has created a continuing disturbance must generally be interpreted as encompassing not only the refraining from such acts, but also the performance of any feasible and reasonable acts necessary to remedy the disturbance. An obligation to refrain from an act is not limited to mere inaction but also encompasses the performance of acts to remedy a previously created disturbance, if compliance with the injunction can be achieved solely by such means (LD Düsseldorf, Order of 18. October 2023 – UPC_CFI_177/2023). In addition, the obligation also requires a permanent compliance with effective measurements to ensure that the compliance is uninterrupted and permanent.

36 The facts on which the Applicant's request is based are mainly undisputed.

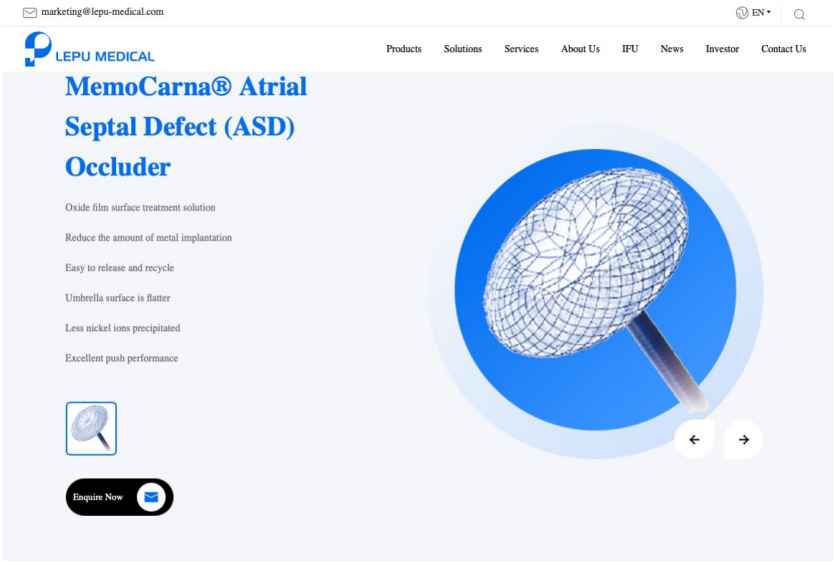
a) Defendant 2's Website

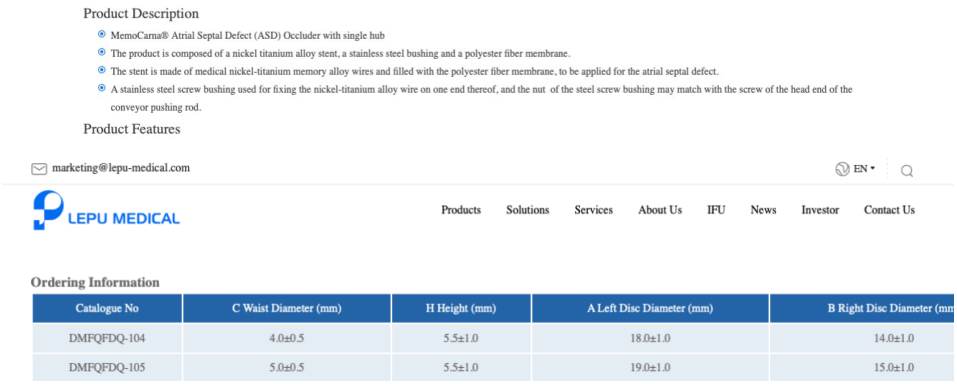
37 It is undisputed that the Defendants jointly continued to offer the attacked embodiments through Defendant 2's website, accessible within inter alia in Germany (cf. Screenshot of the website as accessed on 2 March 2026, as Exhibit 3), at least in the period of 2 December 2025 to 2 March 2026 (filing of Penalty Application), thus for 91 days.

