Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf local division
UPC_CFI_811/2024

Decision
of the Court of First Instance of the Unified Patent Court,
issued on 22 June 2026
concerning EP 1 840 282 B 1 and EP 1 813 734 B 1

HEADNOTE:

Under Article 72 of the UPC Agreement, and without prejudice to Article 24(2) and (3) of the UPC Agreement, actions relating to all forms of financial compensation must be brought no later than five years after the claimant became aware, or ought reasonably to have become aware, of the last event giving rise to the action. This limitation period does not apply to injunctions. As an injunction is directed towards the future, it is not subject to the limitation period.

KEYWORDS:

limitation period; consent; forfeiture; de facto business succession; exhaustion ;

HEADNOTE:

According to Article 72 of the UPCA, without prejudice to Article 24(2) and (3) of the UPCA, actions relating to all forms of financial compensation may not be brought more than five years after the date on which the applicant became aware, or had reasonable grounds to become aware, of the last fact justifying the action. This limitation period does not apply to injunctions. As an injunction is directed towards the future, it is not subject to the limitation period.

KEYWORDS:

limitation period; agreement; forfeiture; de facto business succession; exhaustion of rights

Claimant:

Evac Oy, legally represented by its CEO and President Björn Ullbro, Linnoitustie 6 A, 02600 Espoo, Finland

represented by:	Cordula Schumacher, Attorney-at-law, Arnold Ruess Rechtsanwälte PartmbB, Königsallee 59A, 40215 Düsseldorf, Germany
supported by:	European Patent Attorney Jan-Pieter Look, Patent Attorneys Kutzenberger Wolff & Partner, Waidmarkt 11, 50676 Cologne, Germany
Electronic service address:	upc-evac@arnold-ruess.com

DEFENDANT:

1. **Shanghai VacDrain Vacuum Drainage Equipment Co., Ltd.,** represented by the management
management

   Registered office and postal address: Building 2, 5th Floor, No. 166 Min Dong Road, Pudong New Area, Shanghai, 201209, People's Republic of China

   Registered office: Room 211, Building 2, South Fangzhai, Rixin village, Gonglu Town, Pudong New Area, Shanghai, People's Republic of China

2. **VD Solutions GmbH,** legally represented by the managing director Mr Yue Cao, Grönlander Damm 27, 22145 Hamburg, Germany

3. **Mr Yong Cao,** Nagysandor Jozsef Utca 3, 1054 Budapest 05, Hungary

Defendants 1 to 3, represented by:	Dr Matthias Ringer, Attorney-at-law; Xiaodi Wang, patent attorney Dipl.-Ing. Nikolaus von Tietzen, Lorenz Seidler Gossel Attorney-at-laws Patent Attorneys Partnership mbB, Widenmayerstraße 23, 80538 Munich, Germany
Electronic service address:	ringer@lsg.eu

PATENT AT ISSUE:

European Patents No. EP 1 840 282 B 1 and EP 1 813 734 B 1

DECISION-MAKING PANEL/CHAMBER:

Panel 1 of the Düsseldorf local division

JUDGES SEATING ON THE BENCH:

This decision was delivered with the participation of the Presiding Judge Thomas as the reporting judge, the legally qualified Judge Dr Schumacher and the legally qualified Judge Agergaard.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT MATTER: Action for infringement

ORAL HEARING: 19 May 2026

BRIEF SUMMARY OF THE FACTS:

1. The claimant is bringing proceedings against the defendants for infringement of European patents EP 1 840 282 B1 (submitted as Annex AR 20, hereinafter: Patent at issue I) and EP 1 813 734 B1 (submitted as Annex AR 24, hereinafter: Patent at issue II).

2. Patent at issue I was filed on 8 February 2007 in the language of the proceedings, claiming the priority of FI 20065209 dated 31 March 20026. The patent application was published on 3 October 2007. The notice of grant of the patent at issue was published on 29 April 2015. The patent at issue is currently in force in Germany, Finland, France, Italy and the Netherlands. No national legal proceedings or administrative proceedings were or are pending in respect of the patent at issue.

3. The application for the patent at issue II was filed on 15 December 2006, also in English as the language of the proceedings, with the patent at issue II claiming priority from FI 20065059 dated 30 January 2006. The application for Patent at Issue II was published on 1 August 2007. The grant of Patent at Issue II was published on 9 November 2016. Patent at Issue II is currently in force in Germany and Finland.

4. An opt-out was filed for both patents at issue on 9 June 2023, which the Claimant withdrew in each case on 14 December 2023.

5. The patent at issue is entitled ‘Vacuum sewer system’. Its claim 1 is worded as follows:

> ‘A discharge valve including an aeration means for a vacuum sewer system comprising a sewage receptacle (1), sewer piping (3), a vacuum generating means (4) for generating a vacuum in the sewer piping, and a control mechanism (5), which discharge valve (2) including the aeration means (10) is arranged to be installed between the sewage receptacle (1) and the sewer piping
> (3) and is controlled by the control mechanism (5), **characterised in that** the aeration means (10) is arranged to provide direct fluid communication to the discharge valve (2) and is in the form of a rapid vent valve and comprises a valve plate (102) arranged to open or close against a valve seat (22) in the discharge valve (2), that the valve plate (102) is arranged to be withdrawn from the valve seat (22) so that air is supplied directly to the discharge valve (2) through

the open valve seat (22) to rapidly close the discharge valve (2) following a discharge or flushing sequence (B), and in that the valve plate (102) is arranged to close against the valve seat
(22) when the discharge valve (2) is supplied with vacuum by the control mechanism
(5) for opening the discharge valve (2) for the discharge or flushing sequence (B).”

6. In the registered German translation, patent claim 1 reads as follows:

> “Discharge valve with a venting means for a vacuum sewage system, comprising a sewage tank (1), wastewater pipes (3), a vacuum-generating means (4) for generating a vacuum in the wastewater pipes, and a control mechanism (5), wherein the discharge valve (2) is arranged with the venting means (10) for establishing a connection between the wastewater tank
> (1) and the waste water pipes (3) are ordered and controlled by the control mechanism (5), **characterised in that** the venting means (10) is provided to establish direct fluid communication with the outlet valve (2) and is in the form of a quick-release vent valve, comprising a valve plate (102) which is arranged to open and close against a valve seat (22) in the outlet valve (2) for opening and closing; such that the valve plate (102) is ordered to retract from the valve seat (22) so that air is supplied directly to the outlet valve (2) through the open valve seat (22) for rapid closure of the outlet valve (2) following an outlet or purge sequence (B), and that the valve plate (102) is arranged to close against the valve seat (22) when the outlet valve (2) is subjected to a vacuum supplied by the control mechanism (5) for opening the outlet valve (2) for the outlet or purge sequence (B).”

7. With regard to the wording of sub-claims 2, 4, 5 and 10, which the Claimant has asserted as ‘in particular when’ applications, reference is made to the specification of the contested patent I.

8. Figure 1, reproduced below on a reduced scale, illustrates a vacuum sewerage system in which the invention protected by the patent at issue is utilised.

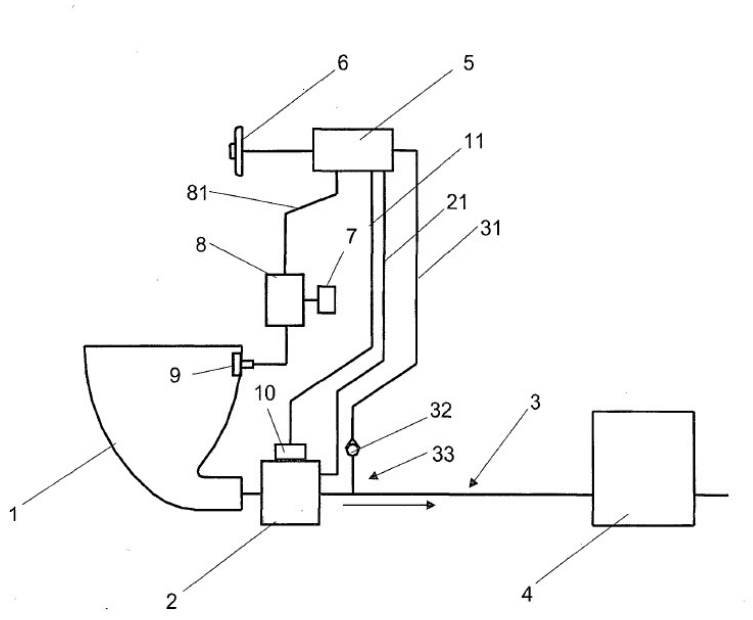


Fig. 1

9. In particular, the figure shows the waste water tank (1), the waste water pipes (3), the control mechanism (5), the outlet valve (2) and the venting means (10).

10. Furthermore, Figure 3, which is also shown below in reduced form, illustrates a first embodiment of a drainage or flushing sequence in which the invention protected by the patent at issue is utilised.

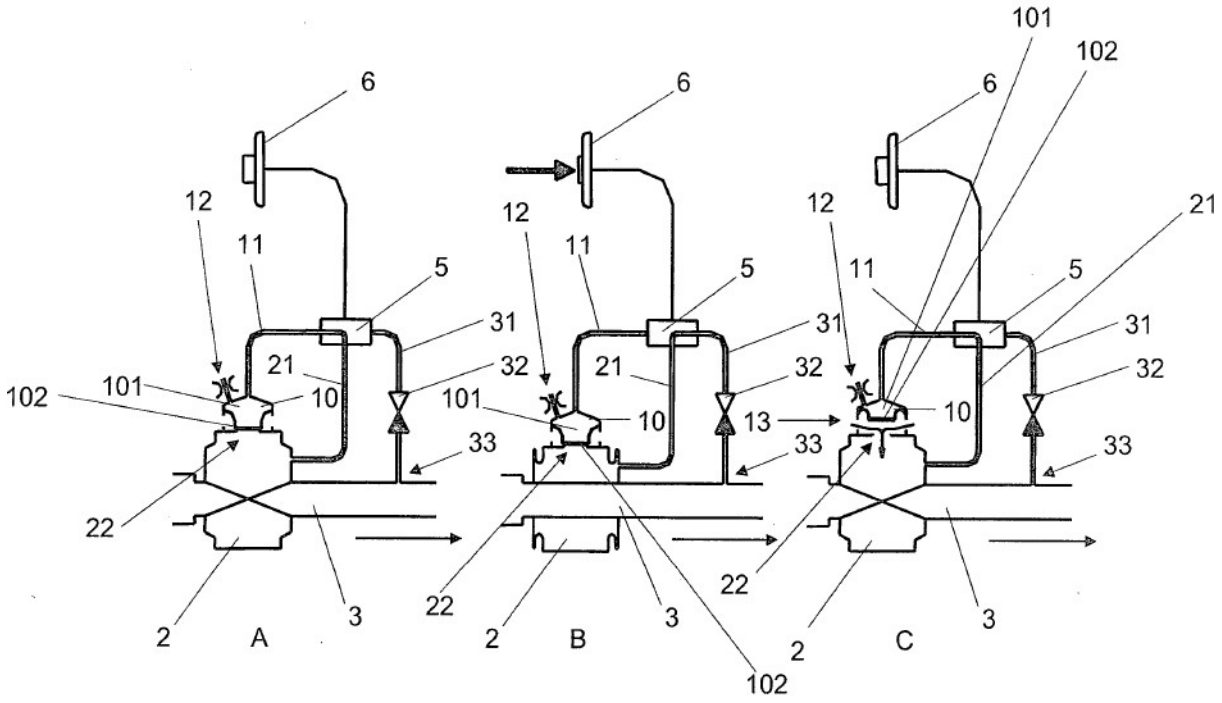


Fig. 3

11. The patent at issue II is also entitled 'Vacuum sewer system'. Its claim 1 reads as follows:

> 'Vacuum sewer system comprising a sewage receptacle (1), sewer piping (3) connected to the sewage receptacle by means of a discharge valve (2), a vacuum-generating means (4) for generating vacuum in the sewer piping, a control mechanism (5) for controlling the discharge valve, and a vacuum buffer means, **characterised in that** the vacuum buffer means comprises an active buffer device (10) in fluid communication with the control mechanism (5) and the sewer piping (3), wherein the term 'active' means that the buffer device switches from a first mode to a second mode, providing additional vacuum to control the discharge valve (2) when, in use, said discharge valve (2) is opened."

12. And in the registered German translation:

> "Vacuum sewage system comprising a sewage tank (1), sewage piping (3) connected to the sewage tank by means of a discharge valve (2), a vacuum-generating means (4) for generating a vacuum in the sewage piping, a control mechanism (5) for controlling the discharge valve, and a vacuum buffer means, **characterised in that** the vacuum buffer means comprises an active buffer device (10) in fluid communication with

the control mechanism (5) and the waste water pipework (3), whereby the term ‘active’ is defined as the buffer device switching from a first mode to a second mode, thereby providing additional vacuum for regulating the drain valve (2) when the drain valve (2) is opened during use.”

13. Figure 1 of the patent at issue II, reproduced below on a reduced scale, shows a vacuum waste water system with an active buffer device (10).

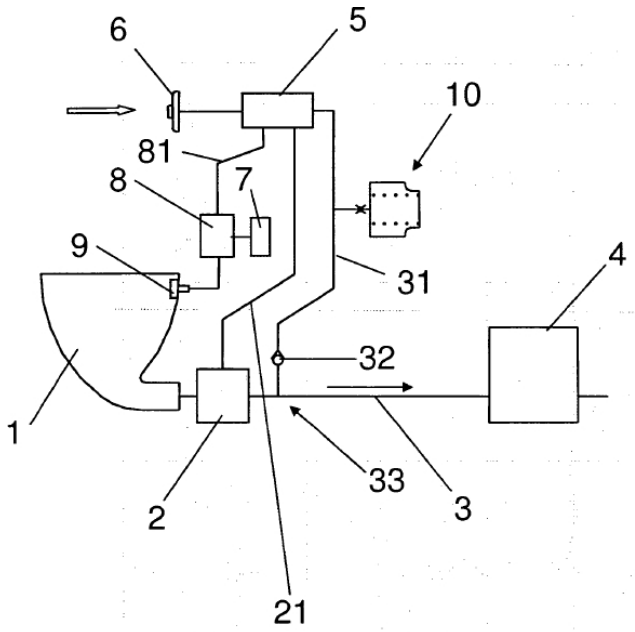


Fig. 1

14. Figure 2, also reproduced at a reduced scale, shows an embodiment of an active buffer device (10).

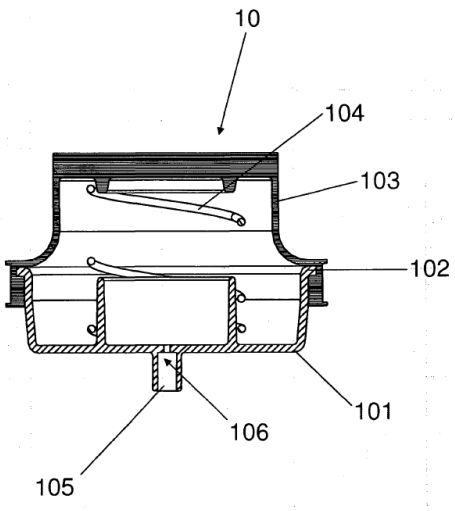


Fig. 2

15. In particular, a cup-shaped part (101), a flexible

flexible membrane (103) attached to it, and a means for expanding the housing in the form of a spring element (104).

16. The first defendant is the parent company of the VacDrain Group. It is the manufacturer of the products marketed by this group. Like the Claimant, this group specialises in retrofitting passenger ships with waste and sewage systems. On the website https://vacdrain.com/30/, the business activities of the VacDrain Group are described as follows (see Annex AR 2):

> **COMPANY INTRODUCTION**
>
> VacDrain is a global manufacturer and supplier of vacuum and waste management systems. We provide solutions for global marine and municipal vacuum projects, specializing in vacuum toilets, food waste and dry waste systems. With globally located manufacturing assembly, warehousing and service, VacDrain is a competitive partner in the industry. VacDrain has the head office in Hamburg and other branch offices are located in Busan, Shanghai, Singapore and Helsinki. We provide customers with timely and efficient service with our global agent and distributor network.
> Since its establishment in 2006, VacDrain has supplied over 700 projects, including ships, trains, buildings and mobile units. We have a global network of services and spare parts for all vacuum toilet brands / makers. We provide customers with timely and efficient services.

