



Action number: UPC\_CFI\_860/2025

**Procedural order**  
**of the Court of First Instance of the Unified Patent**  
**Court, Central Division (Milan)**  
**issued on 27 May 2026**  
**concerning EP2223589**

CLAIMANT:

LS9 GmbH, Garmischer Str. 9, 81373 Munich  
represented by Matthias Geitz, Attorney-at-law

DEFENDANT:

Bellissa HAAS GmbH, Birkenstr. 22, 88285 Bodnegg-Rotheidlen  
represented by Thomas Adrian, Attorney-at-law, and Thomas Daub, Patent Attorney and European Patent Attorney

PATENT AT ISSUE

European Patent No. 2223589

PANEL/CHAMBER

Presiding Judge	Andrea Postiglione
Rapporteur	Anna-Lena Klein
Technically Qualified Judge	Max Tilmann

PARTICIPATING JUDGES

This order was issued by the judge-rapporteur, Anna-Lena Klein.

LANGUAGE OF THE PROCEEDINGS

German

SUBJECT

Action for annulment, in this case: Order

under Rule 105 ORDER

Under Rule 105.5 of the RoP, the judge-rapporteur shall issue an order setting out the decisions taken.

In the present case, the judge-rapporteur ordered a digital interim hearing on 13 May 2026 by order of 20 February 2026, confirmed by order of 11 March 2026. The interim hearing was held on 13 May 2026 from 10 a.m. via Webex. An audio recording was made, in accordance with Rule 106 of the RoP.

On behalf of the court, the interim hearing was attended by the judge-rapporteur, Anna-Lena Klein, the presiding judge, Andrea Postiglione, and the technically qualified judge, Max Tilmann.

The following were present on behalf of the parties:

Claimant:

- Matthias Geitz, Attorney-at-

law Defendant:

- Thomas Daub, MEng, patent attorney
- ██████████ Trainee patent attorney
- Thomas Adrian, Attorney-at-law
- ██████████ Attorney-at-law
- ██████████ Managing Director of the defendant

In accordance with the agenda sent in advance following consultation with the parties, the following matters were discussed:

**1. Representation of the claimant by Mr Geitz, Attorney-at-law**

At the start of the interim hearing, it was noted that an application dated 11 May 2026 had been submitted pursuant to Rule 293 of the RoP, according to which Mr Geitz would take over the representation of the Claimant. The judge-rapporteur explained that an extract from the commercial register had been submitted, showing that Mr Geitz is no longer the managing director of the Claimant. The judge-rapporteur no longer sees any admissibility concerns regarding Mr Geitz taking over. In view of Rule 293 of the RoP, the change of representative is now likely to have taken effect.

## **2. Value of the claim**

The court suggested that the parties agree on a joint proposal for the value in dispute in the run-up to the oral hearing. The court indicated that, based on the guidelines for determining court fees and the upper limit for recoverable costs in this case, and in view of the infringement action concerning the patent at issue, it might be appropriate to base the value in dispute on the value in dispute set in the infringement proceedings before the local division in Mannheim concerning the patent at issue. The claimant is likely to be required to explain to the court why a deviation from the value in dispute set in the proceedings before the LD Mannheim is appropriate.

## **3. Costs of the proceedings**

The court suggested that the parties reach an agreement on the costs to be settled in the present proceedings in the run-up to the oral hearing or submit a provisional estimate of the costs in accordance with Rule 118.5 of the RoP.

## **4. Admissibility of the action with regard to Art. 47.6 UPC Agreement, Art. 73.4 UPC Agreement, Rules 361, 362, 363 of the RoP**

The judge-rapporteur indicated that the Court is, for the time being, assuming that the action is admissible.

### **a) Interest within the meaning of Article 47.6 of the UPC Agreement**

With regard to the 'affected party' referred to in Article 47(6) of the UPC Agreement, the Chamber's preliminary view is that a broad interpretation may be warranted in the context of actions for annulment. In particular, a distinction may need to be drawn between businesses and private individuals. Accordingly, businesses engaged in commercial activities could, in principle, be considered 'affected' within the meaning of the provision in the context of actions for annulment. Specific standing could only be required in relation to private individuals. Article 27(a) of the UPC Agreement could be invoked as an argument in this regard. The provisions in the RoP are consistent with this understanding, as Rule 44 does not require any indication of standing. The situation is different, for example, in the case of an action for a declaration of non-infringement (Rules 63 and 61 of the RoP).