38 This product page constitutes an offering within the meaning of Art. 25 UPCA. The CoA had already clarified in the Philips vs. Belkin case (UPC_CoA_534/2024, Decision of 3 October 2025, mn. 205) that the concept of "offering" within the meaning of Art. 25(a) UPCA must be interpreted autonomously. The prohibition on offering patent-infringing products is intended to cover acts occurring prior to the conclusion of contracts which may result in the patent holder losing business. Therefore, "offering" must be understood in an economic sense and should not be based on the legal concept of a binding contractual offer. It therefore need not contain all the details that would be necessary for the immediate conclusion of a contract through mere acceptance of the offer. It is sufficient to present an item in such a way that observers can make an offer to acquire it, e.g. to conclude a sale, hire or lease agreement. Thus, the "invitatio ad offerendum" is already covered. Consequently, the indication of a price is not required.

39 In the present case these criteria are fulfilled, because the website presented the device under its commercial name, highlights technical features, describes its composition, specifies medical indications, and provides detailed ordering information including catalogue numbers and size dimensions. In addition, the website contained a prominently placed "Enquire Now" function and contact form through which interested

customers can directly submit inquiries, combined with an express invitation to email the company for further information.





Catalogue No	C Waist Diameter (mm)	H Height (mm)	A Left Disc Diameter (mm)	B Right Disc Diameter (mm
DMFQFDQ-104	4.0±0.5	5.5±1.0	18.0±1.0	14.0±1.0
DMFQFDQ-105	5.0±0.5	5.5±1.0	19.0±1.0	15.0±1.0

40 Contrary to the Defendants' argumentation, the incident that the once installed disclaimer was removed because of an update of the website in question on 2 December 2025, does not contradict the finding that the Defendants acted negligently. The Defendants are responsible for the appearance of their own website at any time. If the Defendants previously manually uploaded a disclaimer on 7 November 2025, they remain responsible to instruct any third-party they assigned the tasks of web development services to. As Defendant 1 uses the website provided by Defendant 2, both bear this obligation. Hence, it is the Defendants' responsibility to instruct the third-party provider to maintain the disclaimer. It is a general rule, that a defendant is obliged to control third-parties which it assigns tasks to or when it grants the third-party the possibility to execute changes on behalf of the defendant. It remains the defendant's obligation to make sure that it and its affiliates or delegates comply with Orders of the Court.

41 As a result, the Defendants were in non-compliance with the order at least in the period of 2 December 2025 to 2 March 2026 (filing of Penalty Application), thus for 91 days as the website was offering the attacked embodiments without a disclaimer.