17. The second defendant is a German company with its registered office in Hamburg. Its incorporation was entered in the Commercial Register on 24 April 2023 (see Annexes AR 5 and AR 6).

18. The third defendant is the majority shareholder (holding 90 per cent) of the first defendant and, at the same time, the sole shareholder of the second defendant.

19. The products manufactured by the first defendant include, amongst others, the following items, whereby the item numbers given are the Claimant's original spare part numbers:

- Art.-Nr. 6562976: Discharge valve (Auslassventil) für Toiletten und Urinale der Reihe "Optima" der Klägerin
- Art.-Nr.: 6543002: Discharge valve (Auslassventil) für Toiletten der Reihe "Evac 910" der Klägerin
- Art.-Nr. 6543229: Vacuum buffer (Vakuumpuffermittel) kompatibel mit Toiletten der Reihe "Evac Classic Toilet" der Klägerin

20. Shown below is Defendant 1's exhaust valve (hereinafter: contested design I) in comparison with the Claimant's exhaust valve:

Auslassventil der Klägerin

Auslassventil der Beklagten

21. Due to their design, the defendant's exhaust valves are, amongst others, compatible with the Claimant's 'EVAC 910' and 'Optima' systems.

22. Furthermore, the illustrations reproduced below show the vacuum buffer devices of the first defendant (hereinafter: contested embodiment II) and of the Claimant:

23. The vacuum buffer device of the first defendant is also compatible, amongst others, with the Claimant's 'Evac Classic Toilet' system.

KEY PROCEDURAL STEPS:

24. In its claim, the claimant initially brought proceedings not only against Defendants 1 to 3 but also against S.K. Marine Supplies GmbH, Ms Katharina Kiran Singh Kang and Mr Shaminder Sing Kang. Upon application by the Claimant and the aforementioned defendants, the Chamber, by a decision of 2 May 2025, confirmed the conclusion of a settlement and, at the same time, clarified that the proceedings against Defendants 1 to 3

would continue.

25. Defendant 2 lodged a preliminary objection under Rule 19 of the RoP by a document dated 4 April 2025 and applied for the claim against Defendant 2 to be dismissed as manifestly unfounded. In the alternative, the second defendant requested that the action against the second defendant in respect of Finland, France, Italy and the Netherlands be dismissed as inadmissible.

26. Defendant 2 based its preliminary objection on the ground that the court lacked jurisdiction due to the action being manifestly without prospect of success (Rule 19.1(a) of the RoP). The claimant had not alleged any acts of infringement in relation to the second defendant, let alone in respect of Finland, France, Italy and the Netherlands. In addition, the second defendant based its preliminary objection on the lack of jurisdiction of the Düsseldorf local division (Rule 19.1(b) of the RoP). The claimant bases the jurisdiction of the local division on Article 33(1)(a) of the UPC Agreement, according to which the local division has jurisdiction in whose territory the actual or threatened infringement occurs or is likely to occur. However, with regard to the second defendant
2., however, no such infringement has taken place, nor is one imminent. In any event, as the second defendant argued later in the proceedings, it is not the Düsseldorf local division but the Hamburg local division that has jurisdiction, as the second defendant has its registered office there.

27. The claimant contested the preliminary objection by document dated 16 April 2025. It considers the preliminary objection to be inadmissible. The alleged manifest lack of grounds put forward by the second defendant does not constitute any of the grounds for preliminary objections exhaustively listed in Rule 19.1 of the RoP. Apart from that, the preliminary objection is unfounded in both the principal and the alternative claims, as there is in any event a threat of infringement by the second defendant. Finland, France, Italy and the Netherlands are contracting states to the UPC Agreement, so that the UPC has jurisdiction pursuant to Article 31 of the UPC Agreement in conjunction with Articles 4(1) and 71b(1) of the Brussels Ia Regulation.

28. The Düsseldorf local division has deferred the decision on the preliminary objection pending the main proceedings.

APPLICATIONS OF THE PARTIES:

29. The claimant requests:

I. That the defendants be ordered

1. to refrain from

an outlet valve with a venting means for a vacuum waste water system, comprising a waste water tank (1), waste water pipes (3), a vacuum-generating means (4) for generating a vacuum in the waste water pipes, and a control mechanism (5), wherein the outlet valve

(2) is ordered with the venting means (10) for establishing a connection between the waste water tank (1) and the waste water pipes (3) and is controlled by the control mechanism (5), characterised in that the venting means (10) is provided to establish direct fluid communication with the outlet valve (2) and is in the form of a quick-release vent valve, comprising a valve plate (102) which is arranged to open and close against a valve seat (22) in the outlet valve (2) for opening and closing; such that the valve plate (102) is ordered to retract from the valve seat (22) so that air is supplied directly to the outlet valve (2) through the open valve seat (22) for rapid closure of the outlet valve (2) following an outlet or purge sequence (B), and that the valve plate (102) is ordered to close against the valve seat (22) when the outlet valve (2) is subjected to a vacuum supplied by the control mechanism (5) for opening the outlet valve (2) for the outlet or purge sequence (B),

(independent claim 1 of EP 1 840 282 B1)

to offer, place on the market, use, import or possess in Germany, Finland, France, Italy and/or the Netherlands for the aforementioned purposes;

2. to refrain from

vacuum buffer means characterised in that the vacuum buffer means comprise an active buffer device (10) in fluid communication with the control mechanism (5) and the waste water pipework (3), whereby the term ‘active’ is defined as the buffer device switching from a first mode to a second mode, thereby providing additional vacuum to regulate the drain valve (2) when the drain valve (2) is opened during use,

which are suitable for vacuum waste water systems comprising a waste water tank (1), sewage pipework (3) connected to the sewage tank by means of a drain valve (2), a vacuum-generating means (4) for generating a vacuum in the sewage pipework, a control mechanism (5) for controlling the drain valve, and a vacuum buffer means, to be used

to be offered to and/or supplied to customers in Germany and/or Finland.

(independent claim 1 of EP 1 813 734 B1)

II. The defendants are further ordered, within a period of 30 days following service of the notice within the meaning of Rule 118.8, first sentence, of the RoP and, where applicable, the certified translation,

1. to the Claimant, to provide information on the extent to which they – the defendants – have, since 29 April 2015, committed the acts described in Section I.1 and, since 9 November 2016, those described in I.2, , namely in the form of a breakdown, structured for each month of a calendar year and by infringing product, of the following information:

   a) the origin and distribution channels of the infringing products;

   b) the quantities produced, manufactured, delivered, received or ordered, and the prices paid for the infringing products;

   c) the identity of all third parties involved in the manufacture or distribution of the infringing products;

   d) the number and dates of the products offered;

   e) the advertising carried out, broken down by advertising medium, its reach, the period of distribution and the distribution area; including evidence of these advertising activities;

   f) the costs, broken down by individual cost factors, and the profits made,

   whereby, as evidence of the information provided, copies of the relevant purchase documents (namely invoices, or alternatively delivery notes) must be submitted, with details requiring confidentiality being redacted from the data subject to the obligation to provide information and disclosure;

2. to recall the infringing products referred to in sections I.1. and I.2. by the defendants, stating that this Court has found that the products infringe European Patent EP 1 840 282 B1 – in respect of the infringing products referred to in section I.1. infringing products – or European Patent EP 1 813 734 B1 – for the infringing products referred to in section I.2. — whereby the defendants must give a binding undertaking to the third party to reimburse the costs incurred, to bear the packaging and transport costs incurred, to reimburse the customs and storage costs associated with the return of the products, and to take the products back;

3. to permanently remove the infringing products referred to in paragraphs I.1. and I.2. from the distribution channels by – the defendants – stating that this Court has found that the products infringe European Patent EP 1 840 282 B1 – in respect of the infringing products referred to in paragraph I.1. infringing products – or European Patent EP 1 813 734 B1 – for the infringing products referred to in Section I.2. – request third parties who are commercial customers but not end users to cancel all orders relating to the products referred to in Section I;

4. to destroy, at the defendant's expense, all products referred to in Section I which are directly or indirectly in their possession or ownership or which – even after the expiry of the aforementioned period – still come into their possession or ownership;

5. to provide the court and the Claimant with written evidence of the measures carried out in accordance with points II.2 to 4.

IV. The defendants are ordered

1. in the event of any breach of the order set out in paragraph I, to pay a recurring penalty payment of at least EUR 1,000.00 per infringing product,

2. in the event of any breach of the order set out in Section II, to pay the court a recurring penalty payment of at least EUR 500.00 per day for each day of the breach.

V. The defendants are ordered to pay the claimant EUR 100,000.00 as provisional damages, which shall be adjusted if the acts referred to in Section I continue.

VI. It is hereby declared that the defendants are, in principle, obliged to compensate the Claimant for any further damage she has suffered or may suffer in the future as a result of all past and future acts referred to in Section I.

VII. The defendants are ordered to bear the costs of the proceedings.

30. With regard to the wording of the 'in particular where' applications based on sub-claims 2, 4, 5 and 10 of the patent at issue, reference is made to the statement of claim.

31. The defendants request that

1. that the claim be dismissed;

2. that the Claimant be ordered to pay the costs of the proceedings.

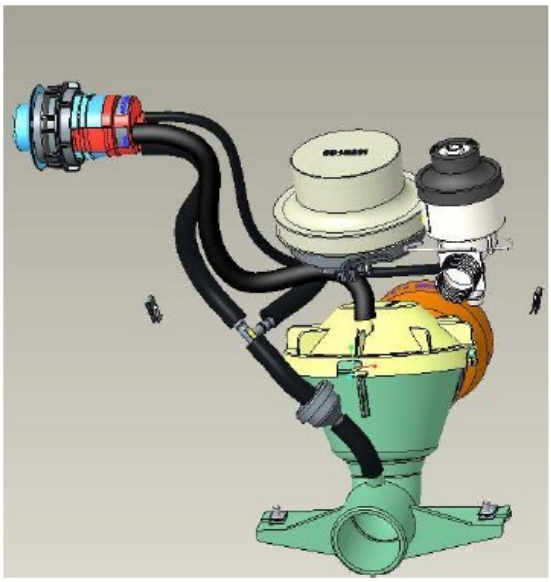
FACTUAL AND LEGAL ISSUES:

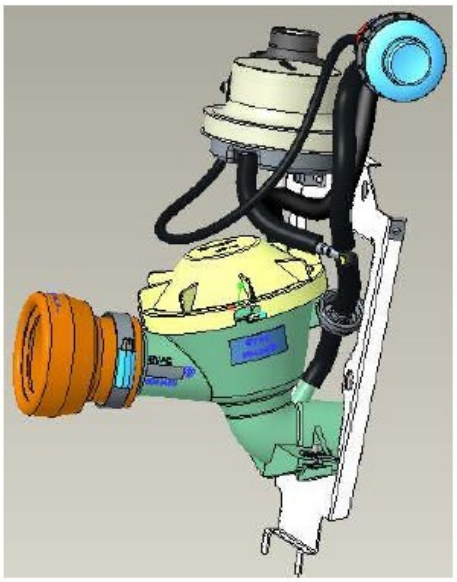
32. The claimant alleges that it became aware that the first defendant was, amongst other things, advertising the claimant's original spare parts for vacuum toilet systems. As the VacDrain Group is not an official distribution partner of the claimant, the claimant suspected that the spare parts on offer were product copies. For this reason, the claimant arranged for several test purchases to be carried out in China through its Chinese Attorney-at-laws. The products ordered in this context were delivered in January,

March and October 2021. A subsequent examination revealed that the spare parts delivered were exact copies of the Claimant's products. The parcel also contained installation instructions originating from the Claimant's original spare part and bearing a copyright notice in the Claimant's name. The invoices for all three test purchases were signed by the third defendant. The deliveries were also accompanied by a leaflet in which Mr Shaminder Sinh Kang, who was originally a co-defendant, was expressly referred to under the name
'VacDrain Germany'. At that time, Mr Shaminder Sinh Kang had still been the managing director of S.K. Marine Supplies GmbH, which was originally named as a co-defendant. On its website, this company offers spare parts for vacuum toilet systems, referring to the first defendant. Consequently, the claimant must have assumed that the spare parts distributed by S.K. Marine Supplies GmbH were also copies of the Claimant's products.

33. In order to confirm her suspicions, the claimant organised a test purchase from S.K. Marine Supplies GmbH via an intermediary in August 2021. When placing the order, it was expressly stated that the delivery was to be made to Germany and that the goods were intended for the German market. It was already apparent from the order confirmation issued by S.K. Marine Supplies GmbH that the parts sold were not original spare parts, but 'non-original parts'. The sales documents further showed that the second defendant had sourced the products via Vacdrain GmbH, a company that has since been wound up and which had the same registered office as the first defendant. The liquidation of Vacdrain GmbH was entered in the Commercial Register on 4 January 2023. Its shareholders were, each holding a 50 per cent stake, Mr Shaminder Sinh Kang and the third defendant, who was also the majority or sole shareholder of the first and second defendants. Shortly after the liquidation of Vacdrain GmbH, the third defendant incorporated the second defendant, with the incorporation being entered in the Commercial Register on 24 April 2023. The order confirmation dated 16 August 2021 and the delivery note from S.K. Marine Supplies GmbH were signed by Ms Katharina Kiran Singh Kang, who was originally also named as a defendant. The order was subsequently delivered to Secotech GmbH in Bad Bramstedt on 31 August 2021. The items delivered were not original parts but copies, which had been affixed with stickers bearing the defendant 1's markings.

34. In the claimant's view, the contested embodiment I (outlet valves) literally makes use of the technical teaching of the patent at issue I. Furthermore, with regard to the contested embodiment II (vacuum buffer means), the conditions for an indirect infringement of the patent at issue II are fulfilled. In particular, when the contested Embodiment II is installed in the Claimant's 'Classic Toilet' system, the active buffer device is also in fluid communication with the control mechanism and the waste water pipework. This is illustrated by the figures shown below, taken from page 8 of the Reply:





35. The defendants are of the view that the claimant has not even alleged any acts of infringement by the first defendant affecting the validated EP contracting member states (hereinafter: 'contracting member states'), but has merely referred to events in Asia or internal group matters relating to Vacdrain GmbH. Furthermore, there are no unlawful acts, as the Claimant has been aware of the actions of Defendant 1 for years and not only tolerates them but even supports them.

36. For many years now, Defendant 1 and the Claimant, including its German subsidiaries, have maintained close business relations, with orders being placed regularly both by Defendant 1 with the Claimant and vice versa. In particular, Defendant 1 has maintained very good business relations with Virtus GmbH. Virtus GmbH was acquired by the Claimant in 2019 through a merger with the Claimant's German company, Evac Germany GmbH. This ongoing business relationship, which continued until recently, also concerned the products at issue in the dispute and, in particular, the distribution of the vacuum buffer agent and 'air wave covers' (item no. 6543133), the latter being part of the disputed outlet valves. These were purchased by the first defendant from Virtus GmbH, which belongs to the Claimant, at a unit price of €1.22 and formed a key component of the claimed venting device for the Claimant's outlet valve. Defendant 1 then incorporated this cover into the overall product of the allegedly patent-infringing outlet valve. The Claimant itself subsequently purchased large quantities of the outlet valve (including the Claimant's outlet valve cover and the 'VACDRAIN' marking on the outlet valve) from Defendant 1 via Virtus GmbH.

37. The Claimant itself had regularly procured the vacuum buffer device at issue over a period of several years.

38. Given that the first defendant had been in regular and uninterrupted business contact with the Claimant for some time and had been fully

familiar with Defendant 1's products for several years, Defendant 1 could not reasonably have assumed that this would be regarded as patent infringement. Rather, Defendant 1 acted as a supplier to the Claimant.

