Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Local Division Düsseldorf
UPC_CFI_723/2025

Order

of the Court of First Instance of the Unified Patent Court
issued on 3 July 2026
EP 4 346 690 B1

HEADNOTE:

The principles set out by the Court of Appeal on the term "offering" within the meaning of Art. 25(a) UPCA (UPC_CoA_534/2024, Order of 3 October 2025 mn. 205 – 206, Belkin v. Philips), can also be applied to the concept of “offering” in Art. 25(b) and (c) and 26 UPCA.

KEYWORDS:

application for provisional measures; penalty payments

APPLICANT:

Align Technology, Inc., 410 North Scottsdale Road, Suite 1300, Tempe, Arizona 85288, United States

Represented by:	John Brunner, European Patent Attorney and registered UPC Representative, and Agathe Michel-de Cazotte, Avocat à la Cour in Paris, Toque W12 and registered UPC Representative, each of Carpmaels & Ransford LLP, One Southampton Row, London, WC1B 5HA, United Kingdom
Electronic address for service:	#CRU010586UC@carpmaels.com

DEFENDANTS:

1. **Angelalign Technology Inc.,** Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands

2. **Angelalign France Technology SASU**, 147 Avenue de Malakoff, 75116 Paris, France

3. **Europe Angelalign Technology B.V.,** Herikerbergweg 292, 1101 CT Amsterdam, the Netherlands

4. **Angelalign Technology (Germany) GmbH**, Wankelstrasse 60, 50996 Cologne, Germany

5. **Italy Angelalign Technology S.R.L.,** Corso Vercelli 40, Milan CAP 20145, Italy

6. **Shanghai EA Medical Instruments Co., Ltd.,** Room 601-603, No. 500 Zhengli Road, Yangpu District, Shanghai, China

Represented by:	Arno Riße, Rechtsanwalt and UPC Representative, Arnold Ruess Rechtsanwälte Part mbB, Königsallee 59a, 40215 Düsseldorf, Germany and Ulrich Storz, European Patent Attorney, and Wanze Zhang, Rechtsanwältin, Michalski Hüttermann & Partner Patentanwälte mbB, Kaistraße 16A, 40221 Düsseldorf, Germany
Electronic address for service:	upc-angel-ep690@arnold-ruess.com

PATENT IN SUIT:

EUROPEAN PATENT NO EP 4 346 690 B1

PANEL/DIVISION:

Panel of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by Presiding Judge Thomas, legally qualified Judge Dr Thom, legally qualified Judge Visser acting as judge rapporteur and technically qualified Judge Dr Papa.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT: R. 209.1 RoP - Application for provisional measures
Art. 82(4) UPCA, R. 354.4 - Penalty payments

SHORT SUMMARY OF PROCEEDINGS AND REQUESTS:

1. The Applicant filed an application for preliminary measures against the Defendants for the infringement of its patent EP 4 346 690 B1, following the introduction in May 2025 of the latest version of the Defendants' 'iOrtho' software, release 5.2, including a 'Live Now' function, which was alleged to infringe the patent in suit.

2. By Order of 12 February 2026 a preliminary injunction pursuant to R. 211.1(a) RoP was imposed on the Defendants 1, 2, 4, 5 and 6. In the Order, periodic penalty payments pursuant to R. 354.3 RoP were provided for. The operative part of the Order inter alia reads:

    A. The Defendants 1, 2, 4, 5 and 6 are ordered, in the territories of Austria, Belgium, Bulgaria, Germany, Denmark, Estonia, Finland, France, Italy, Lithuania, Luxembourg, Latvia, Malta, The Netherlands, Portugal, Romania, Sweden and Slovenia,

    to cease and desist from

    I. using or offering for use

    a method for automated management of clinical modifications to a treatment plan for orthodontically treating teeth, the method comprising:

generating a digital model of a final position of a patient's teeth from a scan of the patient's teeth in an initial position of the patient's teeth;

generating the treatment plan comprising incremental positions of the patient's teeth to move the patient's teeth from the initial position towards the final position;

providing a three-dimensional representation of the treatment plan to a display (1324);

receiving, in real time, a user request to modify the treatment plan,

characterised by

determining, in real time, that the requested user modification is within a predetermined thresholds for modifications to the treatment plan,

generating, automatically and in real time when the user requested modification is within the predetermined threshold, a revised treatment plan based on the user requested modification; and

outputting to the display a three-dimensional representation of the revised treatment plan;

II. manufacturing, offering, placing on the market or using, or importing or storing for the aforementioned purposes,

orthodontic appliances obtained directly by the method of claim 1, further comprising: outputting instructions for fabricating a plurality of orthodontic appliances based on the modified treatment plan; and/or forming one or more aligners from the modified treatment plan;

III. supplying and/or offering to supply for use means which are suitable and intended for use in,

a system (200) for orthodontically treating teeth, the system comprising:

one or more processors and memory comprising instructions that when executed by the one more processors (1314) causes the system to carry out the method of one or more of claims 1 to 12.

