Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf Local Division
UPC_CFI_2258/2026

Order

of the Court of First Instance of the Unified Patent Court
issued on 30 June 2026
concerning EP 3 743 812 B1

HEADNOTE:

If the applicant's request for provisional measures is based on the allegedly ongoing, irreparable loss of market share already gained, a detailed and substantiated account of the relevant market situation prior to the entry of the allegedly infringing product onto the market is required.

KEYWORDS:

provisional measures; preliminary injunction; pending main proceedings on the merits; necessity of provisional measures; order on provisional measures without hearing the defendant; irreparable harm; direct competitors; market share; Art. 62 UPCA; R. 206 RoP; R. 209 RoP; R. 212 RoP

APPLICANT:

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DEFENDANTS:

1. **Lenovo Global Technology Germany GmbH,** Löffelstraße 40, 70597 Stuttgart, Germany,

2. **Lenovo (Deutschland) GmbH,** Löffelstraße 40, 70597 Stuttgart, Germany,

3. **Lenovo Group Limited,** 23rd Floor, Lincoln House, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong SAR, China

EUROPEAN PATENT NO. EP 3 743 812 B1

PANEL/DIVISION:

Panel 2 of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Presiding Judge Dr Thom, legally qualified Judge Dr Rinken acting as judge-rapporteur and legally qualified Judge Ambrasaité-Balynienė.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: ART. 62 UPCA; R. 206, R. 209, R. 212 ROP – Application for provisional measures

SUMMARY OF THE FACTS:

1. By way of an application for provisional measures, the Applicant seeks a preliminary injunction and further provisional measures against the Defendants in respect of an alleged infringement of EP 3 743 812 B1 (hereinafter: patent in suit, Exhibit EV-1).

2. The Applicant is the registered proprietor of the patent in suit. The patent in suit was filed in English language on 23 January 2019. It claims the priority of EP 18152903 (23 January 2018). The date of publication and mention of the grant of the patent is 2 August 2023. Unitary effect was registered on 6 September 2023.

3. The patent in suit is titled "Application runtime determined dynamical allocation of heterogeneous compute resources". Its claim 1 reads as follows:

> *„A method of operating a heterogeneous computing system (10) comprising a plurality of computation nodes (20) and a plurality of booster nodes (22), at least one of the plurality of computation nodes (20) and plurality of booster nodes (22) being arranged to compute a computation task, the computation task comprising a plurality of subtasks, wherein in a first computing iteration, the plurality of subtasks are assigned to and processed by ones of the plurality of computation nodes (20) and booster nodes (22) in a first distribution; characterized in that information relating to the processing of the plurality of subtasks by the plurality of computation nodes (20) and booster nodes (22) is used to generate a further distribution of the sub-tasks between the computation nodes (20) and booster nodes (22) for processing thereby in a further computing iteration."*

4. The Applicant is a leading developer of modular high-performance supercomputers and heterogeneous computing cluster architectures. Founded in 1999 as a spin-off from the University of Karlsruhe, it developed the dynamic Modular System Architecture (dMSA), which forms the technical foundation of the patented inventions. It is lead partner in the JUPITER Exascale Supercomputer project at Jülich Supercomputing Centre and has built, together with Eviden, the MareNostrum 5 pre-exascale supercomputer at the Barcelona Supercomputing Centre.

5. Defendant 1 is a wholly-owned subsidiary of Defendant 3, and responsible for the sales, marketing, and supply of Lenovo ThinkSystem servers and LiCO software in Germany and across Europe.

6. Defendant 2 is a further German subsidiary of Defendant 3, engaged in the distribution of Lenovo products in Germany.

7. Defendant 3 is the ultimate parent entity of the Lenovo group. It exercises decisive control over the strategy, product development, pricing, and commercial activities of Defendants 1 and 2.

8. In a decision dated 11 March 2026, the Munich Local Division (UPC_CFI_180/2025) dismissed an infringement action brought inter alia by the Applicant here against NVIDIA Corporation and others, based on the patent in suit (Exhibit EV-4). The Applicant´s appeal against this decision is pending before the Court of Appeal of the UPC (UPC_COA_055/2026).