39. A prerequisite for patent infringement is that the use takes place without the patent proprietor's consent. However, the conduct described above constitutes implied consent or tacit authorisation, which precludes patent infringement from the outset. In any event, any claims by the claimant would be time-barred.

40. Furthermore, as the claimant relies solely on a test purchase from 2021 to substantiate a patent infringement, the defendants appeal to the limitation period. In particular, Article 72 of the UPC Agreement, which provides for a maximum limitation period of five years, does not apply to the application for an injunction. Rather, the three-year limitation period under Sections 195 and 199 of the German Civil Code (BGB) applies, and this period has already expired.

41. The test purchase made by the claimant via its intermediary, Secotech GmbH, from S.K. Marine Supplies GmbH cannot be attributed to the first defendant as a relevant act of infringement, as it merely constituted an internal transfer of products within the group to Vacdrain GmbH – which has since been wound up – without any external effect. Consequently, the market-related nature required for an act of infringement is lacking.

42. With regard to the second defendant, the claimant had failed to allege an act of infringement. Nor was this possible, as the second defendant was an independent, autonomous company with no connection to the now-liquidated Vacdrain GmbH. Defendant 2 has expressly denied that Defendant 1, as alleged by the Claimant, wished to save itself the administrative burden of setting up Defendant 2 as a direct German subsidiary, that VD Solutions GmbH is an abbreviation for Vacdrain Solutions GmbH, and that Defendant 2 had taken over the business of the now-liquidated Vacdrain GmbH. Defendant 2 has nothing to do with Vacdrain GmbH. These are different companies with different names, different managing directors, different addresses, different objects of business and a different corporate structure.

43. Since the claimant has not alleged any act of infringement in relation to the first defendant, it follows logically that the third defendant is not liable either. Personal liability cannot be inferred from the mere position of the third defendant as managing director.

44. Apart from that, the claimant has not sufficiently demonstrated an infringement of the patent at issue. On the basis of the figures referred to, it cannot be sufficiently established that the vacuum buffer device is connected to the waste water pipework (and not, instead, to the outlet valve), as required by the patent.

45. In any event, however, the defendants could appeal to exhaustion in relation to an infringement of the patent at issue, Patent II, by the challenged embodiment II. The alleged distribution of the vacuum buffer device by the defendants as a spare part for the Claimant's toilet system did not constitute a new manufacture of the system. The contested products merely served the purpose of a permissible repair of the systems marketed by the Claimant. On the one hand, consumers or purchasers of such toilet systems would have had to expect the vacuum buffer unit to be replaced during the service life of the patent-protected system, a point also supported by the list of spare parts and their item numbers submitted as Annex AR 13 to the file. Furthermore, the vacuum buffer unit comprises a flexible diaphragm, the pumping action of which is intended to create the necessary vacuum during system operation. From a technical perspective, it is therefore clear to the consumer that such components are subject to wear and tear and must be replaced after a certain service life. Moreover, replacing such a vacuum buffer unit does not require any extensive modifications to the Claimant's vacuum toilet system, as the vacuum buffer unit can be removed and replaced in a few simple steps by disconnecting the hose connection. Furthermore, in accordance with the legitimate expectations of the relevant customer group, the replacement of the vacuum buffer element from the patent-protected overall system constitutes a standard maintenance measure which does not call into question the identity of the device as a marketable, i.e. valuable, economic asset. Consequently, when the vacuum buffer medium is replaced, it must in principle be assumed that this constitutes merely the use of the exhausted article.

46. Furthermore, in the defendant's view, the claimant had also failed to prove the elements of an indirect patent infringement in relation to the patent at issue. In its claim, the claimant had indeed argued that the vacuum buffer media had been supplied and offered for installation in vacuum toilet systems in the Federal Republic of Germany. However, the Claimant left open in its submissions whether the installation in the Claimant's vacuum toilet system – and thus the alleged use of the technical teaching protected by the patent – had taken place in the Federal Republic of Germany or in another Member State. For this reason, the claim was not sufficiently substantiated with regard to the necessary dual domestic connection and was therefore unfounded.

47. The claimant has contested the defendant's submissions.

48. It claims that there was never a direct business relationship between itself and the defendant. Such a relationship had existed only with Virtus GmbH. This had been a formerly independent trading company based in Osten (Lower Saxony), which had been in competition with the Claimant. In March 2019, Virtus GmbH was acquired by the Claimant and, in March 2020, merged into its German subsidiary, Evac Germany GmbH.

49. At the same time as the subsequent integration process, the Claimant's attention was drawn to the (at that time still alleged) patent infringement by the defendants. In 2021, the Claimant undertook various investigative measures, including test purchases in January, March and October 2021. In this context, it became clear to the Claimant

that the new German subsidiary maintained a business relationship with the first defendant, which, amongst other things, involved the trade in patent-infringing products or parts thereof. Consequently, in December 2021, the Claimant instructed Evac Germany GmbH to cease purchasing spare parts for Evac products from the defendant. However, due to criminal investigations still ongoing in China at that time, the claimant initially felt unable to approach the defendants immediately. This was not possible until June 2024.

50. The first defendant infringed the patents at issue. This is evidenced by the test purchase arranged by the Claimant in August 2021, which was not disputed by the defendants. As part of this test purchase, Vacdrain GmbH, which has since been wound up, procured the contested embodiments directly from the first defendant. It is apparent from the order form submitted as Annex AR 14 to the file that the first defendant ('Vacdrain Shanghai') supplied the contested embodiments to Vacdrain GmbH and thereby imported them into Germany. The mere importation into the territory covered by the patents at issue constitutes an independent act of use within the meaning of Article 25(a), third alternative, of the UPC Agreement.

51. In any event, the second defendant is facing an imminent infringement within the meaning of Art. 32(1)(a), alternative 2, of the UPC Agreement and Article 62(1), alternative 1, of the UPC Agreement. The second defendant is the de facto successor to Vacdrain GmbH, which has since been wound up and which placed the contested embodiments within the scope of the patent at issue on the market. Defendant 2 is not merely partly, but entirely owned by Defendant 3, who is also the 90% majority shareholder and CEO of Defendant 1. Defendant 3 therefore acts as the 'spider in the web' and controls the business of the VacDrain conglomerate as the majority or sole shareholder and managing director of all group companies. Defendant 2 has assumed the role previously held by Vacdrain GmbH as the German sales branch and distributes the VacDrain Group's goods in Europe. In particular, Defendant 2 appeared as 'Vacdrain' at the SMM trade fair in Hamburg in September 2024 and also offered goods belonging to Defendant 1. It is therefore evident that the second defendant at least threatens to offer and place on the market the contested embodiments within the scope of the patents at issue.

52. The third defendant is liable as an infringer of the patents at issue pursuant to Article 64 of the UPC Agreement in conjunction with Article 25 of the UPC Agreement. He is not only the managing director but also the majority or sole shareholder of the first and second defendants. Furthermore, he was directly involved in the distribution of the contested embodiments. This goes beyond the duties typically associated with the role of managing director. The fact that there is no invoice signed by the third defendant for the test purchase in Germany is solely due to the fact that the test purchase was not made directly from the first defendant, but from S.K. Marine Supplies GmbH as an intermediary. Finally, the third defendant was also aware of the unlawfulness of the acts of use. He was at least aware that the Claimant comprehensively protected its products against counterfeiting by third parties through intellectual property rights. Whether the third defendant was also positively aware of the unlawfulness of the specific acts of use can be left open, as he is not merely an accessory but a joint perpetrator of the patent infringement.

53. Contrary to the defendants' view, the contested vacuum buffer indirectly makes use, in the literal sense, of the technical teaching of the patent at issue. In particular, the connecting pipe does not lead into the waste water valve but into the waste water pipework. Consequently, the vacuum buffer is directly connected to the waste water pipework.

54. Nor could the defendants successfully appeal to the defence of exhaustion. The replacement of the vacuum buffer does not constitute a routine maintenance measure. Rather, the service life of the vacuum buffer is designed to match that of the entire vacuum waste water system. Only the diaphragm in the vacuum buffer is to be replaced every 10 years in accordance with the proposed maintenance programme. This is not refuted by the fact that the Claimant itself offers vacuum buffers as spare parts. The Claimant offers almost all individual components of its vacuum toilet systems for separate purchase as spare parts. Furthermore, the replacement of the vacuum buffer does not constitute the manufacture of a new vacuum system as claimed, precisely because the technical effects of the invention are reflected in the vacuum buffer itself.

55. With regard to the requirements for indirect patent infringement, no proof is required that the vacuum buffers supplied by the defendants are actually installed within the scope of the patent at issue. The feature 'for the use of the invention' does not require that the recipient actually use the means. It is sufficient that the means enables the recipient to utilise the invention. Given that the goods were supplied to customers in Germany, there is no evidence whatsoever to suggest that the contested embodiments were not intended for use in Germany and thus in the same Member State to which the supply was made.

56. Nor had the claimant granted the defendants consent, either expressly or impliedly, to use the patents at issue. In particular, no consent to use the patents at issue could be inferred from the business relations between the defendant and the former Virtus GmbH or the current Evac Germany GmbH. In any event, the activities of these companies prior to the takeover or merger were not attributable to the Claimant. Furthermore, the Claimant had instructed its new subsidiary to cease further trade in spare parts for Evac products with the defendant once it had become clear that the transactions had also involved product copies infringing intellectual property rights. In any event, such consent would be limited solely to the contested embodiments acquired from Evac Germany GmbH and would not extend to the defendant's supplies to third parties.

58. The claimant's claims are not time-barred. If German law on limitation periods applies, this also applies to Section 167 of the Code of Civil Procedure (ZPO) in conjunction with Section 204(1) No. 1 of the Civil Code (BGB), which is why the limitation period was suspended by the bringing of the present action. With regard to the other Member States, the defendants had undisputedly stated that national law provided for a limitation period of at least three years. Furthermore, it can be inferred from comparative law literature that the relevant limitation periods are three years in Finland and five years each in France, Italy and the Netherlands.

59. Nor could forfeiture be assumed before the expiry of the limitation period. Furthermore, there is a lack of both a temporal and a factual element in this respect.

60. Reference is also made to the entire contents of the file.

REASONS FOR THE DECISION:

A. Admissibility of the infringement action

61. The infringement action is admissible; in particular, the Unified Patent Court (UPC) has international jurisdiction.

62. The UPC is a common court within the meaning of Article 71a(1) of the Brussels Ia Regulation (Article 71a(2)(a) of the Brussels Ia Regulation). It therefore has jurisdiction where the courts of a Contracting Member State would have jurisdiction under the Brussels Ia Regulation for an action within the meaning of Article 32(1) of the UPC Agreement (Article 71b(1) of the Brussels Ia Regulation).

63. That is the case here.

64. With regard to the second defendant, international jurisdiction already follows from Article 4(1) of the Brussels Ia Regulation in conjunction with Article 71b(1) of the Brussels Ia Regulation, as the second defendant has its registered office in Hamburg and thus in Germany. On this basis, the territorial jurisdiction of the Düsseldorf local division derives from Article 33(1)(b) of the UPC Agreement. According to this provision, the local division in the Contracting Member State in whose territory the defendant has his domicile or the seat of his principal place of business has jurisdiction. The second defendant has its registered office in Hamburg and thus in Germany, the Contracting Member State in which the Düsseldorf local division is also situated. The local jurisdiction of the Düsseldorf local division is therefore established. The second defendant's admissible preliminary objection is consequently unsuccessful on the merits.

65. With regard to the first and third defendants, it must be assumed that the UPC has international jurisdiction simply because these defendants neither lodged a preliminary objection pursuant to
Rule 19 of the RoP, nor have they raised the issue of jurisdiction in their statement of defence (see UPC_CoA_409/2025, decision of 27 March 2026, Headnote 3 – NUC v Hurom). Apart from that, international jurisdiction over these defendants arises from Article 7(2) of the Brussels Ia Regulation, as this provision, in conjunction with Article 71b(2) of the Brussels Ia Regulation, establishes international jurisdiction for all patent infringements (allegedly) committed in a Contracting Member State, irrespective of the defendant's place of business. The jurisdiction conferred by Article 7(2) of the Brussels Ia Regulation is not limited to that Member State (see also UPC_CoA_317/2025, Order of 28 November 2025, Headnotes 4 and 5 – Barco v. Yealink). The fact that the claimant relies exclusively on a test purchase made in August 2021 to substantiate the allegation of infringement does not preclude the UPC's jurisdiction (UPC_CFI_162/2024 (LD Mannheim), decision of 11 March 2025, para. 50 – Hurom v. NUC).

66. Furthermore, the jurisdiction of the UPC and that of the Düsseldorf local division are deemed to be accepted, Rule 19.7 of the RoP, since only Defendant 2, in its preliminary objection, raised the issue of lack of jurisdiction solely in relation to itself.

B. Qualified professional

67. The claimant defines the person skilled in the art as a university-qualified engineer, for example a mechanical engineer, plant engineer or sanitary engineering specialist, with several years' practical professional experience in the field of vacuum sewage and sanitary systems, in particular with regard to their design, integration and operation in ships, buildings or comparable technical installations. The expert considers the claimed technology primarily from functional and operational perspectives and, in particular, assesses the interaction of the system components within the overall system.

69. Even taking into account the defendant's submissions, there are no objections to this definition, meaning that it may form the basis of the decision.

C. Merits of the infringement claim

70. The infringement claim is partially well-founded.

71. It is true that the contested outlet valves directly make use, in the literal sense, of the technical teaching of the patent at issue. However, the claimant has failed to sufficiently establish the conditions for liability on the part of the second defendant.

72. With regard to the contested vacuum buffer means, the conditions for an indirect infringement of the patent at issue are met. However, even in this respect, no infringement by the second defendant can be established.

I. Preliminary issue: Applicable substantive law

73. In accordance with the principles established by the Mannheim local division (UPC_CFI_162/2024, decision of 11 March 2025, headnote 4(c) and para. 105 et seq. – Hurom
v. NUC), the substantive law as laid down in the UPC Agreement applies to acts which commenced before the entry into force of the UPC Agreement and which continued after 1 June 2023, even taking into account the prohibition on retroactive effect enshrined in Article 28 of the Vienna Convention. By contrast, acts which were completed before
1. June 2023 are subject to the relevant national law (UPC_CFI_162/2024, decision of 11 March 2025, Headnote 4(b) and paras. 99 and 101 – Hurom v. NUC).

74. When determining whether acts of infringement are 'continuing' in this sense, one must not adopt an overly formalistic approach that would run counter to the objectives of the Agreement. A normative and thus evaluative assessment is required.

a continuing act may therefore be assumed where the infringer continues their infringing conduct, even though they could have ceased it in view of the entry into force of the UPC Agreement on
1 June 2023. In that case, however, each party retains the right to appeal to provisions of national law relating to acts occurring prior to
1 June 2023 and which are more favourable to their position than the provisions of the UPC Agreement and the Rules of Procedure (UPC_CFI_162/2024, decision of 11 March 2025, Headnote 5 and para. 105 et seq. – Hurom v NUC; UPC_CFI_50/2024, (LD Düsseldorf), judgment of 10 April 2025, para. 203 et seq. – YelloSphere v Knaus Tabbert).

75. On the basis of these principles, the UPC Agreement applies in the present case. It is true that, contrary to the Claimant's view, the existence of a continuing act within the aforementioned meaning cannot be established solely on the grounds that the defendants neither submitted a declaration of discontinuance nor otherwise dispelled the risk of further infringement. The mere fact that the defendants did not issue a declaration of discontinuance does not mean that they did not continue their infringing conduct after the UPC Agreement came into force. However, the defendants themselves stated at the oral hearing that a sale had taken place in Germany even after 1 June 2023, albeit that the invoice had not been issued by the first defendant. The distribution of the contested embodiments was therefore not concluded with the test purchase, but continued in Germany in at least one instance after 1 June 2023, which justifies the assumption in the present case that there was a continuing act within the aforementioned meaning.