B. For each individual infringement of the orders under A., the respective Defendant 1, 2, 4, 5 and 6 shall pay to the Court a (possibly repeated) penalty payment of up to EUR 10,000,- per infringing product and/or, in the case of continuous infringement such as the offering of the infringing method, of up to EUR 20,000,- per day.

C. The time period for compliance with each order under A., after which a penalty shall be forfeited, will be set at one (1) week after the service of this order.

[…]

G. This order is enforceable without security.

[…]

3. The Order was served on the Defendants on 12 February 2026 by its uploading in the CMS.

4. On 12 February 2026, the Applicant's representatives have send an e-mail with a notice of enforcement attached, to the Defendants' representatives, informing them of the Applicant's intention to enforce the Order. On the same day, the Defendants' representatives replied, confirming that they had already been in contact with their client to fully comply with the Court's orders.

5. The Defendants have filed an appeal against the Order of 12 February 2026.

6. On 20 March 2026, the Applicant filed a request for penalty payments under Art. 82 UPCA and R. 354.4 RoP. The Applicant requests that:

    1. the Court orders Defendants 1, 2, 4, 5 and 6 to pay a recurring penalty payment pursuant to R. 354.4 RoP, as provided for in paragraph B of the Order, for each of the Defendants' failure to comply with paragraph A of the Order after expiry of the compliance period;

    2. the Court sets the amount of the recurring penalty payment at EUR 20,000 per day for each day of continued non-compliance, pursuant to paragraph B of the Order, from 20 February 2026 onwards, which amounts to a total of EUR 580 000 on the day of this Request for penalty payments. Such total shall be updated at the date of the upcoming order in the present proceedings if the Defendants still fail to comply with paragraph 1 of the Order;

    3. the Court sets a two-weeks deadline for the payment referred to in 1. and 2., the starting point being the service of the upcoming order in the present proceedings according to the rules.

7. Upon invitation by the Court, the Defendants have responded to the request by document dated 9 April 2026. The Defendants request:

    1. to dismiss the requests 1, 2 and 3 as set out in the request for penalty payments dated 20 March 2026

    2. in the alternative, to set any penalty payment at a substantially reduced amount that the Court considers proportionate and reasonable in light of the circumstances at hand.

8. The parties have filed further written pleading on 24 April and 7 May 2026 respectively.

Short summary of facts:

9. A PDF document available on 20 March 2026 (in the English version) on the website www.angelaligner.com includes, inter alia, the following:

angel aligner™

User Manual

Product Name: Orthodontic Treatment Planning Software

Models: iOrtho Platform

Software Version: 11

Shanghai EA Medical Instruments Co., Ltd.