9. On 22 May 2026, but not signed until 25 June 2026 by the Applicant's representative, the Applicant filed an infringement claim on the merits against the Defendants with the Düsseldorf Local Division (CFI_1815/2026; Exhibit EV-2): In these main proceedings on the merits, the Applicant alleges that the Defendants infringe inter alia the patent in suit directly and indirectly by supplying the LiCO software (the means by which the patented method is practised; hereinafter: initially attacked embodiment) to customers in the UPC Contracting Member States.

10. Furthermore, on 24 June 2026, the Applicant filed a Supplemental Statement of Claim in the aforementioned main proceedings on the merits (Exhibit EV-3), introducing a further attacked embodiment (hereinafter: newly attacked embodiment): The Applicant contends that the technical-subject-matter has changed, since the Defendants have withdrawn the initially attacked embodiment LiCO from marketing (Exhibit EV-10), and are now marketing an NVIDIA-integrated stack, expressly including NVIDIA´s so-called Expert Parallel Load Balancer (hereinafter: EPLB).

11. Also on 24 July 2026, the Applicant filed an application for provisional measures, which forms the subject matter of the present preliminary proceedings.

12. The application for provisional measures is exclusively based on an alleged indirect infringement of method claim 1 of the patent in suit. The Applicant argues it is more likely

than not that the patent in suit is valid. Further, the Applicant contends that - according to NVIDIA`s own measurement data - the newly attacked embodiment indirectly infringes independent method claim 1 of the patent in suit (cf. Applicant`s claim chart, Exhibit EV-6). In particular, the Applicant argues that the newly attacked embodiment fully meets the criteria laid down by the Munich Local Division in its aforementioned decision dated 11 March 2026. Finally, the Applicant submits: It firstly identified the newly attacked embodiment on 15 June 2026. According to the Applicant, the continuing infringing acts are high-volume acts of substantial economic weight and the parties are direct competitors.

13. The Applicant seeks primarily for a decision without hearing the Defendants, whereby it, in particular, contends: The Defendants effected the migration from the initially to the newly attacked embodiment without disclosing it to the Applicant despite the parties` out-of-court correspondence (cf. EV-14) exchanged prior to the preliminary proceedings. In the alternative the Applicant requests the shortest possible inter partes procedure.

14. The Applicant requests verbatim:

„1. Injunction. That the Defendants be ordered, by way of provisional measures and on pain of a recurring penalty payment to be fixed by the Court for each case of contravention (request 2), to refrain — within the territories of the UPC Contracting Member States for which European patent EP 3 743 812 B1 ("EP'812") has unitary effect — from:

(a) using, or offering for use, the method of Claim 1 of EP'812; and/or

(b) offering or supplying, to persons not entitled to exploit EP'812, means relating to an essential element of that method which are suitable and intended to put the method into effect (Art. 25(c), 26 UPCA);

namely by offering, placing on the market and/or supplying — in each case together with NVIDIA's inference software (NVIDIA TensorRT-LLM / NVIDIA Dynamo with the Expert Parallel Load Balancer, "EPLB") — any of the following:

- *Lenovo ThinkSystem GPU systems (SR680a V3, SR780a V3, SR675 V3) equipped with NVIDIA H200 or B200 GPUs;*
- *Lenovo NVIDIA Grace-Hopper (GH200) systems; and/or*
- *Lenovo GB200 / GB300 NVL72 systems;*

where the method is thereby operated such that, in a first computing iteration, the experts (sub-tasks) are assigned to and processed by the GPUs in a first distribution; the tokens actually processed by each expert are measured; from those measured values a further distribution of the experts is generated; and that further distribution is applied in a further computing

iteration;

save that systems of the earlier NVIDIA A100 / H100 generation adjudicated by the Munich Local Division (UPC_CFI_180/2025) are expressly excluded (Art. 62(1), 63 UPCA; Rule 211.1(a) RoP).

2. *Penalty payment. That, for each case of non-compliance with the injunction under request 1, a recurring penalty payment of up to EUR 250,000 per infringing act, or in the alternative up to EUR 50,000 for each day of non-compliance, be imposed on the Defendants (Art. 63(2), 82(4) UPCA; Rule 354(3) RoP).*

3. *Seizure (in the alternative or in addition). That the seizure or delivery-up of the infringing products be ordered so as to prevent their further offer, supply or circulation within the UPC territory - including in ongoing public and private procurement tenders - (Art. 62(3) UPCA; Rule 211.1(b) RoP).*

4. *That the Defendants bear the costs of the proceedings."*

GROUNDS OF THE ORDER:

15. The application for an order granting provisional measures has to be rejected in total as there is no substantive necessity for such measures. A fortiori, the requirements for an ex parte order are not met.