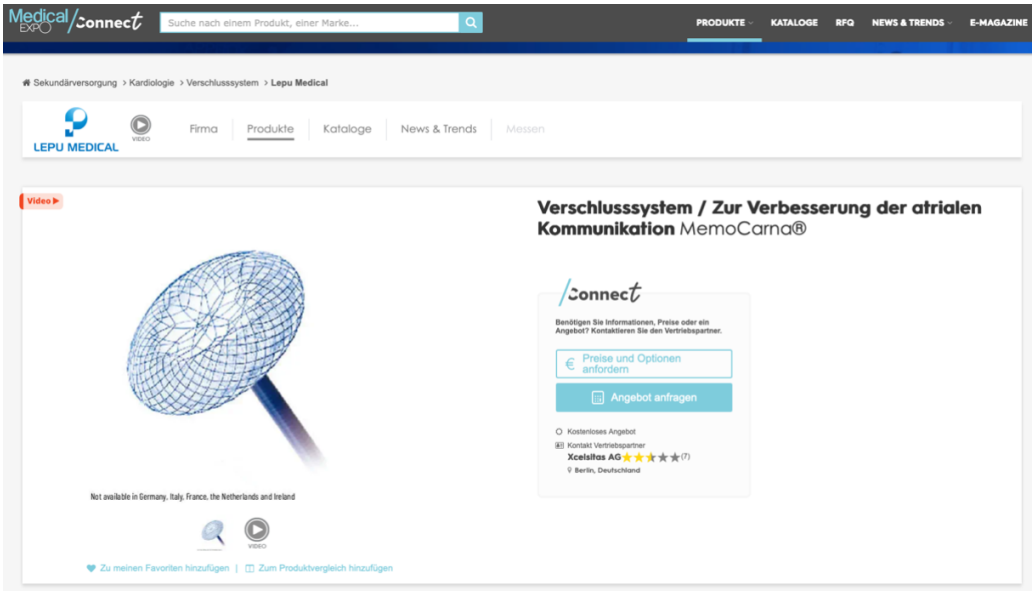
b) MedicalExpo platform

42 It is also undisputed that the Defendants participate in the "B2B-platform Medical Expo Connect", which is a platform designed for medical manufacturers and distributors to showcase their expertise in the industry. It is also undisputed that the listing on this platform was created by the Defendants themselves. This is, in fact, confirmed by exhibit D-P-5 submitted by the Defendants. Contrary to the Defendants' assertion, this document does not prove that the Defendants had issued a formal written instruction to MedicalExpo on 27 January 2026 to erase any reference to MemoCarna sales into Europe and rely on exhibit D-P-5; it simply confirms that the content originated from the Defendants.

43 As the Final Order already prohibits the offering of the products in question, it is not sufficient to implement geo-blocking measures to block the *purchase option* on this platform for all five countries in questions. That is because, offering and placing on the market are independent actions under Art. 25 UPCA and independently prohibited by the Final Order.

44 The Defendants' defence that the contents provided by them were in English and only automatically translated into German, is not relevant. The Defendants were aware (or had to be aware) that MedicalExpo uses an "automatic content enrichment tool" and automated translations based on the information provided by Defendants (Exhibit D-P 2 and 5). Hence, the Defendants were aware that there is a risk of explicitly addressing customers for example in Germany, despite of the Final Order ordering them to refrain from. It is the Defendants' obligation to make sure that such a situation does not happen and to choose their options to ensure full compliance with the Order. The means to achieve this fulfilment are open to the Defendants, and it is up to them to consider what measures are necessary and sufficient to comply with the order. A website's market power is not an excuse for non-compliance.

45 The fact, that the product page indeed contained a disclaimer, as already visible on the Applicants application 2 March 2026, page 9, was proven to not be sufficient to prevent the offering of the products in question:



46 First, a disclaimer is not sufficient – regardless of the dispute around its readability – when the (automated) use of German language to German customers contradicts its content. Despite the wording to not be available in Germany (..), the product is displayed and described in German. In the "connect" section an active invitation to potential distributors is made to request 'information, prices or an offer', again in German. The Defendants did not even claim that any geo-blocking of this display was provided (only with regard to the purchase option), and the Applicant's counsel was in fact able to send a request via this online form. Hence, the question whether geo-blocking could in general be a sufficient tool to prevent actions of infringement (see Advocate General at the ECJ (Rantos), Opinion of 15 January 2026 – C-788/24, BeckRS 2026, 80 – Anne Frank Fonds ./. Anne Frank Stichting et al.; relating to copyrights), can remain open in the present case.

47 Second, this request has undisputedly led to the correspondence with the Key Account Manager of the Defendant as described by the Applicant. Contrary to the Defendants' position this subsequent behaviour by Defendant 2's key account manager did also counteract the disclaimer and showed that the Defendants also internally have not done everything to prevent a non-compliance. The communication between the counsel and the Key Account Manager was not only creating the impression that its CE-marked products (including the "MemoCarna ASD/VSD") could be sold in Europe (without restrictions), but in a further response, she even confirmed that both Memo Carna ASD & VSD would be commercially available in Europe.

48 This fact cannot be dismissed as a bad faith inquiry, as it is comprehensible that the Applicant is conducting test inquiries to control whether or not a Court order in their favour is complied with or not. The inquiry did not contain any false and misleading allegations trying to do the Defendant something it would otherwise not have done, which could be interpreted and dismissed as bad faith.

3. Setting the amount of the penalty

49 It follows from R. 354.3 RoP that the penalty amount that may be forfeited shall be set by the Court, considering the importance of the order in question. This is based on Art.