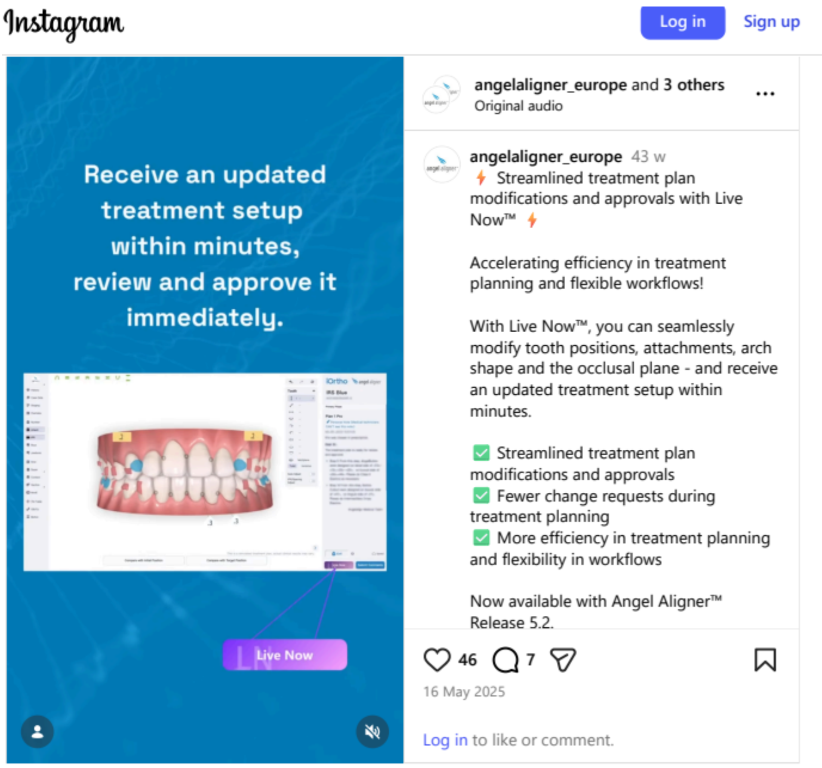
(3) Live now

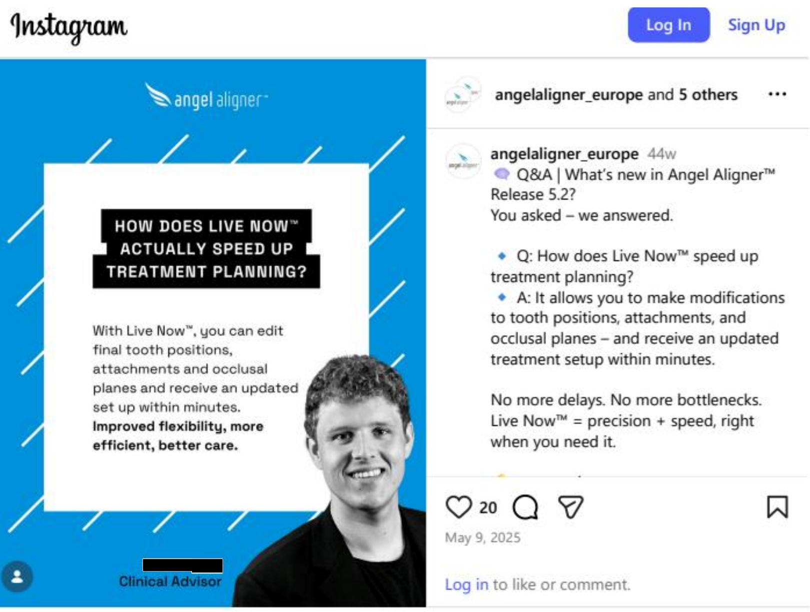
When the doctors modify the target position in the 3D modification, the algorithm will automatically calculate the staging and generate an updated plan that can be used for production and processing, which will improve the efficiency of treatment design and help doctors develop diagnosis more quickly.

10. The document (hereinafter also named the User Manual) has a filename indicating an internal document date of 27 February 2026. The URL path shows that the document was uploaded to the WordPress media library in March 2026. A screenshot dated 20 March 2026 displays a date of the most recent modification of 4 March 2026.

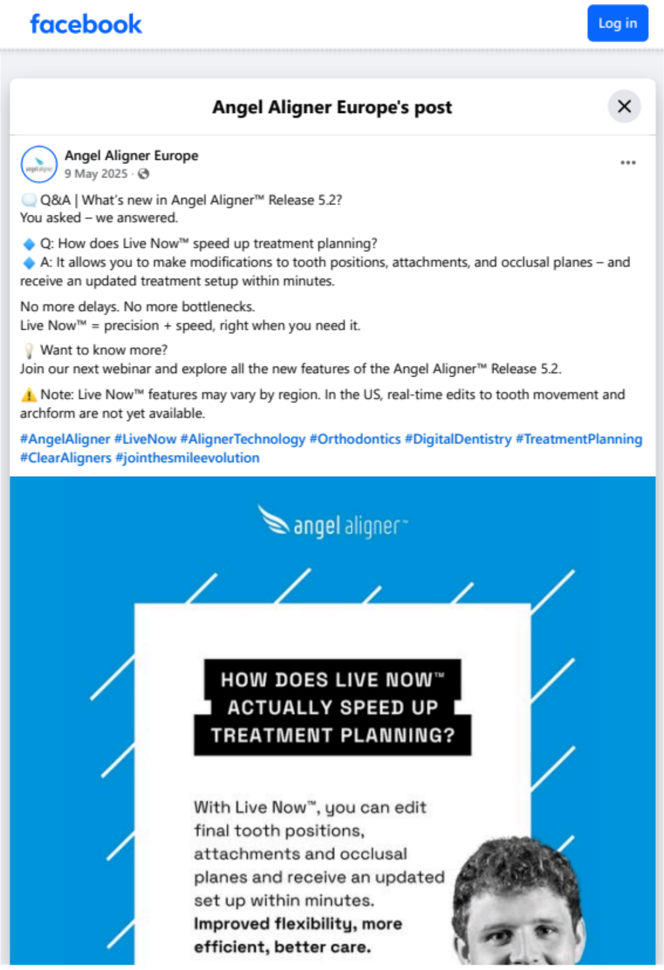
11. The User Manual is available in the languages English, Dutch, Bulgarian, Estonian, Finnish, Lithuanian, Romanian, German, French, Danish, Italian, Latvian, Portuguese, Slovenian and Swedish.

