



Order
In application of R.263.3 RoP and R. 361 RoP
of the Court of First Instance of the Unified Patent Court
Issued on 4 June 2026
Concerning EP 3 107 487 B1

HEADNOTES

1. R. 263.3 RoP is not constructed in such a way that limiting an action (even if this has an impact on the legal standing of one or more defendants against whom no allegations have been made anymore) would automatically imply the application of R. 265 RoP. The application of R. 265 RoP necessitates a formal application as a procedural step.
2. R. 361 RoP does not oblige the Court to decide on costs.

KEYWORDS

- Conditions for application for R. 265 RoP – R. 265 RoP
- Leave to limit a claim in action unconditionally - R. 263.3 RoP
- Claims manifestly bound to fail or manifestly inadmissible - R. 361 RoP

APPLICANT R. 263.3 RoP APPLICATION

CLAIMANTS INFRINGEMENT ACTION (UPC CFI 1357/2025)

DEFENDANTS COUNTERCLAIM FOR REVOCATION (UPC CFI 629/2026)

ESTABLISHMENT LABS S.A.

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RESPONDENTS R. 263.3 RoP APPLICATION

DEFENDANTS INFRINGEMENT ACTION (UPC CFI 1357/2025)

CLAIMANTS COUNTERCLAIM FOR REVOCATION (UPC CFI 629/2026)

- (1) GC AESTHETICS PARENTCO LIMITED
- (2) NAGOR LIMITED
- (3) GC AESTHETICS MANAGEMENT LIMITED
- (4) GC AESTHETICS (DISTRIBUTION) LIMITED
- (5) GC AESTHETICS (France) SAS
- (6) EUROSILICONE SAS
- (7) GC AESTHETICS ITALY S.R.L.
- (8) GC AESTHETICS GmbH

- (9) GC AESTHETICS SPAIN, S.L.U.
 (10) GLOBAL CONSOLIDATED AESTHETICS (UK) LIMITED
 (11) GC AESTHETICS HOLDINGS LIMITED
 (12) GC AESTHETICS FINANCE LIMITED
 (13) ROMED N.V.

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Collectively as “Defendants”

PATENT AT ISSUE

Number	Proprietor(s)
EP 3 107 487 B1	ESTABLISHMENT LABS S.A.

LANGUAGE OF THE PROCEEDINGS:

English

SUBJECT MATTER:

Application R. 263.3 RoP and R. 361 RoP

PANEL - LOCAL DIVISION

Presiding Judge (Judge-Rapporteur):

Samuel Granata

Legally Qualified Judge:

Carine Gillet

Legally Qualified Judge:

Marije Knijff

Technically Qualified Judge:

Paolo Gerli

DECIDING JUDGES:

Order issued by the panel

I. PROCEDURAL BACKGROUNDS AND REQUESTS

1. On 4 May 2026, LABS introduced a R. 263.3 RoP application (hereafter the “Application”) “for permission to unconditionally limit its claim in these proceedings by withdrawing the United Kingdom portion of its infringement claim.”
2. In its Application, LABS requests the Court as follows:
 1. Grant permission under Rule 263(3) UPC RoP to limit the claim as set out above;
 2. Accept the amended claim in revised form;
 3. Issue such consequential procedural directions as the Court considers appropriate.
3. In relation to request (1), LABS requests to limit its claim “by no longer pursuing a claim for infringement by Defendants 1, 2, 4 and 10 (GC Aesthetics ParentCo Limited, Nagor Limited, GC Aesthetics (Distribution) Limited and Global Consolidated Aesthetics (UK) Limited, respectively, for infringing acts in the UK”. As a result of this limitation, LABS holds that parts of the Reply to the Defence and Counterclaim dated 24 April 2026 would no longer be relevant (in particular the entire paragraphs 954, 968, 1013 to 1015, 1068 to 1072, 1077, 1078, and 1091).