76. If one were to take a different view and rely on national law, this would not lead to a different outcome.

77. Where national law applies, it is primarily for the party to put forward its legal arguments regarding national law. In this context, a party may consider either putting forward arguments regarding national law through its representatives and/or substantiating these arguments by means of an expert opinion from a private expert, or proposing to the court that such a private expert opinion be submitted, should the court deem this appropriate and necessary. Only where the legal opinions on national law submitted by the parties are at odds and the court itself is unable to adequately resolve the issue of national law must the court consider whether to appoint a court-appointed expert proposed by the party concerned (Mannheim local division, UPC_CFI_162/2024, decision of 11 March 2025, Headnote 5 and para. 105 et seq. – Hurom v NUC; Bopp/Kircher/Böttcher, Handbook of European Patent Litigation, 3rd ed., § 23, para. 175 et seq.; Ahrens GRUR 2017, 323, 325, Haft/Lohr,
GRUR-Patent 2023, 69, 71).

78. On this basis, the claimant in the present case submitted a detailed document of 13 May 2026 on German, Finnish, French, Italian and Dutch law and, as Annexes AR 37 to AR 40, submitted the provisions which it considers to be relevant. A dismissal of these submissions pursuant to Rule 9.2 of the RoP, as sought by the defendants, is out of the question for the simple reason that the claimant made these submissions in response to the guidance provided by the judge-rapporteur during the interim proceedings (see

R. 103.1(a) of the RoP). On that basis, it would then have been for the defendants to respond to this and to identify any possible discrepancies between the national law of the aforementioned Contracting Member States and the UPC Agreement. However, the defendants did not make use of this opportunity.

II. Patent at issue I

1. Subject-matter of the patent at issue I

79. Patent at issue I relates to a drain valve with a venting device for a vacuum sewerage system.

80. In vacuum sewerage systems, where the operation of the sewage collection tank and, in particular, the drain valve is controlled pneumatically – that is, by air or negative pressure – the source of the negative pressure is usually the sewer pipe. The negative pressure for the control mechanism is frequently drawn from a point on the sewer pipe situated downstream of the drain valve in the direction of flow of the waste water. When the drain valve is opened, the negative pressure level drops as atmospheric air enters the sewer pipe (para. [0003]).

81. In this context, the control mechanism functions like a three-way valve, whereby the outlet valve is closed by venting it via the control mechanism. Consequently, the closing speed depends on the flow resistance of the vent pipe. According to the description of the contested patent, such vacuum arrangements are known, for example, from GB 2 149 534 A (para. [0004]).

82. Vacuum-controlled outlet valves known to date exhibit a strikingly high noise level, as the air flow through the outlet valve is severely restricted when the valve is closed. Examples of earlier attempts to reduce the noise level, as the specification of the contested patent goes on to explain, can be found in US 6,128,789, in which the exhaust valve is closed more quickly, as well as in EP 0 436 357 and EP 0 778 432, in which additional air is introduced into the waste water pipe. However, the patent at issue regards such solutions as disadvantageous, as they are rather complex and yield only very limited results (para. [0005]).

83. On this basis, the patent at issue states that the object of the invention is to provide a drain valve with a venting device, the noise level of which is reduced during a draining or flushing operation. Furthermore, according to the description of the patent at issue I, the invention is based on the objective of providing a drain valve that improves the operation of the vacuum sewerage system.

84. To solve this problem, claim 1 of the patent at issue claims protection for a device having the following features:

1. Outlet valve

1.1 with a venting means

1.2 for a vacuum sewerage system, comprising

1.2.1 a waste water tank

1.2.2 sewage pipes

1.2.3 a vacuum-generating means for generating a vacuum in the waste water pipes, and

1.2.4 a control mechanism,

1.3 wherein the outlet valve is ordered with the venting means to provide a connection between the waste water tank and the waste water pipes,

1.4 wherein the outlet valve is controlled by the control mechanism,

1.5 characterised in that the venting means

1.5.1 is arranged to provide a direct fluid connection with the outlet valve and

1.5.2 takes the form of a quick-release vent valve and

1.5.3 comprises a valve plate,

1.5.3.1 which is ordered to open and close against a valve seat in the outlet valve,

1.5.3.2 which is ordered to be retracted from the valve seat so that air is supplied directly to the outlet valve through the open valve seat for the rapid closure of the outlet valve following an outlet or purge sequence,

1.5.3.3 Which is ordered to close against the valve seat when the outlet valve is subjected to a vacuum supplied by the control mechanism for opening the outlet valve for the discharge or flushing sequence.

85. Claim 1 therefore protects an outlet valve *for a vacuum waste water system*, which in turn comprises a waste water tank, waste water pipes, a vacuum-generating means for generating a vacuum in the waste water pipes, and a control mechanism. The vacuum drainage system described in feature group 1.2 is therefore not part of the claimed product. Rather, it is sufficient, but

also necessary that the claimed outlet valve can be integrated into such a vacuum drainage system.

86. The outlet valve, which is controlled by a control mechanism, comprises a venting means (features 1.1. and 1.3.), which, when the outlet valve is installed in the vacuum drainage system, is ordered between the waste water tank and the waste water pipes (feature 1.3.).

87. The core of the invention is the venting means described in feature group 1.5, which provides a direct fluid connection to the outlet valve. The venting means according to the invention ensures that, as soon as the connection between the waste water pipes and the outlet valve is severed, atmospheric air flows into the outlet valve. This equalises the negative pressure without delay and thereby causes the valve to close, cf. para. [0008]. The valve is a quick-venting valve (feature 1.5.2.). According to the invention, the venting means comprises a valve plate which is ordered on a valve seat on the outlet valve for opening and closing (feature 1.5.3.1.).

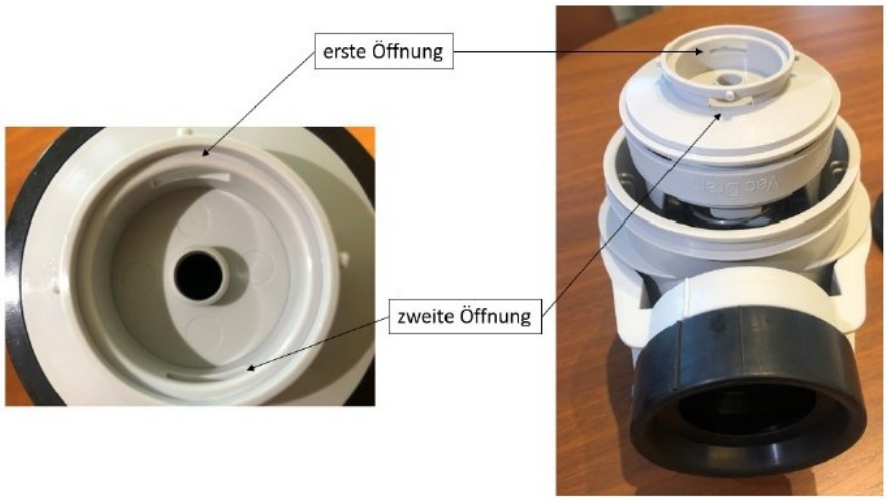
88. Features 1.5.3.2. and 1.5.3.3. describe the mode of operation of this valve plate in more detail: On the one hand, the valve plate is to be ordered at the valve seat so as to retract, ensuring that air is supplied directly to the outlet valve via the front valve seat for rapid closure following an outlet or flushing sequence (feature 1.5.3.2.). Secondly, it is to be ordered against the valve seat for closing when the exhaust valve is subjected to a vacuum supplied by the control mechanism for opening the exhaust valve for the exhaust or purge sequence (feature 1.5.3.3.).

2. Literal implementation of all features

89. The contested embodiment I makes literal use of the technical teaching of claim 1 of the patent at issue.

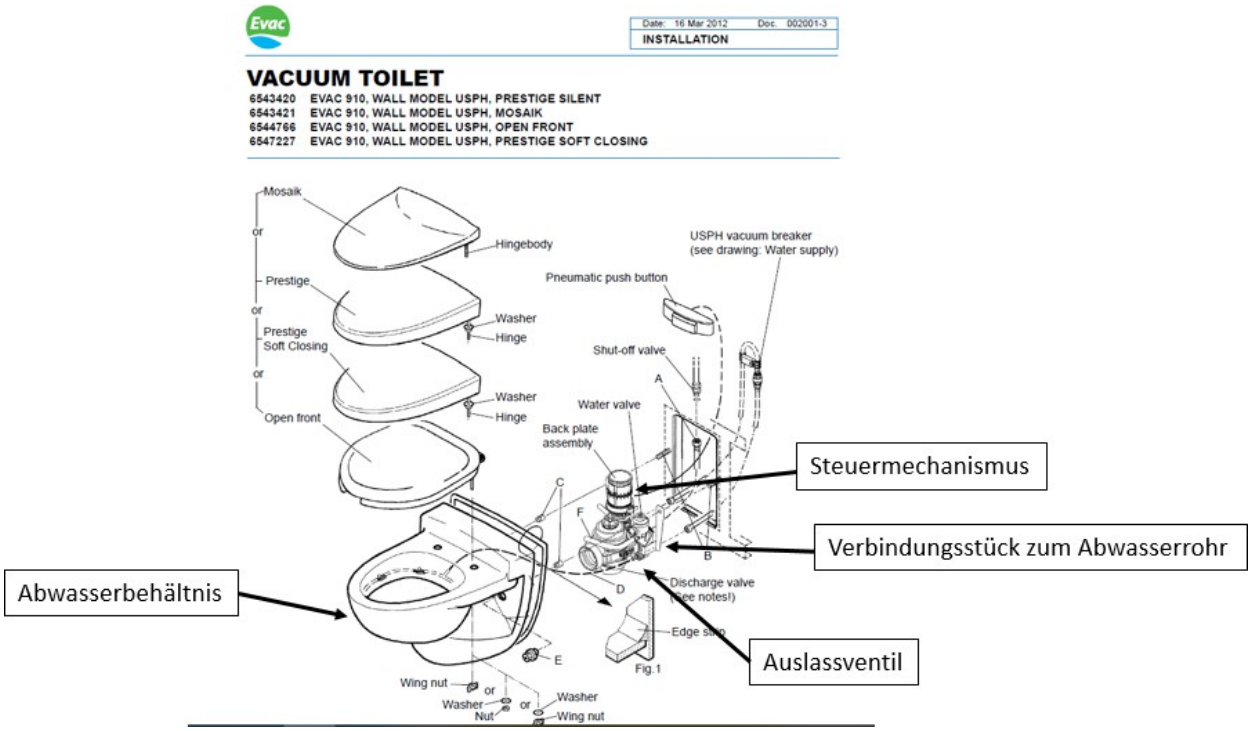
a. Feature 1. – Outlet valve

90. As the figures shown below illustrate, the contested outlet valve comprises a venting means within the meaning of feature 1:



b. Feature group 2 – Vacuum waste water system

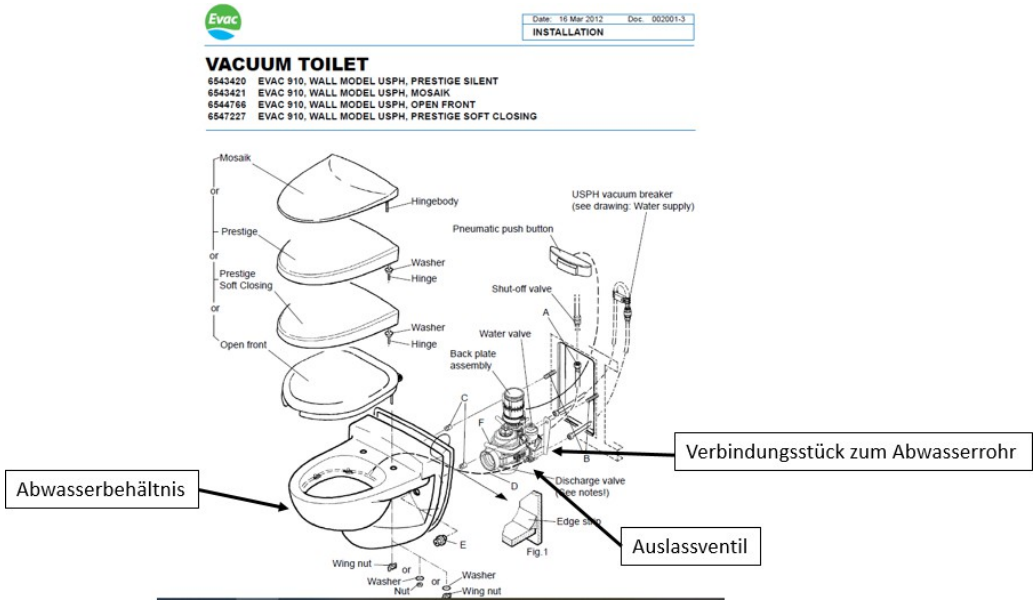
91. Furthermore, it is not disputed between the parties that it follows from ISO standard 15749-3 that all vacuum toilet systems must comprise a vacuum waste water system, comprising a waste water tank (Feature 1.2.1), waste water pipes (Feature 1.2.2), a vacuum-generating means for creating a vacuum in the waste water pipes (Feature 1.2.3) and a control mechanism (Feature 1.2.4), as the Claimant has illustrated using its EVAC 910 and Optima vacuum waste water systems:



92. A vacuum is maintained in the waste water pipe, so that the waste water can be conveyed from the toilet bowl into the waste water pipe (feature 1.2.3).

c. Feature 1.3 – Order of the outlet valve

93. As the claimant has further submitted, and this is undisputed, in all systems complying with ISO standard 15749-3, the outlet valve is ordered between the waste water tank and the waste water pipes (feature 1.3.), as can be seen from the figure shown below:



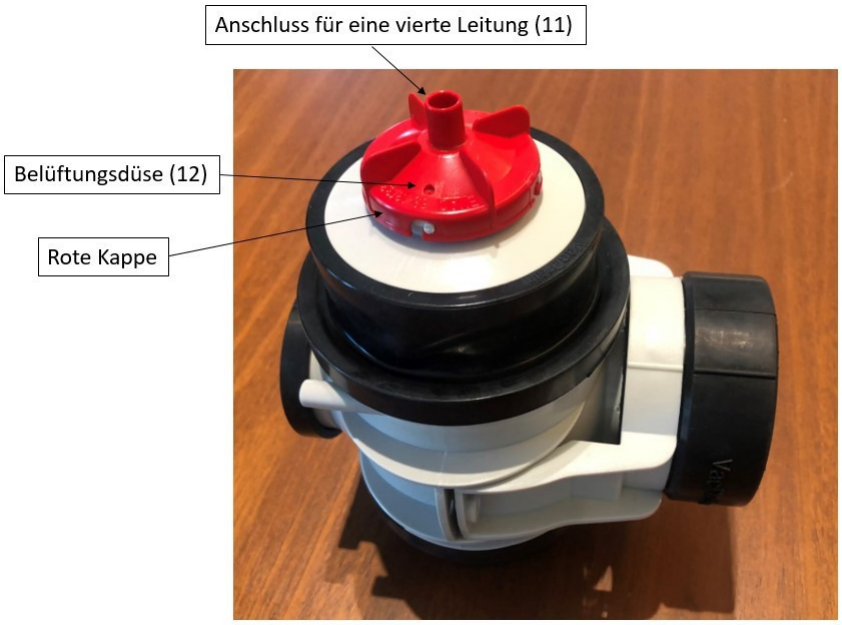
d. Feature 1.4. – Control of the outlet valve

94. It is undisputed that the outlet valve is controlled by the control mechanism, as required by Feature 1.4., and this follows directly from ISO Standard 15749-3. Thus, in the Claimant's vacuum waste water systems, the control mechanism establishes a direct connection between the waste water pipe and the outlet valve when the flush button is operated, causing the valve to open. This connection is subsequently broken, causing the valve to close again.