12. Screenshots of 20 March 2026 of the Defendants' Instagram account show the following posts dated 16 May 2025 (containing a video) and 9 May 2026:





13. A screenshot of 20 March 2026 of the Defendants' Facebook account shows the following post with a date of 9 May 2025:



14. These posts on Instagram and Facebook will hereinafter also be named the Social Media Posts.

Points at Issue:

15. In summary, the parties dispute on the question whether (i) the User Manual including guidance on the use of the 'Live Now' feature (hereinafter also: the Live Now feature) and (ii) Angel Aligner Europe Instagram and Facebook posts promoting the Live Now feature, constitute an offering within the meaning of Art. 25 UPCA and if this is the case, whether the requested penalty amount is reasonable and proportionate.

The Applicant's arguments

16. The term "offering" includes acts committed prior to the conclusion of contracts and an advertisement constitutes an offer. It is irrelevant whether the offered feature can or will actually be provided to the customer.

17. The User Manual is directed at dentists and orthodontists and contains references to and guidance on the use of the Live Now feature. It is publicly accessible at the website www.angelaligner.com and has been made available in English and the various languages of the respective UPC Contracting Member States. The Defendants have actively uploaded or maintained the User Manual on their website after the compliance deadline.

18. Even if the User Manual would be a regulatory document, it can reasonably be expected that EU-based dentists or orthodontists interested in the Defendants' products will review any

information provided on the Defendants' website, including a user manual for the treatment planning software features. Advertising a specific feature in a user manual can create a demand and can be decisive or at last relevant for the customers' choice of the Defendants' products. It is not apparent to those customers that the Live Now feature is not available in the UPC territory.

19. The Defendants did not specify when they uploaded an updated user manual with a disclaimer. The original User Manual is furthermore still available under the link provided in the penalty request.

20. The Angel Aligner Europe Instagram and Facebook accounts are active and maintained by the Defendants for commercial and promotional purposes. The posts published in May 2025 promote and advertise the Live Now feature. The continued availability of these posts constitutes a continued offering of the infringing method and therefore a continuous infringement within the meaning of paragraph B. of the Order.

21. The date of the posts and the number of subsequent posts are irrelevant. It can be assumed that customers interested in the Defendants' products will scroll through the social media pages, look at older posts and even search for the relevant features. Even without the context of a current event, launch or possibility to supply, the posts create a demand for the infringing product.

22. The Defendants were aware of the infringing Social Media Posts. The Defendants' advertisements on social media channels and in particular the promotional video on Instagram were referred to in the Application for provisional measures. The promotional video was furthermore explicitly referred to in the Order.

23. It is the Defendants' responsibility to ensure compliance with the injunction. The Applicant is not required to make the Defendants aware of their violation or file the penalty request earlier.

The Defendants' arguments

24. The alleged infringing activities do not stem from unwillingness to comply with the Order. The Defendants took extensive steps to ensure compliance with the Order. Immediately after the service of the Order, on 12 February 2026 at 11.10 AM CET, the Defendants disabled the Live Now feature in the territory of the UPC Contracting Member States. Since then, the iOrtho software including the Live Now feature is no longer offered or otherwise available within the UPC territory. The Defendants also informed their existing users, inter alia by introducing an express pop-up in the iOrtho software, that the Live Now feature is no longer available. Promotional materials issued by the Defendants after 19 February 2026 do not mention the former Live Now feature or they mention the unavailability of this function.

25. The materials relied on by the Applicant do not constitute an offering. Even if these references to the Live Now feature constitute a violation of the Order, these violations would be marginal and the requested maximum daily penalty is clearly unfounded.