82(4), second sentence, UPCA, which requires that penalty payments be proportionate to the importance of the order to be enforced. In determining the appropriate amount, the Court must consider the nature, scope and duration of the violations, the degree of fault, the risk of repetition, and the importance of the orders to the Applicant (cf. CD Milan, Order of 4 December 2025 – UPC_CFI_1167/2025, mn. 8.2; LD Munich, Order of 5 December 2023, UPC_CFI_2/2023 – 10x Genomics v. NanoString; LD Düsseldorf, Order of 18 October 2023, UPC_CFI_177/2023 – myStromer v. Revolt Zycling) This amount should be sufficiently deterrent to be coercive, but also within reasonable limits for it to be an appropriate (proportionate) penalty.

50 The suggested penalty amount for non-compliance with the relevant order(s) as well as the time period(s) for compliance therewith, must be included in the claimant's corresponding application (in the statement of claim, application for provisional measures or separate request as the case may be) (see Court of Appeal, 3 October 2025, in Belkin v. Philips (merits), UPC_CoA_683/2024, par. 240). If the claimant requests a penalty order but has not included a suggested amount and/or time period, the defendant may still comment on what it considers reasonable and feasible.

51 The Court assesses the amount forfeited in the amount of EUR 58.800.

52 This follows that the main act of non-compliance is the disclaimer-free presence of the product advertisement on the company website for three months (91 days), with each day justifying a penalty of EUR 500, totalling EUR 45.500. Even though offering is prohibited by itself by the order, setting a higher penalty does not seem appropriate as the Applicant did not counter the Defendants' defence that no single unit was brought to the market in the five countries in question. However, it has to be noted, that any future non-compliance can trigger an even higher daily penalty.

53 In addition, the MedicalExpo presentation, despite showing a disclaimer added a further channel for a product offering as the disclaimer was relativised by the German language descriptions and invitations to send an inquiry, also with respect to pricing. The Defendant's own employees proved that they were not strictly observing the obligation to refrain from any marketing of the encompassed devices in, amongst others, Germany. Based on the facts provided by the parties, this situation lasted from the date of service of the Final Order in the CMS (21 October 2025) until at the filing of the penalty request (2 March 2026). However, as the website did include a disclaimer (though being relativized), the non-compliance is less severe. Also here, it has to be taken into account that it was not disputed that no single unit was actually brought to the market in the five countries in question. Hence, the 133 days of non-compliance are to be sanctioned by a penalty of EUR 100 per day, totalling EUR 13.300.

4. Value of the proceedings

54 The value of the enforcement proceedings is set to EUR 100.000, which is 1/10 of the value of the proceedings for provisional measures.

55 As both sides had the opportunity to submit two written submissions and the relevant facts showed to be undisputed, the panel could decide on the application without conducting an oral hearing, R. 354.4, second and third sentence RoP.

ORDER

I. The Defendants are ordered to pay the Court a penalty in the amount of EUR 58.800 for non-compliance with the Final Order of this Court dated 21 October 2025, UPC_CFI_553/2025, payable to the Court within two weeks from the date of service of this order.

II. The Defendants are ordered to pay the Court a recurring penalty of up to EUR 1.500 per day for any further non-compliance with the Order pursuant to R. 354.3 RoP, the exact amount to be determined at the Court's discretion.

III. The Defendants are ordered to pay the costs of the proceedings.

IV. The value of the enforcement proceedings is set to EUR 100.000.

V. These orders are immediately effective and enforceable.

VI. Appeal against this order is granted.

INFORMATION ON THE APPEAL

Parties may appeal against this order within 15 days of the service of this order, Art. 73 (2) lit. b) UPCA, R. 220.2, 354.4 RoP.

SIGNATURES

Presiding judge Sabine Klepsch

Sabine Maria Klepsch
Digital unterschrieben von Sabine Maria Klepsch
Datum: 2026.05.20 10:00:27 +02'00'

Judge rapporteur Dr. Stefan Schilling

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Legally qualified judge Samuel Granata

Samuel Rocco M Granata
Digitally signed by Samuel Rocco M Granata
Date: 2026.05.20 09:26:40 +02'00'

For the sub-registry

Digitally signed
Brecht Sarah
2026-05-20 11:49:43 +0200
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