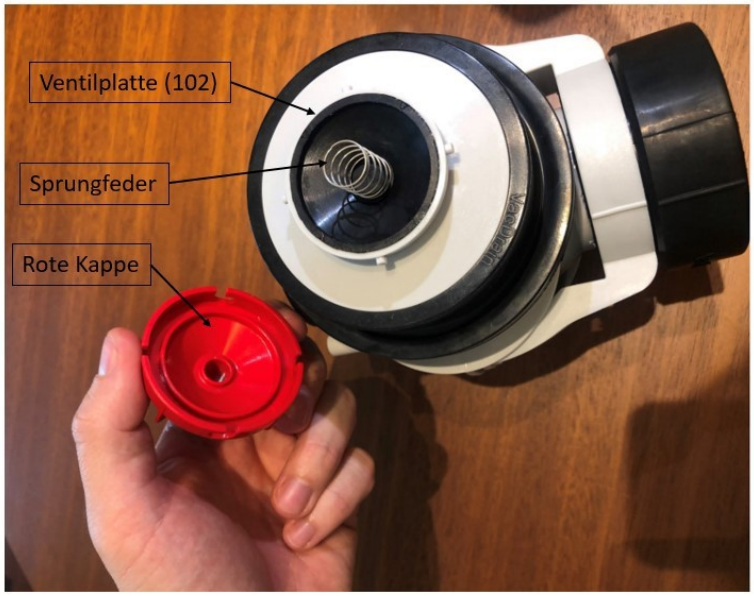
e. Features 1.5 and 1.5.1 – Venting means

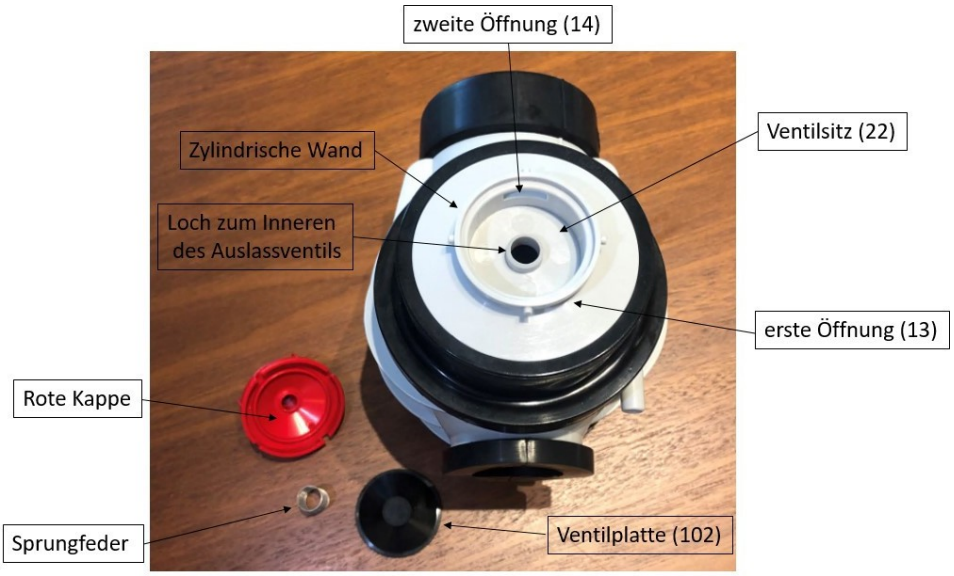
95. Furthermore, in contested embodiment I, the venting means is also arranged to provide a direct fluid connection to the outlet valve (features 1.5. and 1.5.1.).

96. The venting means of the contested embodiment I comprises a red cap with a vent nozzle (12) and a connection for a fourth pipe (11):



97. Furthermore, the venting means comprises a valve seat (22) surrounded by a cylindrical wall (22) with two openings (13, 14). There is also a valve plate (102) which closes off the upper end of the valve seat (22) and the vent openings in the cylindrical wall. A small leaf spring is located between the valve plate (102) and the red cap. A hole is ordered below the valve plate (102), which leads into the interior of the exhaust valve.





98. The red cap and the valve plate beneath it form an expandable chamber (101) which, when expanded, seals the hole in the valve seat (22) via the depressed valve plate (102). When a vacuum is created in the expandable chamber by extracting air through the fourth conduit (11), the valve plate (102) moves upwards towards the red cap, thereby opening the hole in the valve seat. This establishes a direct fluid connection between the ambient air and the interior of the exhaust valve via the first and second openings (13, 14) of the venting means and via the hole in the valve seat (22).

f. Feature 1.5.2. – Quick-release vent valve

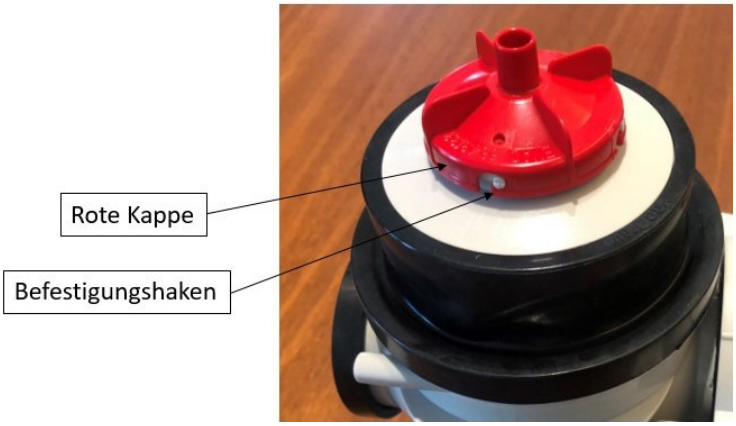
99. The defendants have also correctly not disputed that the venting means of the contested embodiment I fulfils the requirements of a quick-release vent valve within the meaning of the patent at issue (cf. para. [0007]) (Feature 1.5.2). A vacuum is created in the expandable chamber by extracting air through the fourth conduit (11). As a result, additional air flows directly into the outlet valve. The negative pressure in the outlet valve is immediately relieved, which brings about an effective and rapid closure of the

exhaust valve.

g. Feature group 1.5.3. – Valve plate

100. Finally, the contested embodiment I also comprises a valve plate which fulfils all the requirements of feature group 1.5.3.

102. The valve plate (102) is arranged on the valve seat (22) in the outlet valve for opening and closing. In the initial position, the valve plate (102) is pressed towards the valve seat (22) by the tension spring located between the valve plate (102) and the red cap. The pressure acting on the valve plate is generated by the tension spring, which is compressed between the valve plate and the red cap and is held in place within the red cap by retaining hooks. As a result, the valve plate (102) closes against the valve seat (22) and seals the opening in the valve seat (22) leading into the outlet valve in an airtight manner:



103. If a vacuum is created in the expandable chamber by extracting air via the fourth conduit (11), which exceeds the force of the spring, the spring is compressed and the valve plate (102) moves upwards towards the red cap, opening the hole in the valve seat (22). Feature 1.5.3.1. is fulfilled.

104. If the valve plate moves upwards and is thereby withdrawn from the valve seat within the meaning of feature 1.5.3.2. as soon as a vacuum is created in the expandable chamber (101), this opens the hole in the valve seat (22) and air is supplied directly to the outlet valve through the open seat. The supplied air equalises the vacuum in the outlet valve, which consequently closes rapidly.

105. Furthermore, the valve plate (102) seals the valve seat (22) and thus the opening leading into the outlet valve, even when the outlet valve is supplied with vacuum by the control mechanism to open the outlet valve. The vacuum generated in the outlet valve at this point is isolated from the expandable chamber due to the airtight seal created by the valve plate (102) seating on the valve seat (22). As the control mechanism of the EVAC 910 and Optima vacuum toilet systems only establishes a connection between the outlet valve and the venting means after the flushing sequence has been completed

, the vacuum in the outlet valve, which acts to open the outlet valve, has no effect on the sealing of the opening of the valve seat (22). Feature
1.5.3.3. is therefore also fulfilled.

3. Acts of use under Article 25(a) of the UPC Agreement

106. The first defendant placed the contested outlet valves on the market in the Federal Republic of Germany – and thus in a contracting member state in which the patent at issue is in force – and imported them for that purpose. It has therefore committed an act of use within the meaning of Article 25(a) of the UPC Agreement. Defendant 3 is involved in the operational business of Defendant 1 beyond his mere position as managing director. He is therefore also liable. By contrast, liability on the part of Defendant
2. cannot be established on the basis of the facts presented.

a. Test purchase

107. It is undisputed that Defendant 1 delivered the contested products as part of a test purchase in August 2021 to Vacdrain GmbH, which is based in Hamburg and thus in the Federal Republic of Germany, in response to its order, from where they were delivered via S.K. Marine Supplies GmbH to Secotech GmbH (see Annexes AR 12 and AR 14). The fact that this placing on the market took place as part of a test purchase does not justify the conclusion that the importation and placing on the market took place with the Claimant's consent and were therefore not unlawful. The very purpose of a test purchase is to investigate possible acts of infringement and to gather evidence for infringement proceedings that may be necessary at a later stage. This does not imply consent to the distribution of the contested embodiments (UPC_CFI_50/2024 (LD Düsseldorf), decision of 10 April 2025, para. 208 – Yellow Sphere v Knaus Tabbert).

108. In so far as the defendants seek to dispute the existence of an act of infringement by Defendant 1 within the meaning of Article 25(a) of the UPC Agreement on the grounds that the delivery from Defendant 1 to Vacdrain GmbH constituted a purely intra-group transfer with no external effect and was therefore not a placing on the market within the meaning of Article 25(a) of the UPC Agreement, the defendants' arguments do not permit such a finding. If the case law of the German courts cited by the defendants in this context (Tilmann/Plassmann/Busche, 'Unitary Patent', 'Unified Patent Court', Art. 25, para. 27, with reference to BGH GRUR 1969, 479, 480 – Colle de Collogne) were also to apply at the Unified Patent Court, the fundamental prerequisite would be that the group company in question – and thus Vacdrain GmbH – is, in substance, merely an autonomous business division of the first defendant. However, no such finding can be made in the present case. The question of the applicability of these principles therefore does not require a final decision in the present case.

b. No consent from the claimant

109. There is no evidence to suggest that the Claimant, as the patent proprietor, would have consented to the supply of the contested discharge valves to third parties. In any event, the supply to

Secotec GmbH via Vacdrain GmbH and S.K. Marine Supplies GmbH thus took place, as required by Article 25(a) of the UPC Agreement, without the consent of the patent proprietor.

110. Even if, as claimed by the defendants and assumed here in their favour, a supply relationship had existed between the parties, under which the first defendant acted as a supplier to the Claimant or to Virtus GmbH, no consent on the part of the Claimant to supplies to third parties can be inferred from this. The question discussed by the parties as to whether such consent existed is therefore not relevant to the existence of a patent infringement per se, but only with regard to the possible legal consequences of such consent.

4. Liability of the third defendant

111. Defendant 3 is also liable in his capacity as director and legal representative of Defendant 1.

112. It is true that, for such liability to arise, it is not sufficient to refer merely to Defendant 3's position under company law. As the Court of Appeal has already held, the managing director's mere position under company law does not in itself make him an accomplice or accessory to a patent infringement by the company. Liability on the part of the managing director can only be considered if the managing director's contested conduct goes beyond his typical professional duties as a managing director. This applies in particular where he deliberately uses the company to commit patent infringements. However, this is also the case where the managing director knows that the company is infringing a patent and – although it is possible and reasonable for him to do so – fails to take action to put an end to the patent infringement (UPC_CoA_534/2024, decision of 3 October 2025, headnote 4 and para. 189 et seq. – Belkin v. Philips).

113. Based on these principles, however, it must be taken into account that the third defendant does not merely hold a corporate role within the first defendant. Rather, he also personally signed the invoices in each instance in connection with the test purchases carried out in China. Even if these test purchases in China do not in themselves constitute an infringement of the patent at issue, this conduct nevertheless demonstrates that his position extends beyond that of a typical managing director or director. In any event, in 2021 – and thus also around the time of the test purchase by Secotech GmbH – he was, as a director and majority shareholder, actively involved in the operational business and the sale of the contested embodiment by the first defendant. This justifies classifying him as an accomplice to the patent infringement committed by the first defendant.

5. No liability on the part of the second defendant.

114. By contrast, no liability on the part of the second defendant can be established.

115. The incorporation of the second defendant was entered in the Commercial Register on 24 April 2023. It therefore did not yet exist at the time of the test purchase in August 2021. There is no evidence of

acts of infringement by Defendant 2. There is a lack of evidence to support such acts. Nor does the Claimant allege that such acts took place.

116. Nor does the claimant allege that the second defendant is, in legal terms, the legal successor to Vacdrain GmbH. It is undisputed that the second defendant and Vacdrain GmbH are two separate companies with different names, different managing directors, different addresses and a different shareholder structure. In so far as the claimant nevertheless attempts, on the basis of the test purchase made from Vacdrain GmbH, to infer liability on the part of the second defendant as the de facto legal successor to Vacdrain GmbH on the basis of the test purchase made from Vacdrain GmbH, the Claimant has failed – even though there may be some circumstantial evidence to support this – to put forward sufficiently specific facts on the basis of which such legal succession could be established with the certainty required for a judgment.

117. It is obvious, and requires no further explanation, that no conclusions regarding such succession can be drawn solely from the use of the letter sequence 'VD' in the name of the second defendant.

119. In so far as the Claimant further refers in this context to the second defendant's 2's presence at a trade fair, the SMM in Hamburg, this too does not, either on its own or when viewed in the overall context, justify a different assessment. It is true that the second defendant also offered goods belonging to the first defendant at this fair, including a vacuum toilet, as can be seen from the illustration below, taken from the Reply:

118. However, such a trade fair appearance, taken on its own, can initially only serve to establish that Defendant 2, in accordance with the corporate purpose stated in the commercial register ('import, export and distribution of (…) vacuum systems', see Annex AR 6), is a distribution company of Defendant 1, which also covers the vacuum toilet sector. No concrete evidence can be inferred from this to suggest that the second defendant might also offer or distribute the discharge valves or vacuum buffers at issue in the relevant Member States party to the Agreement. This applies in any event where, as in this case, no acts of infringement by the second defendant have occurred since its incorporation in 2023.

119. The claimant has failed to adduce any further concrete evidence from which it could be concluded that the second defendant, as alleged by the claimant, ‘as the de facto successor to Vacdrain GmbH, threatens to repeat its acts of infringement’. The circumstantial evidence relied upon by the Claimant is insufficient, either on its own or when considered as a whole, to establish an imminent patent infringement by the second defendant.

120. In so far as the claimant points out that the second defendant is not merely partly but wholly owned by the third defendant, who is also a 90 per cent majority shareholder and CEO of the first defendant, it cannot be inferred from this overlap in the shareholding structure that an act of infringement by the second defendant is imminent. The same applies with regard to the reference to the temporal proximity of the incorporation of the second defendant to the liquidation of Vacdrain GmbH. This finding is all the more applicable given that – as already explained – Defendant 2 did not yet exist at the time of the sole specific act of infringement alleged to have taken place in 2021, and that no acts of infringement have been committed by Defendant 2 since its incorporation in 2023.

121. In so far as the claimant instead attempts to establish liability on the part of the second defendant on the basis of an alleged risk of first-time infringement, this approach is also unsuccessful. In this context, it would have been incumbent on the claimant to set out specific circumstances indicating that, whilst an infringement by the second defendant had not yet occurred, but that the second defendant, as a potential infringer, had created the conditions for such an infringement and that, with preparatory acts having been completed, the infringement was merely a matter of implementation (see UPC_CoA_446/2025, Order of 13 August 2025, paragraphs 46 and 54 – Boehringer v Zentiva; UPC_CFI_166/2024 (LD Düsseldorf), order of 6 September 2024, headnote 2 – Novartis
v. Celltrion).