26. The User Manual, an electronic instruction for use (eIFU), was available after clicking the "e-IFU (EMEA)" button in the footer of Angelalign's European website. The iOrtho software including the Live Now feature is still available in non-UPC Contracting member States within the CE-territory. The online availability of the e-IFU is a regulatory obligation to use a CE-mark for a medical device in the European Union and has a regulatory, informational and

non-commercial character. The relevant public would not receive this as an offer in the sense of Art. 25 UPCA. Even if the eIFU would create any commercial demand, this is not “likely to be satisfied” since the Live Now feature is disabled in the UPC-territory.

27. The fact that the User Manual is available in other (UPC) languages does not result in an offer directed at customers within the UPC territory. It is not unusual in the dental market for practitioners to operate across borders and accommodating non-native speakers does not amount to an offer of the product within the UPC territory.

28. On 24 March 2026, the Defendants have introduced a disclaimer in the eIFU, making clear that the product is not available in the UPC Contracting Member States. The underlying URL to the download button on the eIFU page of the website has been replaced with a PDF URL of the updated manual. Since 24 March 2026, the PDF URL to the previous manual was neither available on the eIFU page anymore nor anywhere else on the website. Only somebody who would have purposefully ascertained and saved the exact PDF URL to the previous manual could in theory have accessed the previous manual after 24 March 2026. This is very likely only the Applicant. This does not constitute an offer in the sense of Art. 25 UPCA. The real-world impact of this residual theoretical accessibility is de minimis. Since 29 April 2026, the PDF URL identified by the Applicant is removed and returns a “404” error message.

29. The Facebook and Instagram posts dating from 9 and 16 May 2025 do not constitute an infringing offer. The posts were published almost a year ago. For instance, on the Instagram account, 166 subsequent posts were placed in the period until 20 March 2026. It is unlikely that a user of social media will still stumble upon these historical posts. Moreover, no professional in the field of orthodontic aligners would consider these posts as a serious, currently standing offer. The historic posts are detached from any current availability in the UPC territory and do not refer to a current event, launch or possibility to supply.

30. The Defendants have removed the posts on 24 March 2026. To emphasize its willingness to comply with the Order, they have further filed requests to main search engine companies to delete its cached data in relation to these posts.

31. The Applicant only mentioned the social media posts in the Application for provisional measures as evidence for the use of the claimed method and not for the offering.

32. The Applicant calculated the requested amount of EUR 580.000 based on the maximum penalty imposed for each infringement per day. This is not proportionate in view of residual materials in the form of the regulatory eIFU and historical social media posts. The maximum penalty can, by its nature, only be applicable to violations of the most severe nature, such as when a defendant wilfully disrespects an injunction and continues or expands its sales efforts. The Defendants in this case took immediate and substantial efforts to comply with the Order by disabling and refraining from offering the Live Now feature in the UPC territory. The purpose of the injunction was served therewith. There was no strategy to continue injuncted conduct in another way. At most, the Defendants did not check outdated social media posts and did not clarify market availability in regulatory material. The Defendants acted in good faith and corrected the relevant matters immediately once raised.

33. The alleged breach has a minimal to no practical or commercial significance and would have no realistic and relevant market effect.

34. It even took the Applicant several weeks to even find the alleged infringing offers – which

would proof their insignificance – or deliberately decided not to immediately flag the issues but rather wait for the potential penalties to accumulate. The Applicant was fully aware of the Defendants' wish to comply with the Order and the fact that their representatives were open to communicate on this. In such a situation, proportionality and procedural economy require that parties take a particular restraint when only minor and readily remediable acts are relied upon. The Applicant could and should have reached out to the Defendants.

GROUNDS FOR THE ORDER

I. Penalty payments

a) General principles

35. Pursuant to Art. 82(4) UPCA, if a party does not comply with the terms of an order of the Court, that party may be sanctioned with a recurring penalty payment payable to the Court. The individual penalty shall be proportionate to the importance of the order to be enforced and shall be without prejudice to the party's right to claim damages or security.

36. R. 354.3 RoP stipulates that the Court's decisions and orders may provide for periodic penalty payments payable to the Court in the event that a party fails to comply with the terms of the order or an earlier order. The value of such payments shall be set by the Court having regard to the importance of the order in question. R. 354.4 RoP states that if it is alleged that a party has failed to comply with the terms of the order of the Court, the first instance panel of the division in question may decide on penalty payments provided for in the order upon the request of the other party or of its own motion. The procedure foreseen in Rule 264 shall apply. After having heard both parties the Court may make an appropriate order which may be subject to an appeal pursuant to Rule 220.2.