4. LABS justifies these requests as follows:
- *parallel litigation concerning the UK designation has been commenced by a company linked with Defendants 1-12;*
 - *withdrawal of the UK claim will consolidate UK-specific infringement and validity issues before the appropriate national forum;*
 - *it removes duplicative disputes from the UPC proceedings;*
 - *it preserves the Claimant's remaining jurisdictional claims;*
 - *it reduces unnecessary procedural burden and associated costs;*
 - *it does not unfairly prejudice the Defendants, who have themselves challenged the inclusion of UK-related issues in this forum and who used a group company to initiate the UK court action;*
 - *it is consistent with principles of procedural economy, fairness, and sound judicial administration.*
5. On 7 May 2026, the Court requested comments from the Defendants, specifically concerning the implications of the Application for their Counterclaim for Revocation (see (C) "*Declare that European Patent EP 3 107 487 B1 is invalid [...] and/or in the United Kingdom*") (UPC_CFI_629/2026). On 14 May 2026 (one day later due to technical CMS issues communicated to the sub-registry of the LD Brussels on the day of the deadline (13 May 2026)), the Defendants responded and requested as follows:
- DISMISSAL OF THE CLAIM FOR INFRINGEMENT OF THE UK DESIGNATION OF EP '487
- The Claimant is permitted unconditionally to amend the claim to withdraw its claim for infringement of the UK designation of EP 3 107 487 B1.*
 - A declaration that the claim against Nagor Ltd and Global Consolidated Aesthetics (UK) Limited is closed.*
 - In the alternative to b above, a declaration that the claim against Nagor Ltd and Global Consolidated Aesthetics (UK) Limited is manifestly bound to fail.*
 - Dismissal of the claim against Nagor Ltd and Global Consolidated Aesthetics (UK) Limited.*
- RESTRICTION ON FURTHER INFRINGEMENT CLAIMS
- That the Court:*
- Injuncts the Claimant, whether acting by itself or any licensee from issuing a claim before the Unified Patent Court for infringement by the Perle implant (as defined in the Statement of Claim) of the UK designation of EP 3 107 487 B1.*
 - In the alternative to e above, injuncts the Claimant, whether acting by itself or any licensee from issuing a claim before the Unified Patent Court for infringement by the Perle implant (as defined in the Statement of Claim) of the UK designation of EP 3 107487 B1 without the advance permission of the Brussels Local Division of the Court.*
- COSTS
- The Claimant shall be ordered to pay the Defendants €61,000, to be paid within 14 days.*
 - In the alternative to g above, the Claimant shall be ordered to pay the Defendants €19,500, to be paid within 14 days.*
6. On 21 May 2026, the Court received LABS's response to the Defendants' comments under R. 263.3 RoP. In this response, LABS counterargued the Defendants' position, holding that the

requests to attach a number of consequences to the R. 263.3 RoP procedural step (i.e. that the Application should: (a) be treated as a withdrawal of claims against Defendants 2 and 10 under R. 265 RoP; (b) justify dismissal or declarations that the claims are manifestly bound to fail under R. 361 RoP; (c) give rise to immediate cost consequences; and (d) restrict the LABS's future procedural rights) should be dismissed. LABS requested the following:

- a) *Grant the Claimant permission under Rule 263(3) RoP to limit its claim by withdrawing the UK designation of EP 3 107 487 B1 from these proceedings;*
- b) *Reject the Defendants' contention that the Claimant's application constitutes a withdrawal of the action under Rule 265 RoP;*
- c) *Reject the Defendants' requests for declarations that claims against Defendants 2 and 10 are manifestly bound to fail under Rule 361 RoP;*
- d) *Reject the Defendants' requests for dismissal or closure orders under Rules 265 or 361 RoP beyond the consequences necessarily flowing from the Claimant's Rule 263(3) RoP limitation;*
- e) *Reject the Defendants' requests for prospective restrictions on future claims;*
- f) *Reject the Defendants' requests for immediate costs orders, including the requests for payment of €61,000, €19,500, or any other immediate costs award. In the alternative, if the Court considers that any immediate costs award is appropriate (which is denied), such award should be limited to no more than €19,500.*
- g) *Direct that any costs issues arising from the Rule 263(3) RoP limitation be reserved to the final costs decision in the main proceedings.*