122. Even if the claim against the second defendant is unsuccessful, the claimant is not left without legal recourse. On the one hand, by virtue of the present decision, it holds an injunction against the first defendant and thus against the manufacturer of the contested embodiments. Secondly, the Rules of Procedure provide for effective means to enable the Claimant, in the event of a future act of infringement, to obtain such an order swiftly and effectively against the second defendant as well.

III. Patent at issue II

1. Subject-matter of the patent at issue II

123. The patent at issue protects a vacuum drainage system.

124. As the person skilled in the art will gather from the introductory remarks in the patent specification, in vacuum drainage systems in which the function of the wastewater collection tank is

negative pressure, the source of the negative pressure is usually the sewer pipe. The negative pressure is typically drawn from a point on the sewer pipe situated downstream of the outlet valve in the direction of flow of the waste water. When the outlet valve is opened, the negative pressure level drops as atmospheric air enters the sewer pipe. Consequently, the vacuum level available to the control mechanism and for controlling the drain valve may be too low to open the drain valve properly. Furthermore, if the vacuum sewerage system includes a flushing arrangement with a vacuum-controlled water valve, the low vacuum level may also impair the function of the water valve (para. [0002]).

125. In the prior art, a vacuum buffer device in the form of a vacuum tank connected to the waste water pipe was used to avoid this problem. However, in order to provide a sufficient additional vacuum volume, such a tank must be relatively large. A large tank, however, requires additional space as well as additional pipework or hoses. Furthermore, due to its size, it is more or less impossible to install such a tank within a waste water collection tank or within its casing (para. [0004]).

126. According to the description of the contested patent, EP 1 130 180 A2 discloses, as the closest prior art, a vacuum drainage system comprising a rigid chamber or a rigid tank in the vacuum pipe, wherein this chamber or tank has a larger cross-sectional area than the vacuum pipe. The container increases the volume of the vacuum line and thus serves as a vacuum buffer for the drainage system (para. [0005]).

127. In addition, WO 99/64778 discloses a thin-walled high-pressure volume compensator for a system containing a pressurised, flowable material, whereby this compensator is not connected to a control device (para. [0006]).

128. On this basis, the objective of the patent at issue is to provide a vacuum sewerage system which avoids the aforementioned disadvantages and is equipped with an effective vacuum booster. Furthermore, the aim is to provide a vacuum buffer device which improves the operation of the vacuum sewerage system (paragraph [0007]).

129. To solve this problem, patent claim 1 of the patent at issue II claims protection for a device having the following features:

1. Vacuum sewerage system comprising

1.1. a waste water tank (1),

1.2. sewage pipework (3) connected to the sewage tank by means of a drain valve (2),

1.3. a vacuum-generating means (4) for generating a vacuum in the sewage pipework,

1.4. a control mechanism (5) for controlling the drain valve,

1.5. a vacuum buffer means, characterised in

1.5.1 that it comprises an active buffer device (10),

1.5.2 in that the active buffer device (10) is in fluid communication with the control mechanism (5) and the waste water pipework (3),

1.5.3 whereby the term 'active' is defined as the buffer device switching from a first mode to a second mode, thereby providing additional vacuum to regulate the drain valve (2) when the drain valve (2) is opened during use.

130. The vacuum waste water system claimed is therefore characterised by a vacuum buffer means, the technical configuration of which is described in more detail in feature group 1.5. Accordingly, the vacuum buffer means comprises an active buffer device (feature 1.5.), whereby the term 'active' is defined as meaning that the buffer device switches from a first mode to a second mode, thereby providing additional vacuum to control the drain valve when the drain valve is opened during use (feature 1.5.3.). To enable the vacuum buffer means to fulfil its intended function, the active buffer device is in fluid communication with a control mechanism, as per feature 1.5.2.

131. Without the invention being limited to such a configuration, Figure 2, shown below, illustrates a preferred embodiment of such an active buffer device:

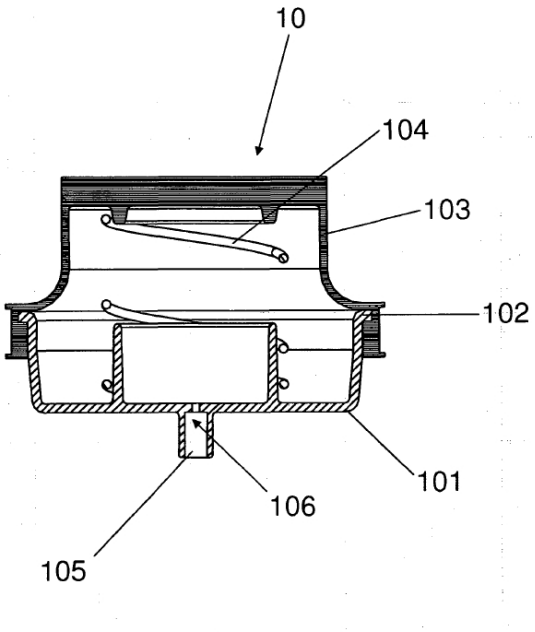


Fig. 2

132. The active buffer device (10) comprises a housing with a rigid, cup-shaped part (101) and a flexible diaphragm (103) attached thereto. The rigid cup-shaped part (101) is provided with a circumferential flange (102), to which the flexible diaphragm (103) is secured by a snap-fit connection. A compression spring (104) is located inside the housing. This gives the active buffer device (10) a variable volume, with the compression spring (104) is ordered such that, in a first mode with the spring compressed – as shown in Figure 3 – the active buffer device (10) has only a small volume, which can be expanded in a second mode with the spring further extended (Fig. 2).

133. As the active buffer device (10) is mounted, in accordance with the invention, between the control mechanism (5) and the waste water pipework (3) (see feature 1.5.2.), the vacuum from the waste water pipework (3) also extends into the active buffer device (10). The force of the vacuum then exceeds the physical force of the spring (104), so that the spring—and thus the active buffer device (10)—is compressed whilst the drain valve (2) is closed. It then provides only a small volume (first mode, see feature 1.5.3.).

134. As soon as the drain valve (2) is opened, atmospheric air enters the waste water pipework (3). This causes the vacuum level within the waste water pipework (3) to drop abruptly. As the active buffer medium (10) is connected to the waste water pipework (3), the vacuum level within the active buffer medium (10) also decreases. The vacuum is then no longer able to fully overcome the force of the tension spring (104), so that the tension spring (104) extends and, consequently, the volume of the active buffer medium (10) increases. The active buffer medium (10) is thus switched from a first to a second state or mode; see paragraphs [0028] and [0029] and Figure 2 (feature 1.5.3.).

135. The increase in the volume of the active buffer medium (10) simultaneously causes air to be extracted from the waste water pipework (3), thereby preventing a drop in the vacuum level within the waste water pipework (3). The buffer means (10) according to the invention thus ensures that a sufficient vacuum can be maintained at all times to open the drain valve (2).

136. Once the drain valve (2) has been closed again, the original vacuum within the waste water pipework (3) is restored by means of the vacuum-generating means, so that the active buffer means (10) is returned to its compressed initial state (see paragraph [0032]).

2. Indirect infringement of the patent at issue II by the challenged embodiment II

137. The contested vacuum buffers indirectly make use, in the literal sense, of the technical teaching of the patent at issue.

a. Principles

138. Under Article 26(1) of the UPC Agreement, the defendants may not, without the Claimant's consent, within the territory of the contracting member states in which the patent at issue is in force, offer or supply, to persons other than those authorised to use the protected invention, means relating to an essential element of the invention for the purpose of using the invention in that territory, if they know or ought to have known that such means are suitable and intended for use in carrying out the invention.

b. Assessment on a case-by-case basis

aa. Objective requirements

139. The objective conditions for indirect patent infringement are met in the present case.

(1) Objective suitability

140. The contested vacuum buffer means are objectively suitable for use in the invention as set out in claim 1 of the patent at issue. They are designed in such a way that the recipient is able to make direct use of the protected teaching with all its features.

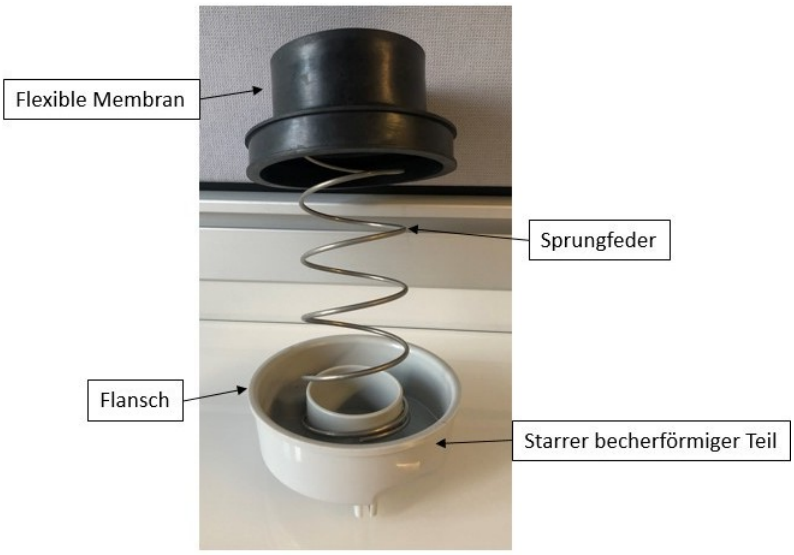
141. This follows simply from the fact that the contested vacuum buffer means embody all the features relating to the vacuum buffer means and, as the defendant has not disputed, can be fitted into a vacuum drainage system in accordance with the patent.

142. The fact that the contested embodiment II embodies all the features relating to the vacuum buffer means is, quite rightly, not in dispute between the parties.

Features 1.5, 1.5.1 and 1.5.3 – active buffer device

143. The contested embodiment II is a vacuum buffer means (feature 1.5.) comprising an active buffer device (feature 1.5.1.), whereby the term 'active' is defined as meaning that the buffer device switches from a first mode to a second mode, thereby providing additional vacuum to control the drain valve when the drain valve is opened during use (feature 1.5.3.).

144. The contested vacuum buffers consist of three parts, namely a rigid cup-shaped part with a circumferential flange, a flexible diaphragm which is secured to the flange of the cup-shaped part by a snap-fit connection, and a tension spring located between these two parts:



145. This design enables the buffer device, when installed in the EVAC vacuum toilet system and thus exposed to a vacuum, to contract, as the physical forces of the vacuum exceed the pressure exerted by the tension spring. It is in the first mode:

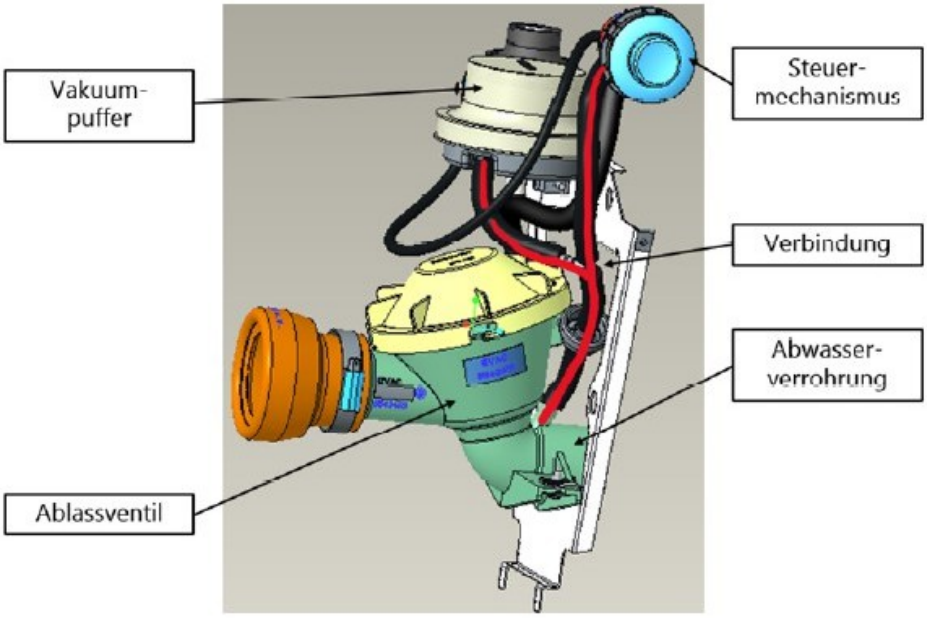
146. If the vacuum in the waste water pipework decreases due to the opening of the drain valve, the compressive forces of the spring exceed the force of the negative pressure, causing the device to expand, thereby generating additional vacuum. It is then in the second mode:

147. The defendant's buffer device thus ensures that a sufficient vacuum is maintained at all times, even when the outlet valve is opened.

148. It is undisputed that, depending on the installation configuration, the contested vacuum buffer device may also be in fluid communication with the control mechanism and the waste water pipework (feature 1.5.2.).

Combination of claims also fulfilled

149. Even though this is not a mandatory objective requirement for indirect patent infringement (see UPC_CFI_779/2024 (LD), decision of 16 April 2026, para. 109 – Brita v. Wessper), the combination of claims at issue is also fulfilled when the contested vacuum buffer means are installed in the Claimant's Classic Toilet system. The fact that the vacuum buffer is, in particular, also in fluid communication with the waste water pipework, as required by feature 1.5.2, can be seen from the illustration shown below, taken from page 9 of the Claimant's Reply:



150. It is evident that the connecting pipe does not lead into the shut-off valve, but into the waste water pipework. Feature 1.5.2. does not require a separate connection point. Rather, a fluid connection with the control mechanism and the waste water pipework is both sufficient and necessary. Nor does the defendant allege that this is lacking.

(2) Essential element of the invention

151. Furthermore, the contested embodiment constitutes a means relating to an essential element of the invention claimed.

Principles

152. Such a connection is to be assumed if the means is capable of interacting functionally with one or more features of the patent claim in the realisation of the protected inventive concept. What constitutes the essential elements of the invention in this sense must be determined on the basis of the subject-matter of the invention. Since the patent claim is decisive in determining which subject-matter is protected by the patent, all features named in the patent claim are generally essential elements of the invention, irrespective of whether they appear in the general part or the characterising part of the patent claim. In particular, it is irrelevant whether they relate to the 'core' of the invention or whether the essential element of the invention distinguishes the subject-matter of the patent claim from the prior art (UPC_CoA_901/2025, Order of 27 March 2026, para. 167 – ONWARD v. Niche; UPC_CFI_248/2024 (LD Munich), decision of 22 August 2025, para. 228 – BRITA v AQUASHIELD; UPC_CFI_779/2024 (LD Düsseldorf), decision of 16 April 2026, para. 141 – BRITA v Wessper).

Assessment on a case-by-case basis

153. Based on these principles, the contested vacuum buffer means relate to an essential element of the invention. The vacuum buffer means are themselves a component of the subject-matter of the invention. Patent claim 1 of the patent at issue protects a vacuum waste water system which, amongst other things, comprises a vacuum buffer means that is the subject of several features of the patent claim and forms the entire defining part. According to the invention, the vacuum buffer means (feature 1.5.) is characterised in that it comprises an active buffer device (feature 1.5.1.), wherein the active buffer device is in fluid communication with the control mechanism and the waste water pipework (feature 1.5.2.) and the term 'active' is defined as meaning that the buffer device switches from a first mode to a second mode, thereby providing additional vacuum to control the drain valve when the drain valve is opened during use (feature 1.5.3.).