A. No provisional measures without hearing the Defendants

16. Pursuant to R. 212.1 RoP the Court may order provisional measures without the defendant having been heard, in particular where any delay is likely to cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed. In the case at hand the Applicant has failed to demonstrate that the relevant requirements have been fulfilled.

17. The Applicant has neither alleged that there is a risk of evidence being destroyed, nor is there any other indication of such a risk.

18. Furthermore, the Applicant has not demonstrated that any delay is likely to cause irreparable harm to the Applicant.

19. The Applicant unsuccessfully argues as follows: The particular urgency would arise because the Defendants effected the migration from the initially attacked embodiment to the newly attacked embodiment without disclosing it to the Applicant (including in the parties' out-of-court correspondence, most recently on 11 June 2026; Exhibit EV-14) and without its infringing character being apparent from their diffuse public announcements,

so that each day's delay would permit further high-value, hard-to-re-verse installations.

20. In this context, the Applicant has neither demonstrated nor is it otherwise apparent why the Defendants should have been obligated to disclose such information, even though only the initially attacked embodiment was the subject of the correspondence.

21. The Applicant's argument that the alleged infringement and the supporting facts are apparent from the Defendants' and NVIDIA's own published documentation is likewise unpersuasive. The mere fact that the Defendants' and/or NVIDIA's materials may contain indications of infringement does not justify granting provisional measures without hearing the Defendants.

22. This is particularly so in infringement proceedings which, as here, concern a relatively complex technology. In such circumstances, it is in general appropriate to give the opposing party an opportunity to exercise its right to be heard.

23. Insofar as the Applicant puts forward that the Düsseldorf Local Division (cf. UPC_CFI_177/2023, Order of 22 June October 2023, myStromer AG v. Revolt Zycling AG) has granted ex parte provisional measures in a case where the parties were direct competitors and the infringer's continued offering threatened an irreversible loss of sales and market share, reference is made to the explanations below.

24. Finally, the Applicant has rightly recognised herself that an order without hearing the defendant is more demanding where - as in the present case - an infringement action on the merits between the same parties is already pending.

25. Insofar as the Applicant, in the alternative, requests the shortest-possible inter partes procedure ("an oral hearing at the Court's earliest convenience, if practicable within one to two weeks"), the following should be noted: The service of a summons on Defendant 3 (who - like the other Defendants - is not represented by attorneys), seated in Hong Kong SAR, China, would obviously not even be feasible within this time frame. That set aside, however, there is no overall necessity to grant provisional measures in the case at hand (see in detail below).

B. No necessity of provisional measures

26. The Applicant`s request lacks the necessity for the issuance of provisional measures.

I. Legal framework / case law of the UPC Court of Appeal

27. Under Art. 62 UPCA and R. 211.1 RoP, the Court may grant provisional measures intended to prevent any imminent infringement, to prohibit, on a provisional basis and subject, where appropriate, to a recurring penalty payment, the continuation of the alleged infringement or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder (UPC_CoA_540/2024, Order of 24 February, para. 17 - bioletic Holding GmbH v. Light Guide Optics Germany GmbH, hereinafter: "CoA 540/2024").

28. Such provisional measures are treated by way of summary proceedings (R. 205 RoP). Compared to proceedings on the merits, these proceedings are short and fast and make it possible to bring a patent infringement to an immediate end. The expedited procedure, however, does not allow for full examination of the Applicant's entitlement to commence proceedings, of the validity of the patent and of the alleged infringement as provided for in proceedings on the merits. The expedited procedure can therefore be used only if, considering the nature of the case, proceedings on the merits cannot be awaited. If proceedings on the merits can be awaited, provisional measures are not necessary since proceedings on the merits offer more procedural safeguards (CoA 540/2024, para. 18).

29. Pursuant to Art. 62(2) UPCA and R. 211.3 RoP, the Court shall have the discretion to weigh up the interests of the parties and, in particular, to take into account the potential harm for either of the parties resulting from the granting or the refusal of the injunction. In view of the considerations given above, this means that the Court must not merely take into account the harm for either of the parties, but also the time factor. More specifically, the Court must assess whether it is possible to await proceedings on the merits, or whether provisional measures are necessary (CoA 540/2024, para. 19).