7. By letter dated 28 May 2026, the Defendants informed the Court that they did not wish to file further comments and invited the Court to rule on parties' respective requests on the basis of the submissions already filed by the parties.

II. GROUNDS

II.A. Application and interaction of R. 263.3 RoP and R. 265 RoP in view of the request made by LABS

8. R. 263.3 RoP states that "*leave to limit a claim in an action unconditionally shall always be granted*". As LABS limits its claim by withdrawing the UK portion of the infringement action, such leave should be granted "*unconditionally*".
9. While LABS acknowledges that, once the UK designation is withdrawn, no further allegations will be pursued against Defendants 2 and 10, it also notes that the other requests (not related to the UK portion) made in the infringement action are maintained. Therefore, the Application cannot be considered a withdrawal of an "*action*" under R. 265 RoP. Rule 265 RoP cannot apply when an action is "*limited*", as the action (given the number UPC_CFI_1357/2025) is not withdrawn in its entirety.
10. R. 263.3 RoP is not constructed in such a way that limiting an action (even if this has an impact on the legal standing of one or more defendants against whom no allegations have been made

anymore) would automatically imply the application of R. 265 RoP. The application of R. 265 RoP necessitates a formal application as a procedural step, which LABS did not undertake.

II.B. Application of R. 361 RoP

11. R. 361 RoP states that the Court may give a decision by way of an order “(...) or where the action or defence is, in whole or in part, manifestly inadmissible or manifestly lacking any foundation in law”.
12. It is clear and admitted that LABS has no more pending requests against Defendants 2 and 10 once the limitation-requests in its Application have been granted. The Court considers it “clear-cut” (see UPC_CoA_265/2024, 18 September 2025, Volkswagen AG v Network System Technologies LLC) that, by limiting its claims on a territorial basis, LABS has no legal basis to oblige Defendants 2 and 10 to remain part of the infringement proceedings.
13. Therefore, the Court by way of this order states that the infringement action introduced by LABS “in part” (i.e. regarding the requests formulated against Defendant 2 and 10) lacks any foundation in law.
14. R. 361 RoP does not oblige the Court to decide on costs (cf regarding R. 360 RoP UPC_CoA_328/2024, order of 12 May 2025, Ballinno BV v. Kinexion Sports & Media GmbH, §57 “Disposal of an action pursuant to R. 360 RoP can include a decision on whom shall bear the costs”). Taking into consideration the circumstances of the case, the Court holds it suitable, reasonable and proportional, as well as pragmatic, that such cost decision is not given together with the order, especially given the fact that all Defendants are represented by the same representatives. Making a costs decision in respect to Defendant 2 and 10 at this stage, where the infringement action remains in place against all other Defendants represented by the same representatives, would be impractical and not in line with procedural efficiency. As it is clear that the Defendants' representatives did not incur separate costs for each client, an assessment of costs limited to Defendants 2 and 10 would indeed seem to be impractical at this stage.
15. The Court is aware of the impractical consequences of the above, in that parties (Defendants 2 and 10) are obliged to remain part of the proceedings despite no infringement allegations being made against them. However, this impracticality is purely a matter of lost of time (delay) (the oral hearing in this case is scheduled for 2 December 2026 and costs proceedings should be introduced within one month of the decision on the merits being served) and as such does not outweigh procedural efficiency. Furthermore, as previously mentioned, the fact that all Defendants (including Defendants 2 and 10) are represented by the same representatives will facilitate the cost decision if the parties have not already agreed on this issue earlier.