(3) Dual territorial connection

154. As the Claimant's test purchase in August 2021 shows, the first defendant does in any event supply the vacuum buffer devices at issue to Germany. Even though the delivery was initially made to Vacdrain GmbH, which then resold the vacuum buffer devices in question to Secotech GmbH via an intermediary, there is no evidence to suggest that the delivery by the first defendant was not at least also intended for the use of the invention within the territory of one of the contracting member states in which the disputed Patent II is in force (see UPC_CFI_513/2024 (Central Chamber, Milan), decision of 8 July 2025, Headnote 2 – Maschido v Spiridonakis). Direct distribution to end customers is not a prerequisite for indirect patent infringement (UPC_CFI_779/2024 (LD), decision of 16 April 2026, para. 145 – Brita v. Wessper). The dual territorial link required by Article 26 of the UPC Agreement is therefore satisfied.

bb) Subjective requirements

155. The subjective elements of indirect patent infringement are satisfied.

156. The intended use pursuant to Article 26 of the UPC Agreement may be determined and presumed on the basis of objective circumstances where such circumstances exist which allow for the sufficiently certain conclusion that the product offered and supplied is intended to be used by the recipient of the offer or the party to whom it is supplied for the purpose of utilising the invention (UPC_CoA_898/2025, Order of 27 March 2026, Headnote 3 – ONWARD v Niche).

157. On this basis, both the intended use on the part of the customers at the time of delivery by the first defendant and the first defendant's subjective knowledge in the present case arise from the fact that the vacuum buffer devices at issue are customarily installed in vacuum drainage systems in accordance with ISO standard 15749-3. Furthermore, it is undisputed that Defendant 1's vacuum buffer device is, amongst other things, compatible with the Claimant's 'Evac Classic Toilet' system. Against this background, Defendant 1 is therefore aware that the devices it supplied are suitable and intended for use of the invention in the relevant contracting member states.

cc) No exhaustion

158. The parties supplied by the first defendant are not entitled to use the invention protected by patent claim 1 of the patent at issue. In this respect, in particular, no exhaustion within the meaning of Article 26 of the UPC Agreement has occurred.

(1) Conditions for exhaustion

159. Under Article 29 of the UPC Agreement, the rights conferred by a European patent do not extend to acts relating to a product protected by the patent after that product has been placed on the market in the European Union by the patent proprietor or with his consent.

160. The right to which the patent proprietor is entitled under the patent is therefore limited throughout the Community where these conditions are met. The lawful acquirer of a product placed on the market by the patent proprietor or with the proprietor's consent is entitled to use it for its intended purpose, to sell it to third parties or to offer it to third parties for one of these purposes.

161. The intended use of a patent-protected product also includes the usual maintenance and restoration of its fitness for purpose where the functionality or performance of the specific product is wholly or partly impaired or lost due to wear and tear, damage or other reasons. By contrast, the intended use does not include any measures that amount to the manufacture of a product in accordance with the patent. The patent proprietor's exclusive right to manufacture is not exhausted upon the first placing on the market of a

copy of the patented product (UPC_CFI_248/2024 (LD Munich), decision of 22 August 2025, para. 234 – Brita v. Aquashield; UPC_CFI_316/2024 (LD Düsseldorf, decision of 10 December 2025, para. 280 – M-A-S v Altech; UPC_CFI_779/2024 (LD Düsseldorf), judgment of 16 April 2026, para. 153 – Brita v Wessper).

162. If a part of a patent-protected product is exchanged or replaced, it must therefore be examined whether this exchange or replacement constitutes permissible use in accordance with the intended purpose, or whether it amounts to an impermissible new manufacture of the patent-protected product. The decisive factor here is whether the exchange or replacement preserves the identity of the specific product already placed on the market, or whether a new product in accordance with the invention is thereby created. This is assessed by weighing up, in light of the specific nature of the patent-protected product, the legitimate interests of the patent proprietor in the commercial exploitation of the invention, on the one hand, and the purchaser's interest in the unhindered use of the specific product embodying the invention that has been placed on the market, on the other (UPC_CFI_248/2024, judgment of 22 August 2025, para. 235 – Brita v Aquashield; UPC_CFI_316/2024, judgment of 10 December 2025, para. 281 – M-A-S v Altech; UPC_CFI_779/2024 (LD Düsseldorf), decision of 16 April 2026, para. 154 – Brita v. Wessper).

163. One factor to be considered in this balancing exercise is whether the replacement or exchange of the part in question is normally to be expected during the product's useful life and whether the public or consumers consequently have a legitimate expectation that they will be able to continue using or reuse the purchased product with the replacement part. If this is the case, it is generally to be assumed that this constitutes a customary maintenance measure and thus a permissible use of the patent-protected product placed on the market. The situation is different, exceptionally, where the technical effects of the invention are reflected precisely in the replaced part. In such cases, the replacement of the part results in the technical and economic advantages of the invention being realised anew, and the identity of the product originally placed on the market is lost (UPC_CFI_248/2024, decision of 22 August 2025, para. 236 – Brita v Aquashield; UPC_CFI_316/2024, decision of 10 December 2025, para. 282 – M-A-S v. Altech; UPC_CFI_779/2024 (LD Düsseldorf), decision of 16 April 2026, para. 155 – Brita v. Wessper).

(2) Assessment on a case-by-case basis

164. On the basis of these principles, the defendant's customers are not entitled to use the invention protected by claim 1 of the patent at issue. The replacement of the vacuum buffer medium constitutes unauthorised use of the technical teaching covered by the patent at issue. The placing on the market of the vacuum drainage system with a vacuum buffer medium does not exhaust the Claimant's rights under the patent at issue in respect of the unity of the vacuum drainage system and the vacuum buffer medium. The replacement of the vacuum buffer medium constitutes, under patent law, a 'new manufacture' of the wastewater system according to the invention, as the technical effects of the invention are reflected precisely in the replaced vacuum buffer medium.

164. The vacuum waste water system protected by patent claim 1 of the patent at issue is characterised precisely by the presence of a vacuum buffer means, the technical configuration of which is described in more detail in the characterising part of the claim. The remaining components of the vacuum drainage system comprise a drainage tank (feature 1.1), drainage pipework connected to the drainage tank via a drain valve (feature 1.2), a vacuum-generating means for generating a vacuum in the waste water pipework (feature 1.3) and a control mechanism for controlling the drain valve (feature 1.4) are, undisputedly, already provided for in ISO Standard 15749-3 and are incorporated in all vacuum toilets. Even if the vacuum buffer, which must be replaced at least every 10 years, were to be a wear part – an assumption that may be made in favour of the defendant – the invention manifests itself precisely and exclusively in this vacuum buffer. The replacement of this part thus realises the technical or economic advantage of the invention anew, which is why such a replacement constitutes a new manufacture and not a mere maintenance measure within the meaning of the aforementioned principles.

165. The indirect use of the teaching protected by claim 1 of the patent at issue is therefore not justified on the grounds of exhaustion of the Claimant's patent rights in this respect. Rather, the remanufacture of the protected device brought about by the installation of the contested, indirectly patent-infringing vacuum buffer means is covered by the exclusive right conferred by the patent at issue.

3. Liability of Defendants 1 to 3

166. With regard to the liability of Defendants 1 and 3, and the lack of liability on the part of Defendant 2, the above considerations concerning Patent I apply mutatis mutandis to Patent II.

D. Legal consequences

167. With regard to the legal consequences, the following applies:

I. Legal consequences of direct infringement of the patent at issue I

1. Injunction

168. Taking into account the circumstances of the case, the claimant is entitled, in relation to the first and third defendants, to an injunction preventing the continuation of the infringement pursuant to Article 25(a) of the UPC Agreement in conjunction with Article 63(1) of the UPC Agreement.

a) Basing the claim on the wording of the patent claims

169. There is no grounds for objection to the fact that the Claimant has based its application for an injunction on the wording of the patent claims (see UPC_CFI_316/2024 (LD), decision of 10 December 2025, para. 288 – M-A-S. v. Altech; UPC_CFI_2/2023 (LD Munich), decision

of 19 September 2023, p. 82 et seq. – Nanostring v 10x Genomics on Article 62(1) of the UPC Agreement).

b) Even if

170. Assuming, for the defendant's benefit, that the disputed exhaust valves were initially placed on the market with the Claimant's consent, it is in any event undisputed that the Claimant instructed Evac Germany GmbH in December 2021 to cease purchasing spare parts for Evac products from the defendant (see Reply of 22 December 2025, para. 2). From that point onwards at the very least, there has been no such consent. This justifies an order even if the defendant has not engaged in any further acts of use since that time. Such an order is in line with the claimant's interest in the effective enforcement of its intellectual property right.

c) No limitation period

171. There is no scope for the limitation period raised by the defendants in connection with the injunction sought by the Claimant.

172. Pursuant to the provision governing the limitation period and which is solely applicable under Article 72 of the UPC Agreement (UPC_CFI_316/2024 (LD), judgment of 10 December 2025, para. 303 – M-A-S.
v. Altech), and without prejudice to Article 24(2) and (3) of the UPC Agreement, *actions relating to all forms of financial compensation* must be brought no later than five years after the claimant became aware, or ought reasonably to have become aware, of the last event giving rise to the action.

173. Consequently, injunctions are not covered by this limitation period. As an injunction is directed towards the future, it is not subject to the limitation period (see Koukounis/Hülsewig, Practical Handbook on Unitary Patent Law, Chapter 2, para. 337; Tilmann/Plassmann/Gundt/Tilmann, Art. 72 UPC Agreement, para. 37 et seq.). There is no need to resort to national law in this respect. If a patent infringement is established, the court may, pursuant to Art. 63 UPC Agreement, prohibit the continuation of the infringement. Provided the patent at issue is in force, there is generally no reason to refrain from issuing such an injunction, even in the case of acts of infringement that occurred some time ago. Even if the relevant act of infringement took place some time ago, the defendants are not entitled to manufacture, offer for sale or distribute the contested embodiment in the relevant contracting member states. The injunction does not cause them any disadvantage (cf. also, in relation to manufacturing, UPC_CFI_712/2025 (LD Düsseldorf), order of 5 December 2025, para. 386 – Roche v Menarini; UPC_CFI_316/2024 (LD Düsseldorf), decision of 10 December 2025, para. 290 – M-A-S v Altech).

2. Determination of liability for damages on the merits

174. A declaration that the claim for damages is well-founded is possible on the basis of Article 68(1) of the UPC Agreement. The conditions of Article 68(1) of the UPC Agreement are met.
Defendants 1 and 3 must in any event have known that their actions infringed the patent at issue

175. There is no reason to limit the liability for damages of Defendants 1 and 3 in terms of time or scope. Neither has the limitation period expired, nor can it be established that the Claimant consented to the defendants' offering and distribution of the contested embodiment.

a. Limitation period

176. The expiry of the limitation period under Article 72 of the UPC Agreement does not preclude the requested declaration of liability for damages from 29 April 2015 onwards.

177. Under Article 72 of the UPC Agreement, the limitation period begins to run upon the occurrence of the last event giving rise to the action. Acts by the defendants constituting patent infringement are, in particular, considered to be such events. The claimant – in this case, the plaintiff – must have become aware of these acts, or should reasonably have become aware of them, in accordance with Article 72 of the UPC Agreement. Unless this subjective condition is met, the limitation period does not begin to run (UPC_CFI_316/2024 (LD Düsseldorf), judgment of 10 December 2025, para. 304 – M-A-S. v. Altech; UPC_CFI_559/2024 (LD Düsseldorf), judgment of 23 April 2026, para. 255 – Quantificare v Canfield Scientific).

178. In the present case, based on the parties' submissions to date, the test purchase in August 2021 is the only possible point of reference for such knowledge. By contrast, the defendant's submissions do not sufficiently establish that the claimant had knowledge of the defendant's patent-infringing acts more than five years prior to the commencement of proceedings.

179. The limitation period is therefore not applicable.

b. Consent

180. Nor is the Claimant's right to damages to be restricted on the grounds of consent to the offer and distribution of the contested embodiment.

181. Article 25(a) of the UPC Agreement grants the patent proprietor the right to prohibit third parties from, *without his consent*, manufacturing, offering for sale, placing on the market, using, or importing or possessing for the aforementioned purposes a product which is the subject-matter of the patent. Conversely, and to put it simply, it follows that a patent holder cannot derive any rights from a patent if he has consented to its use.

182. However, no such consent can be established in the present case. With regard to deliveries to third parties, such consent is – as already explained – ruled out from the outset due to a lack of evidence. Nor can such consent be established beyond this.

183. The defendants attempt to justify such alleged consent by referring

to a business relationship between the first defendant and the Claimant that has existed for 10 years. In fact, however, such a business relationship existed only between Virtus GmbH and the first defendant. Even though Virtus GmbH was merged with Evac Germany GmbH in 2019 and Evac Germany GmbH ordered outlet valves manufactured by the first defendant in 2019 (see Annex B 6), which were fitted with covers previously supplied by Virtus GmbH to the first defendant, it cannot be readily concluded from this that the Claimant, as the patent holder, had consented to the use of the patent at issue by the first defendant.

184. Both Virtus GmbH and Evac Germany GmbH are independent companies. In any event, it cannot be established on the basis of the submissions of the defendant—who bears the burden of proof in this regard—that, at the time of the delivery of the outlet valves to Evac Germany GmbH referred to by the defendants, the claimant was not only aware of the delivery in question but also of the fact that the outlet valves utilised the technical teaching of the patent at issue.

185. The first defendant has failed to provide any concrete evidence to this effect. At most, the email correspondence referred to (Annexes B 7 and B 8) suggests the Claimant's intention to continue or even strengthen the business relationship with the first defendant following the takeover of Virtus GmbH. However, this says nothing as to whether, and if so to what extent, the claimant also consented to the use of its patents in this context, nor whether it was aware at that time of the use of those patents by the first defendant.

186. In so far as the defendants argue that, based on common experience, the supply contracts with the first defendant should have come to light during a due diligence review, this may be assumed in their favour. For this does not necessarily mean that the Claimant should also have become aware of the use of its patents. In particular, no such conclusion can be drawn from the fact that the General Manager responsible for the integration of Virtus GmbH was previously employed directly by the Claimant.

3. Provision of information

187. Furthermore, the claimant has a right to information from the first and third defendants pursuant to Article 25(a) of the UPC Agreement in conjunction with Article 67 of the UPC Agreement. There are no objections as regards the manner in which the information is to be provided.

188. The time limit running from the date of notification pursuant to Rule 118.8, first sentence, of the RoP was, as the Claimant had also requested, to be included in the decision with regard to the order for recall, removal from distribution channels and destruction (UPC_CoA_534/2024, decision of 3 October 2025, Headnote 7 and para. 240 – Belkin v Philips; UPC_CFI_316/2024 (LD Düsseldorf), decision of 10 December 2025, para. 296 – M-A-S. v Altech). The 30-day time limit sought by the Claimant following service of the notice within the meaning of Rule 118(8), first sentence, of the RoP appears reasonable.

189. With regard to the question of the limitation period, the above considerations apply mutatis mutandis. It is true that, according to the strict wording of Article 72 of the UPC Agreement, only claims relating to financial compensation are covered. However, this also includes claims for information, in so far as these serve as ancillary claims in preparation for the main proceedings.

190. Furthermore, under German law (Sections 195, 199(1) of the Civil Code (BGB) in conjunction with Sections 204(1) BGB, 167 of the Code of Civil Procedure (ZPO)), the limitation period has not yet expired either.

191. Insofar as a limitation period based on Finnish, French, Italian or Dutch law were to be relevant, it would first be for the defendants to set out the specific conditions in detail. They have failed to do so, meaning that the expiry of the limitation period cannot be established in this respect either.

4. Recall, removal from distribution channels and destruction

192. The order requiring the defendants 1 and 3 to recall the directly infringing products from the distribution channels is justified under Article 25(a) of the UPC Agreement in conjunction with Article 64(2)(b) and (4) of the UPC Agreement. The claimant's formulation of the claim in this regard is also not open to criticism from the point of view of specificity.

193. The permanent removal from the distribution channels may be ordered against Defendants 1 and 3 pursuant to Article 25(a) of the UPC Agreement in conjunction with Article 64(2)(d) and (4) of the UPC Agreement. As evident from the wording of the UPC Agreement, permanent removal from the distribution channels is a separate measure distinct from a recall. It complements the recall, although removal may only be considered if the infringer has the factual and legal means to do so. The formulation of specific and sufficiently defined measures must be guided by this principle (see UPC_CFI_7/2024 (LD), judgment of 3 July 2024, p. 30 – Kaldewei v Bette; UPC_CFI_16/2024 (LD Düsseldorf Regional Court), judgment of 14 January 2025, p. 36 et seq. – Ortovox v Mammut; UPC_CFI_316/2024 (LD Düsseldorf), judgment of 10 December 2025, para. 293 – M-A-S. v. Altech). The claimant's statement of claim takes sufficient account of this.