30. Accordingly, R. 206.2(c) RoP requires that the Applicant in her application for provisional measures sets out the reasons why provisional measures are necessary to prevent a threatened infringement, to forbid the continuation of an alleged infringement or to make such continuation subject to the lodging of guarantees. This is not a formal requirement but concerns the merits of the application for provisional measures and must be considered by the judge when issuing an order under R. 211 RoP (UPC_CoA_335/2023 App_576355/2023 – NanoString vs. 10x, p. 21; CoA 540/2024, para. 20).

31. Provisional measures will be necessary, for instance, where any delay would cause irreparable harm to the patent proprietor. Irreparable harm is, however, not a necessary condition for the ordering of provisional measures (UPC Court of Appeal, order of 25 September 2024 – UPC_CoA_182/2024 APL_21143/2024, para. 237 – Mammut/Ortovox).

32. This understanding of Art. 62 UPCA and R. 211 RoP is consistent with the Enforcement Directive (CoA 540/2024, para. 22): Art. 9 of the Enforcement Directive requires that the Member States ensure that the judicial authorities may, at the request of the Applicant, issue interlocutory injunctions. According to recital 22 of the Enforcement Directive, it is

essential to provide such provisional measures for the immediate termination of infringements, without awaiting a decision on the substance of the case, while observing the rights of the defence, ensuring the proportionality of the provisional measures as appropriate to the characteristics of the case in question. As indicated there, provisional measures are particularly justified where any delay would cause irreparable harm to the holder of an intellectual property right.

33. The Court of Justice of the European Union (hereinafter: "CJEU") clarified that, in accordance with Article 9(1)(a) of the Enforcement Directive, read in conjunction with recital 22 thereof, the provisional measures must enable the infringement of an intellectual property right to be immediately terminated, without awaiting a decision on the merits, and that those measures are particularly justified where any delay would cause irreparable harm to the holder of such a right. The CJEU emphasized that, thus, the 'time' factor is of particular importance for the purposes of effective enforcement of intellectual property rights (CJEU, judgment of 28 April 2022, C-44/21, ECLI:EU:C:2022:309, Phoenix Contact/Harting, para. 32). Accordingly, Art. 62 UPCA provides for provisional measures that can be relied on to terminate infringements immediately. The procedure can be used where necessary for the effective enforcement of patents, having regard to the time factor (CoA 540/2024, para. 22).

II. Case at hand

34. Against this background, the dismissal of the application for provisional measures is based on the following reasons.

35. First, it should be noted that a decision (which presumes infringement and the validity of the patent in suit in favor of the Applicant) may be rendered without hearing the Defendants, since they are not prejudiced by the decision dismissing the Applicant`s requests (cf. CoA 540/2024, para. 24 f = confirmation of LD Düsseldorf, UPC_CFI_486/2024, Order of 05 September 2024).

36. The reasons brought forward by the Applicant for the alleged necessity of preliminary measures are all unfounded:

37. The Court does not fail to recognize that an application for provisional measures may be filed even while a main action on the merits regarding the same matter is pending (R. 206.1 RoP). However, in such cases, the requirements stipulating that it must be unjustifiable for the applicant to await a decision in the main proceedings on the merits are even more applicable.

38. Insofar as the Applicant argues that the infringing acts are continuing, whereby high-volume acts of substantial economic weight ("systems in the six- to seven-figure euro range per unit") are involved, and that the parties are direct competitors in the European HPC/AI-server market, this does not establish a necessity in the present case.

39. Although direct competition between the products is a relevant factor in the assessment of the necessity of provisional measures, its presence may not be sufficient to justify the necessity of provisional measures in a particular case (cf. CoA 540/2024, para. 26).

40. The newly attacked embodiment may have recently been produced and distributed in the UPC Member States for the first time. However, the Court cannot establish that the alleged infringement effects the necessity to protect Applicant`s current market shares or prices or that for any other purpose the Applicant cannot not await a decision on the merits.