III.C. Procedural Abuse and Request for prospective restrictions

16. The Court does not uphold the allegations (of abusive procedural behaviour) made by the Defendants regarding the UK proceedings and the UK expedition application, specifically with regard to the consequences of the application on the UK expedition request. The Court holds that these allegations are not sufficiently proven. Even more, based on the chronology of the UK proceedings and its procedural history, LABS cannot be considered to have abused or unreasonably delayed any of the proceedings, whether in the UK or at the UPC level, at the time of assessment.

The Court motivates as follows regarding the parallel UK and UPC proceedings:

- When infringement proceedings were initiated before the UPC (UPC_CFI_1375/2025), no separate UK revocation action was brought by the Defendants or any other member of the GCA corporate group. LABS had indeed chosen the UPC-route to have the UK infringement requests assessed.
- It was GC Aesthetics (Brazil) Ltd (a member of the GCA corporate group) which initiated UK revocation proceedings on 16 February 2026 against LABS (with service of the particulars of the claim and grounds for invalidity on 27 February 2026). GC Aesthetics (Brazil) Ltd seems to be presented by the same representatives as the Defendants at the UPC. It was GC Aesthetics (Brazil) Ltd who initiated parallel UK proceedings.
- On 28 April 2026, LABS served its Defence and Counterclaim in the UK proceedings and informed the Defendants of its intention to withdraw the UK portion of the UPC claim. In view of the procedural time-line to be respected in the UK proceedings, the Court finds the date of service to be logical and not proving sufficiently a form of delay tactics.

The Court motivates as follows regarding the UK expedition application:

- On 27 February 2026, GC Aesthetics (Brazil) Ltd mentioned their wish for an early listing (i.e. when serving the particulars of the claim and grounds for invalidity).
- On 8 April 2026, the UK court granted LABS its requested extension of time request (introduced on 30 March 2026) which was motivated as follows by Deputy Master Valentine: *"...the matters set out in evidence supporting the application [by LABS] set out a good reason for the request, and there is insufficient basis to conclude that the application is a delaying tactic or intended to impede an application for an early listing. The extension is granted..."*
- On 10 April 2026 (i.e. before LABS served its defence and counterclaim), GC Aesthetics (Brazil) Ltd filed its application for an expedited trial listing which was followed on 23 April 2026 (i.e. two weeks after filing this application) with the supportive evidence. The Court notes that this evidence was presented more than 2 months after mentioning their wish for an early trial listing on 27 February 2026.
- On 24 April 2026, LABS filed its Reply to the Defendants' Defence and Counterclaim at the UPC and stated that, as a result of the UK proceedings, it *"reserve[d] the right to amend its position in relation to any claim of infringement in the UK"* and *"may now be forced to change its position"* regarding the UK part of the UPC claim (see § 1077 and 1078 of mentioned Reply).

- On 28 April 2026, LABS served its Defence and Counterclaim for infringement against Defendants 1, 2, 4 and 10 and simultaneously (i.e. within an hour) notified the Defendants of its intention to withdraw the UK part of the UPC claim. That LABS did not agree with the requested undertaking (contractually-enforceable promise) in line with the prospective restrictions that the Defendants would like to see imposed through these proceedings, cannot be held against them to conclude abusive procedural behaviour.
 - On 4 May 2026, LABS filed the Application.
 - On 5 May 2026, the application for expedited trial listing was withdrawn in the UK proceedings.
 - On 6 May 2026, a hearing was held in the UK proceedings during which parties agreed that the UK trial be listed in April 2027.
17. Based on the wording of R. 263.3 RoP and given that no procedural abuse can be attributed to LABS, the Court sees no reason to impose prospective restrictions before granting the limitation requests made.
18. Furthermore, granting the requested prospective restrictions would disproportionately limit LABS's (fundamental human) right of access to justice as a patentee even if procedural abuse would have been accepted (quod non).