194. The order for destruction is based on Article 25(a) of the UPC Agreement in conjunction with Article 64(2)(e),
(4) of the UPC Agreement.

195. Neither the order for the recall nor the order for the permanent removal of the products from the distribution channels is disproportionate within the meaning of Article 64(4) of the UPC Agreement. The burden of proof regarding the lack of proportionality rests with the infringer (UPC_CoA_534/2025 et al., decision of 3 October 2025 – Belkin v Philips; UPC_CFI_316/2024 (LD Düsseldorf), judgment of 10 December 2025, para. 295 – M-A-S. v. Altech). However, the defendants have neither appealed against a lack of proportionality nor put forward any facts from which such a conclusion could be drawn.

196. As regards the reasonableness of the 30-day period sought by the Claimant, the comments made concerning the provision of information apply. This period also appears reasonable in relation to the recall, removal

from distribution channels and destruction.

197. No time limit on the claims set out above arises from Article 72 of the UPC Agreement. This is the case simply because Article 72 of the UPC Agreement, which is the sole provision applicable to questions of limitation periods, refers only to actions relating to all forms of financial compensation. The measures referred to in Article 67 of the UPC Agreement are not covered by this (UPC_CFI_316/2024 (LD), judgment of 10 December 2025, para. 290 – M-A-S v Altech).

5. Provisional damages

198. Pursuant to Rule 119 of the RoP, the Court may award provisional damages to the successful party, subject to conditions determined by the Court, which are intended to cover at least the provisional costs of the damages and compensation proceedings incurred by the successful party. The claimant is seeking a sum of EUR 100,000 as provisional damages, but has not provided any further justification for this amount.

199. Even though Rule 119 of the RoP allows for the award of provisional damages on a lump-sum basis, there must be a sufficient factual basis for such an award. Against this background, the claimant's submissions must demonstrate that their claim is based on a plausible estimate grounded in specific facts.

200. The Claimant's submission does not meet this requirement. This is all the more true given that, in the present case, only the defendant's acts of infringement up to 2021 are specifically at issue.

6. Threat of coercive measures

201. The requested imposition of penalty payments raises no objections. This also applies when taking into account considerations of proportionality.

202. The threatened penalty payment of at least EUR 1,000 per product (cease and desist) or at least EUR 500 per day of infringement gives the Chamber the necessary flexibility, in the event of an infringement, to take into account the specific circumstances of the individual case, including the conduct of the infringer, and, on that basis, to set an appropriate penalty payment in accordance with Article 82(4), second sentence, of the UPC Agreement in conjunction with Rule 354.4 of the RoP, to set an appropriate penalty payment. Consequently, the imposition of a fixed sum also appears inappropriate, and the chosen range – including the specified minimum amount – does not give rise to any concerns regarding its specificity.

203. Nor do the defendants claim that the minimum amount sought by the Claimant is too high.

7. Forfeiture

204. In so far as the defendants have, in addition, raised the defence of forfeiture – a defence known at least under German law – the fundamental question arises as to whether there is any scope at all for such a defence before the UPC. Neither the UPC Agreement nor the Rules of Procedure contain any provision on this matter.

205. Under German law, the defence of forfeiture is based on Section 242 of the German Civil Code (BGB). Whether, and if so to what extent, this Rule and the defences developed on this basis apply in UPC proceedings via the reference to national law found in Article 24(1)(e) of the UPC Agreement does not require a definitive decision in the present case (see: Bopp/Kircher/Lux, Handbook of European Patent Procedure, 3rd ed., § 13, para. 238). In any event, the conditions for such forfeiture are not met.

206. A right is forfeited if, due to the creditor's inaction over a certain period of time (time element), a debtor could reasonably expect – on an objective assessment – and did in fact expect that the creditor would no longer assert that right, and consequently the belated assertion of the right contravenes the principles of good faith (circumstantial element) (see BGH GRUR 2001, 323, 327 – Temperature Monitor). The temporal and factual elements are interdependent. The longer the creditor remains inactive, even though one would expect him to assert his rights, the more the debtor's reliance on the creditor not bringing a claim against him becomes worthy of protection (Nieder, Patent Infringement in the Unitary Patent System, Part 4, para. 187).

207. If, as in this case, the limitation period has not yet expired, forfeiture is generally ruled out on the basis of the absence of the temporal element alone (Tilmann/Plassmann, The Unitary Patent, the Unified Patent Court, Art. 72, para. 75). Furthermore, at least in the case of deliveries to third parties, the circumstantial element is also lacking. There are no apparent circumstances from which the defendants could reasonably conclude, in good faith, that the Claimant would not exercise its rights in relation to supplies to third parties. In particular, no such conclusion can be drawn from the supplies made to the Claimant.

II. Indirect infringement of the patent at issue II

1. Injunction

208. With regard to the indirect infringement of the patent at issue II, the Claimant's right to an injunction preventing the defendants 1 and 3 from continuing the infringement derives from Article 26(1) of the UPC Agreement in conjunction with Article 63(1) of the UPC Agreement. It is not apparent that the risk of direct patent infringement by the defendants' customers can be sufficiently countered by a relative prohibition, for example on the basis of warning notices (see UPC_CFI_74/2024 (Munich LD), order of 27 August 2024, p. 59 – Hand Held v Scandit).

2. Declaration of liability for damages on the merits

209. A finding on the merits regarding the award of damages is also possible here in respect of Defendants 1 and 3 on the basis of Article 68(1) of the UPC Agreement. In any event, the defendant should have known that its actions infringed the patent at issue.

210. With regard to the question of the limitation period and consent, the above comments on the patent at issue apply mutatis mutandis.

3. Disclosure of information

211. The claimant has a right to information against Defendants 1 and 3 under Article 26 of the UPC Agreement
in conjunction with Article 67 of the UPC Agreement.

212. In this respect, too, the above comments on the limitation period and consent apply mutatis mutandis.

4. Recall, permanent removal from distribution channels, destruction

213. However, an order for recall, permanent removal from distribution channels and destruction cannot be sought, even in respect of the individual components challenged solely in the context of indirect infringement. Since products that merely give rise to an allegation of indirect patent infringement are not 'the subject-matter of the patent', there is generally no basis for ordering a recall or removal from distribution channels in this respect (UPC_CFI_140/2023 (LD Mannheim), decision of 22 November 2024, para. 184 – Panasonic v OPPO; UPC_CFI_16/2024 (LD Düsseldorf), judgment of 14 January 2025, p. 37 – Ortovox v Mammut). This also applies to an order for destruction.

214. Nor is a different assessment warranted on the grounds that the vacuum buffer means can only be used in a manner that infringes the patent and, against this background, as set out above, the order for an absolute prohibition is justified. The question of whether an order for recall, removal from distribution channels and destruction may, in exceptional cases, be justified in the event of an indirect patent infringement where there are no other possible uses for the products in question may be left open. In any event, in this respect – unlike in the case of the absolute prohibition – distribution opportunities in non-patent-protected foreign countries are also relevant. The Claimant has not demonstrated that such distribution opportunities do not exist (see also UPC_CFI_316/2024 (LD Düsseldorf), decision
of 10 December 2025, para. 314 – M-A-S. v. Altech)

5. Threat of a penalty payment

215. The fact that the requested penalty payment raises no objections, and the reasons for this, have already been set out in the discussion of the legal consequences of infringing the patent at issue I. The relevant comments apply mutatis mutandis here; therefore, to avoid repetition, reference is made to the above comments.

6. Forfeiture

216. The same applies to the remarks on forfeiture.

J. Decision on costs

217. Pursuant to Article 69(2) of the UPC Agreement in conjunction with Rule 118.5 of the RoP, a decision on costs must be made.

218. Since the claimant has been unsuccessful in part of its infringement claim, namely in particular with regard to the orders sought against the second defendant and the order sought for further legal consequences, including in respect of the indirect patent infringement, it is justified to order the claimant to bear a portion of the costs of the infringement action (30 per cent) and, for the remainder, to order the defendant to bear the costs.

K. Security

219. Pursuant to Article 82(2) of the UPC Agreement, Rule 118.8, sentence 2, and Rule 352.1 of the RoP, the court may make any order or measure it is to determine subject to the provision of security. However, the defendants have not put forward any circumstances that might give rise to such a requirement.

L. Reimbursement ceiling

246. The setting of the upper limit for reimbursable legal representation costs is based on the Administrative Committee's decision on the upper limits for reimbursable costs dated 24 April 2023 (D - AC/10/24042023_D) in conjunction with the Administrative Committee's decision of 24 April 2023 on the guidelines for determining court fees and the upper limit for the winning party's recoverable costs (D-AC/09/24042023_D). Based on a value in dispute of EUR 1,000,000, the reimbursement ceiling amounts to EUR 112,000.

247. At the oral hearing, the parties agreed that, subject to the order for costs pursuant to Rule 118.5 of the RoP, recoverable costs up to an amount of EUR 83,500 shall be mutually recognised, in the sense that the parties waive their right to challenge the recoverability of individual cost items up to this amount.

DECISION:

I. The preliminary objection raised by the second defendant is dismissed.

II. Defendants 1 and 3 are ordered to

1. to refrain from

discharge valves with a venting means for a vacuum waste water system, comprising a waste water tank (1), waste water pipes (3), a vacuum-generating means (4) for generating a vacuum in the waste water pipes, and a control mechanism (5), wherein the outlet valve (2) is ordered with the venting means (10) to establish a connection between the waste water tank (1) and the waste water pipes (3) and is controlled by the control mechanism (5), characterised in that the venting means (10) is provided to establish direct fluid communication with the outlet valve (2) and is in the form of a quick-release vent valve and comprises a valve plate (102) arranged to open and close against a valve seat (22) in the outlet valve (2), in that the valve plate (102) is arranged to be retracted from the valve seat (22) so that, following an outlet or flushing sequence (B), air is supplied directly to the outlet valve (2) through the open valve seat (22) to enable rapid closure of the outlet valve
(2) following an exhaust or purge sequence (B), and that the valve plate (102) is ordered to close against the valve seat (22) when the exhaust valve (2) is supplied with vacuum, which is supplied by the control mechanism (5) to open the outlet valve (2) for the outlet or purge sequence (B),

(independent claim 1 of EP 1 840 282 B1)

in Germany, Finland, France, Italy and/or the Netherlands, to offer for sale, place on the market, use, import or possess for the aforementioned purposes;

2. to refrain from

vacuum buffer means characterised in that the vacuum buffer means comprise an active buffer device (10) in fluid communication with the control mechanism (5) and the waste water pipework (3), whereby the term ‘active’ is defined as the buffer device switching from a first mode to a second mode, thereby providing additional vacuum to regulate the drain valve (2) when the drain valve (2) is opened during use,

which are suitable for vacuum waste water systems comprising a waste water tank (1), wastewater pipework (3) connected to the wastewater container by means of a drain valve (2), a vacuum-generating means (4) for generating a vacuum in the wastewater pipework, a control mechanism (5) for controlling the drain valve, and a vacuum buffer means, to be used

to offer and/or supply to customers in Germany and/or Finland.

(independent claim 1 of EP 1 813 734 B1)

III. Defendants 1 and 3 are further ordered, within a period of 30 days following service of the notice within the meaning of Rule 118(8), first sentence, of the RoP and, where applicable, the certified translation,

1. to the Claimant, to provide information on the extent to which they – the defendants – have, since 29 April 2015, committed the acts described in Section II.1 and, since 9 November 2016 – have committed the acts described in Section II.2, in the form of a breakdown, structured for each month of a calendar year and by infringing product, of the following information:

   a) the origin and distribution channels of the infringing products;

   b) the quantities produced, manufactured, delivered, received or ordered, and the prices paid for the infringing products;

   c) the identity of all third parties involved in the manufacture or distribution of the infringing products;

   d) the number and dates of the products offered;

   e) the advertising carried out, broken down by advertising medium, its reach, the period of distribution and the distribution area; including evidence of these advertising activities;

   f) the costs, broken down by individual cost factors, and the profits made,

   whereby, as evidence of the information provided, copies of the relevant purchase documents (namely invoices, or alternatively delivery notes) must be submitted, with details requiring confidentiality being redacted from the data subject to the obligation to provide information and disclosure;

2. to recall the infringing products referred to in Section II.1 by ensuring that – Defendants 1 and 3 – state that this court has found that the products infringe European Patent EP 1 840 282 B1 in respect of the infringing products referred to in Section II.1 infringe the infringing products referred to in Section II.1., whereby Defendants 1 and 3 must give a binding undertaking to the third party to reimburse the costs incurred, to bear the packaging and transport costs incurred, to reimburse the customs and storage costs associated with the return of the products, and to take the products back;

3. to permanently remove the infringing products referred to in Section II.1 from the distribution channels by – Defendants 1 and 3 – notifying third parties, with reference to this Court's finding that the products infringe European Patent EP 1 840 282 B1 in respect of the infringing products referred to in Section II.1 infringing products, to instruct third parties who are commercial customers but not end users to cancel all orders relating to the products referred to in Section II.1;

4. to destroy, at the defendants' expense, all products referred to in section II.1 which are directly or indirectly in their possession or ownership or which – even after the expiry of the aforementioned period – still come into their possession or ownership.

IV. Defendants 1 and 3 are ordered to

1. in the event of any breach of the order set out in Section II, to pay a repeated penalty payment of at least EUR 1,000.00 to the court for each product in breach;

2. in the event of any breach of the order set out in Section III, to pay a recurring penalty payment of at least EUR 500.00 per day to the court for each day of the breach.

V. It is hereby held that the first and third defendants are, in substance, obliged to compensate the Claimant for any further damage which she has suffered or may suffer in the future as a result of all past and future acts referred to in Section II.

VI. In all other respects, the claim is dismissed.

VII. The costs of the proceedings shall be borne by the claimant (30 per cent) and by the first and third defendants (70 per cent).

VIII. The value in dispute of the claim is set at EUR 1,000,000.

IX. The orders set out in sections II.1, II.2, III.1, III.2, III.3 and III.4 shall only be enforceable once the Claimant has notified the court of which part of the orders it intends to enforce and, where necessary, has submitted a certified translation of the orders into the official language of the Member State in which enforcement is to take place, and once the notification and the (relevant) certified translation have been served on the defendants.

Düsseldorf, 22 June 2026 NAMES
AND SIGNATURES

Presiding Judge Thomas	Ronny Thomas Signed Digitally by Ronny Thomas Date: 19 June 2026 08:02:33 +02'00'
Dr Schumacher, a legally qualified judge	Jule Kathrin Schumacher Digitally signed by Jule Kathrin Schumacher Date: 19 June 2026 08:21:36 +02'00'
For technical reasons, the legally qualified judge Agergaard	Ronny Thomas signed by Digital Ronny Thomas Date: 19 June 2026 08:02:54 +02'00'
On behalf of the Deputy-Registrar	LAURA CHANTAL DANIEL Digitally signed by LAURA CHANTAL DANIEL Date: 19 June 2026 16:00:48 +02'00'

INFORMATION ON APPEALS:

Any party whose applications have been rejected in whole or in part may lodge an appeal against this decision with the Court of Appeal within two months of the decision being served (Art. 73(1) UPC Agreement, R. 220.1(a), 224.1(a) RoP).

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

A certified copy of the enforceable decision shall be issued by the Deputy-Registrar on application by the enforcing party, Rule 69 of the Rules of Procedure.

This decision was pronounced in open court on 22 June 2026. Presiding Judge Thomas

Ronny Thomas
Digitally signed by Ronny Thomas
Date: 22 June 2026 09:30:44 +02'00'