41. The Applicant merely states the following:

> "*... built JUPITER - Europe's first exascale supercomputer, at Forschungszentrum Jülich - and supplies key architecture and software for European flagship systems, while the Defendants supply competing GPU-accelerated servers to the same customers (the two have at times also collaborated, e.g. on MareNostrum 5 at the Barcelona Supercomputing Center, where the Lenovo general-purpose partition was provided through the Applicant). The Applicant is thus a self-manufacturer and direct competitor of the Defendants in HPC/AI infrastructure; absent provisional measures it faces hardly reversible disadvantages - in particular the erosion of its licensing programme and market position. Every further installation entrenches the infringement over the entire service life of the system. Owing to the unitary effect of EP'812, the harm arises UPC-wide.*"

42. Where an applicant bases a request for provisional measures on an alleged ongoing and irreparable loss of existing market share, it must provide a detailed and substantiated account of the relevant market situation before the allegedly infringing product entered the market.

43. In the case at hand, the Applicant's arguments do not even begin to indicate what specific market shares existed in the alleged relevant market prior to the introduction of the newly attacked embodiment, nor what shares are at risk of being lost if a decision on the merits were to be awaited. The Applicant has not provided any specific evidence regarding long-term effects on customer relationships or purchasing decisions that are not easily reversible. Therefore, it is not apparent to the Court that a possible shift could lead to almost irreversible losses, particularly the Applicant has not demonstrated at all that the allegedly infringing product undercuts prices significantly.

44. The Defendants have already been active on the market with the initially attacked embodiment. This competing product predates the relevant acts complained of in the present application. Granting provisional measures would therefore not preserve the status quo but would rather alter an established market situation in which the Defendants already offer and distribute an alternative which is, at least, based on the

claim construction of the abovementioned Decision of the Munich Local Division on the merits (even if appealed by the Applicant) a non-infringing alternative. The Applicant expressly chose not to discuss the Munich Decision further in the present proceedings (see Application, p. 8). Moreover, the Applicant has not shown that the additional presence of the newly attacked embodiment would cause any harm of a nature or extent that differs qualitatively from the existing competition or that could not be compensated by damages after a full trial on the merits.

45. In weighing the interests of the parties, the Court notes that the potential harm to the Defendants (immediate exclusion from the market or parts thereof) outweighs the unsubstantiated and vague allegations of harm put forward by the Applicant. The main proceedings provide the appropriate forum for a comprehensive examination of validity, infringement, and the quantification of any damages.

46. Although irreparable harm is not a mandatory prerequisite, its absence - coupled with the lack of concrete substantiation in the case at hand - strongly weighs against the grant of provisional measures. At least, the Applicant has not brought forward further considerations which may justify the grant of provisional measures.

D. Cost decision / value in dispute

47. The Applicant shall bear the costs by analogy with Rule 118.5 RoP (cf. Local Division Düsseldorf, Order of 5 September 2024, UPC_CFI_486/2024, p. 9 - Bioletic Holding Gmbh & Co.KG v. Light Guide Optics Germany GmbH).

48. The value in dispute is to be set at EUR 1,000,000 (= two-thirds of the reasonable amount of at least EUR 1,500,000 in corresponding proceedings on the merits). The Applicant's argument that the value in dispute amounts to only EUR 500,000, as only one patent and one embodiment are at issue, is not convincing based on her own submissions:

49. The Applicant argues that the infringing acts are continuing, high-volume acts of substantial economic weight (systems in the six- to seven-figure euro range per unit; highlighting by underlining added by the Court), and that the Applicant and the Defendants are direct competitors in the European HPC/AI-server market. Further, the Applicant alleges that absent provisional measures it faces hardly reversible disadvantages, in particular the erosion of her licensing program and market position.

O R D E R:

The Court

I. rejects the requests for the issuance of provisional measures;

II. orders that the Applicant shall bear the costs of the proceedings;

III. grants the appeal;

IV. sets the value in dispute at EUR 1,000,000.

Issued on 30 June 2026

Names and signatures

Presiding Judge Dr Thom	Anna Bérénice Dr. THOM Digital unterschrieben von Anna Bérénice Dr. THOM Datum: 2026.06.29 18:47:25 +02'00'
Legally Qualified Judge Dr Rinken	Ingo Rinken Digital unterschrieben von Ingo Rinken Datum: 2026.06.29 18:58:25 +02'00'
Legally Qualified Judge Ambrasaité-Balynienė	Goda Ambrasaitė - Balynienė Digitally signed by Goda Ambrasaitė - Balynienė Date: 2026.06.29 19:07:05 +02'00'
For the sub-registry	LAURA CHANTAL DANIEL Digital unterschrieben von LAURA CHANTAL DANIEL Datum: 2026.06.30 07:14:41 +02'00'