III.D. Implication of the granted R. 263.3 RoP request for the Counterclaim for Revocation

19. In its response, the Defendants confirmed that *“to the extent that the request to limit the claim is granted, and to the extent not already provided in the Request set out below (in this order in §4), that their requests set out in §853 of their Defence shall be modified as follows (following the original labelling of the requests), whilst maintaining the Requests in respect of all other designations of EP’487:*

In the Claim

- A. *The Defendants request that the Court dismiss with immediate effect the claim for infringement of the UK designation of EP 3 107 487 B1;*
- B.a. *The Defendants request that the Court declare with immediate effect that the Court has no jurisdiction or competence over Nagor Limited (Defendant 2) and/or Global Consolidated Aesthetics (UK) Limited (Defendant 10);*
- B.b. *The Defendants request that the Court dismiss with immediate effect the claim in relation to the UK designation of EP 3 107 487 B1;*
- B.c. *The Defendants request that the Court reject with immediate effect the Claimant’s action regarding the national designation of EP 3 107 487 B1 in the United Kingdom as against all Defendants (including Defendant 2 and Defendant 10) and declare that part of the action extinguished; and*
- C. and D. *These are no longer sought, on the basis that there will no longer be any claim for infringement of the UK designation of EP 3 107 487 B1.*

In the Counterclaim

C. *The Defendants no longer seek a declaration that EP 3 108 487 B1 is invalid in the United Kingdom.*

20. The Court considers the above to be an application under R. 263.3 RoP with regard to UPC_CFI_629/2026. In accordance with this rule, the claims are limited as stated above.

III.E. Costs and fees

21. As assessed above, although Defendants 2 and 10 are no longer considered to be part of the infringement action, they remain parties to the proceedings with regard to the costs (see §15). Any decision regarding costs is therefore to be dealt with in the final costs proceedings.
22. Finally, the Court notes that neither LABS nor the Defendants requested a reconsideration of the fees already paid (R. 363.4 RoP), given the limitations of the claims. The Court sees no reason to reconsider these fees at this time, but will address this issue later in the proceedings if necessary.

III.F. Leave of Appeal

23. Due to the specific nature of the Application and its interaction with R. 361 RoP, leave to appeal is granted.

III. ORDER

The Court

- (1) Grants LABS leave to limit its claims and specifically *“by no longer pursuing a claim for infringement by Defendants 1, 2, 4 and 10 (GC Aesthetics ParentCo Limited, Nagor Limited, GC Aesthetics (Distribution) Limited and Global Consolidated Aesthetics (UK) Limited, respectively, for infringing acts in the UK”*
- (2) Accepts the amended claims in its revised form.
- (3) Holds, in application of R. 361 RoP, that by the granting the limitation of the requests (see (1)) LABS has no legal basis (and/or manifestly lacks any foundation in law) to oblige Defendant 2 and 10 to remain part of the infringement proceedings.
- (4) Holds, for procedural efficiency, that Defendants 2 and 10 should remain part of the proceedings in view of the final cost proceedings. For the same reason, the Court stays the assessment on costs regarding Defendant 2 and 10.
- (5) Grants the Defendants leave to limit their claims as indicated in §19 of this order.
- (6) Stays a possible reconsideration of the already paid fees.
- (7) Leave to appeal is granted.

Order issued on 4 June 2026 by the panel:

Samuel GRANATA	
Legally Qualified Judge	
Carine Gillet	
Legally Qualified Judge	
Marije Knijff	
Legally Qualified Judge	
Mr. Paolo Gerli	
Technically Qualified Judge	

Notes on Appeal:

- Regarding the R. 263.3 RoP part of this order an appeal may be lodged in accordance with R. 220.2 RoP.
- Regarding the R. 361 RoP part of this order an appeal may be lodged in accordance with R. 363 RoP juncto R. 220.1(a) RoP.