### **b) Other pending proceedings**

The judge-rapporteur explained that the Chamber currently tends not to assume that there is a parallel proceeding. A parallel proceeding would presuppose that the Claimant is acting as a front for the counter-claimant in the invalidity proceedings before the LD Mannheim, which the Chamber, referring to the decision of the Paris LD of 26 January 2026, UPC\_CFI\_999/2025, ALD v Nanoval, does not currently consider to be the case. The judge-rapporteur emphasised that the defendant had not argued that the Claimant had no assets of its own, although the Claimant is likely to be obliged to file its

, so an argument on this point would presumably be possible. Nor did it argue that the Claimant had no employees of its own.

In response to a query from the judge-rapporteur, the defendant stated that there was agreement to a decision on the admissibility issues raised by it to be made as part of the final decision, following discussion at the main hearing.

In this context, the subject matter of an action for annulment before the UPC was discussed. The judge-rapporteur pointed out that – as far as is apparent – there is as yet no decision by the UPC on whether the subject matter of a (counter) action for annulment is determined by the citations on which the (counter) action for annulment is based.

The parties were heard on all points.

#### **5. Citations D6 (K13), D7 (K14) and D8 (K15) submitted with the Reply**

The Board pointed out that it currently assumes that the citations submitted with the Reply are not to be taken into account with regard to claim 1 as granted and sub-claims as granted. In this respect, the citations could already have been made the subject of the attack in the statement of claim. This also applies to auxiliary claims that merely incorporate sub-claims. In so far as the claimant stated in the Reply that the defendant's submissions in the statement of defence gave rise to the introduction of further prior art, it did not elaborate on this.

#### **6. Prospects of success of the action (only with regard to claim 1 as granted)**

The Board explained that it intended to follow the breakdown of features as used by the Mannheim local division. It further indicated that it agreed with the Mannheim local division's interpretation of claim 1 of the patent in suit with regard to feature 2.3.2.

It was discussed that, with regard to citation **K3 = D1**, the only point at issue between the parties is the disclosure of feature 2.3.2 (feature 1.9 according to the parties' breakdown of features), which addresses a statement of purpose. With regard to the legal standard for the novelty assessment in this respect, the judge-rapporteur referred to the decisions UPC\_CFI\_248/2024 (LD Munich), decision of 22 August 2025, BRITA v Aquashield, and UPC\_CFI\_480/2025 (Milan), decision of 27 November 2025 – Pari v Philips. According to the Chamber's preliminary view, D1 could be detrimental to novelty because it might be possible to attach it.

In the Chamber's preliminary view, the attack based on Annexes **K7 to K11** .

Insofar as the claimant submitted further citations with the application but did not explain them with regard to claim 1, the citations are unlikely to be relevant.

The judge-rapporteur pointed out that it is sometimes unclear from the Claimant's submissions on which ground for revocation it relies for which challenge. As an example, she referred to the Reply, para. 45. Here, it might be appropriate to clarify whether the challenge is based on lack of novelty or lack of inventive step.

The parties were heard.

#### **7. Structure and number of auxiliary claims**

The structure of the auxiliary claims was discussed.

The defendant confirmed the Board's understanding that the auxiliary applications should be presented in sequential order, i.e. application 1 is to be examined first, followed by application 2, and so on.

The Board indicated that, in its preliminary view, auxiliary claim 1 might be successful. Consequently, a discussion regarding the number of the defendants' auxiliary claims might be unnecessary.

The Board justified its preliminary view as follows:

Auxiliary claim 1 is based on sub-claim 6 as granted. In the appeal, the challenge to sub-claim 6 was based solely on K8 and a lack of inventive step. In the Board's preliminary view, the feature introduced by auxiliary claim 1 is not clearly derived from K7 or K8. The challenge based on a lack of inventive step was not explained in detail. The judge-rapporteur explained that it is not apparent to the Board at this stage that the specific configuration of the feature introduced by auxiliary claim 1 would be obvious to a person skilled in the art. For the reasons set out above, the challenges to auxiliary claim 1 based on D6 to D8 are unlikely to be taken into account.

Against this background, the Board noted that, in its current view, it is not necessary to discuss all the auxiliary claims at the oral hearing. The defendant was asked to identify a number of auxiliary claims to be discussed at the oral hearing, in order to allow the Claimant and the Board to prepare adequately and to ensure the oral hearing is conducted efficiently. The

Court made it clear that this identification does not entail any restriction on the applications put forward by the defendant.

Both parties were heard.

The defendant stated that it wished to discuss auxiliary claims 1, 9, 13 and 14 at the oral hearing.

The Court reiterated that the Claimant could and should have raised objections to sub-claims in the statement of claim. This also applies to auxiliary claims that (merely) incorporate sub-claims into the independent claim. Insofar as the Claimant relied on further citations (such as D1) in its Reply, this submission may not be admissible.

Following the interim hearing, the judge-rapporteur refers in this regard to the decision of the Court of Appeal, UPC\_CoA\_71/2025, decision of 29 December 2025, paragraph 26 et seq. – VMR v NJOY.

**8. Conduct of the oral hearing before the Chamber**

The judge-rapporteur explained the proposed procedure for the oral hearing before the Chamber. In particular, she announced that, in view of the Chamber’s preliminary opinion as set out in the interim hearing, it was not intended to provide an introduction to the facts and the state of the dispute at the start of the oral hearing or to set out a preliminary opinion of the Court.

The topics to be discussed during the oral hearing were discussed. The following timetable was agreed upon with the involvement of the parties:

Topic	Total time for parties	Total
Right to sue, Admissibility	15 minutes each	30 minutes
Interpretation of the patent	15 minutes each	60 minutes
State of the art with regard to D1	15 minutes each	90 minutes
Legal status with regard to K7 to K11	10 minutes each	110 minutes
Consideration of and legal framework with regard to D6 (K13), D7 (K14), D8 (K15)	15 minutes each	140 minutes
Legal basis of HA 1	15 minutes each	170 minutes
Case law of HA 9	10 minutes each	190 minutes
Case law of HA 13	10 minutes each	210 minutes
Case law of HA 14	10 minutes each	230 minutes

Miscellaneous	10 minutes each	250 minutes
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The judge-rapporteur made it clear that this was not a strictly binding timetable, but that the arrangements discussed should, in principle, be adhered to.

Following feedback from the parties, it is requested that at least one person participate digitally via video conference in the oral hearing on 9 July 2026.

With regard to the video hearing, the court requests notification prior to the oral hearing if any confidential matters are to be discussed.

### **9. oral hearing**

It is hereby confirmed that the oral hearing will take place on 9 July 2026.

from 10 am

Central Division, Milan, Via San Barnaba 50, Milan

Digital participation in the oral hearing is permitted. A video conference will be set up by the court. Persons wishing to participate in the oral hearing via video conference are requested to contact the Milan Central Division at [contact\\_milan.ctl@unifiedpatentcourt.org](mailto:contact_milan.ctl@unifiedpatentcourt.org).

### **10. Order**

- a. The parties are ordered to notify the court by **2 July 2026** whether they have reached a joint proposal regarding the value in dispute of the case.
- b. The parties are ordered to notify the court by **2 July 2026** whether they have reached an agreement on the recoverable costs. If no agreement can be reached, the parties are ordered to submit a provisional estimate of the costs they will claim by **7 July 2026**, Rule 118.5 of the RoP.
- c. The Claimant is granted until **18 June 2026** to submit a tabular list based on the submissions made to date, setting out the grounds for revocation on which the Claimant bases each application. **No new submissions are permitted.**

### INFORMATION ON REVIEW BY THE PANEL

Any party may apply for a review of this order by the panel pursuant to Rule 333 of the RoP. The order remains in force pending the review (Rule 102.2 of the RoP).

INFORMATION ON THE ORAL HEARING IN COURT

The oral hearing is public, unless the court decides, where necessary, to hold a hearing in camera in the interests of one of the parties or third parties, or in the general interest of justice or public order (Rule 115 of the RoP).

INFORMATION ON AUDIO RECORDING

An audio recording will be made of the preliminary hearing and the hearing. The recording will be made available to the parties or their representatives after the hearing at the court's premises (Rules 106 and 115 of the RoP).

INFORMATION REGARDING THE ABSENCE OR LATE ARRIVAL OF A REPRESENTATIVE

Upon application, a default judgment may be issued against a party if a party who has been duly summoned fails to appear at an oral hearing. (R. 355.1 (b) of the RoP).


INFORMATION REGARDING A DEFAULT JUDGMENT

If a party fails to comply with this order within the prescribed time limit, a default judgment may be issued in accordance with R. 355 of the RoP (R. 103.1, last subparagraph, and .2 of the RoP).

Issued on 27 May 2026

Anna-Lena Klein  
**KLEIN**

**ANNA-LENA**

 Digitally signed by ANNA-LENA  
KLEIN  
Date: 27 May 2026 15:07:52 +02'00'