37. The penalty amounts and the time periods set for compliance, as provided for in the order or decision, shall generally be the basis for calculating the amount payable by the defendant. The Court may, however, deviate therefrom in favour of the defendant for reasons of reasonableness and proportionality, if the circumstances of the case so require. Relevant factors in this regard include, among others, aspects such as the severity of the established breach, its duration, and the defendant's ability to pay. Other relevant factors can be the advantage for the infringer and the risk of the infringing acts for the patent proprietor. It is for the defendant to present and substantiate facts that reasonably prevented it from fully and timely complying with a penalty reinforced order or that otherwise justify the imposition of a lower amount of penalties than the amount that would follow from the penalty amounts and the time periods set for compliance, as provided for in the order or decision or later order or decision (UPC_CoA_699/2025, Order of 14 October 2025, mn. 42 – Kodak v. Fujifilm, UPC_CoA_845/2024, Order of 30 May 2025, mn. 35 and 57 – Belkin v. Philips, UPC_CFI_177/2023 (LD Düsseldorf), Order of 18 October 2023, p. 15 – myStromer v. Revolt).

38. The burden of proof that a penalty reinforced order has been fully and timely complied with lies with the defendant, since the evidence concerns information within the defendant's own sphere which is not accessible to the claimant. It is generally incumbent on the defendant to provide a substantiated account of the measures taken to comply with the penalty reinforced orders (UPC_CoA_699/2025, Order of 14 October 2025, mn. 43 – Kodak v. Fujifilm, UPC_CoA_845/2024, Order of 30 May 2025, mn. 66 – Belkin v. Philips).

39. Penalty payments not only serve a coercive function but also have a punitive nature. Their imposition is justified even where the defendant has, in the meantime, complied with the obligation to provide information as ordered. A sanction with punitive characteristics requires fault. In accordance with this requirement, the payment of a penalty sum shall be imposed when the defendant's fault can be established. Thus, a penalty payment may only be imposed if the defendant failed to undertake actions that were both possible and reasonable in order to fulfil the obligation that is reinforced by a penalty. The burden of proof that timely and proper compliance was not reasonable and/or possible lies with the defendant. (UPC_CoA_845/2024, Order of 30 May 2025, mn. 51 - 57 – Belkin v. Philips, UPC_CFI_177/2023 (LD Düsseldorf), Order of 18 October 2023, p. 14 - 15 – myStromer v. Revolt).

b) Case at hand

40. As outlined above, the Court provided for penalty payments in the event of non-compliance in section B of the operative part of the Order of 12 February 2026. The Defendants have violated the Order by making the User Manual describing the Live Now feature and the Social Media Posts available after the expiration of the time period for compliance. However, these violations justify a lower penalty payment than the maximum amount requested by the Applicant.

(1) The User Manual

41. The Defendants do not contest that the User Manual referring to the Live Now feature has been available on the website after the compliance period had expired. Regardless of whether the User Manual has a regulatory purpose, it constitutes an offer within the meaning of Art. 25 UPCA.

42. The term "offering" within the meaning of Art. 25(a) UPCA must be interpreted autonomously. The prohibition on offering patent-infringing products is intended to cover acts preceding the conclusion of contracts that may result in the patent holder losing business opportunities. Offering is therefore to be understood in an economic sense and not in the sense of a binding contractual offer. It is therefore not required to include all the details that would be necessary for the immediate conclusion of a contract by mere acceptance of the offer. It is sufficient to present an item in such a way that viewers can make an offer to acquire it, for example, by concluding a purchase, rental or lease agreement. This therefore already covers the "invitatio ad offerendum". Therefore, indicating a price is not required. Readiness or ability to deliver is not relevant to the concept of offering (UPC_CoA_534/2024, Order of 3 October 2025 mn. 205 – 206, Belkin v. Philips). This principle can also be applied to the concept of “offering” in Art. 25(b) and (c) and 26 UPCA.

43. The existence of the subjective requirements of Art. 25(b), Art. 26 UPCA is not in dispute between the parties.

44. It can be assumed that the various features and possibilities of the treatment planning system are a significant factor in a dentist's or orthodontist's choice of clear aligner supplier. Similarly, it can be assumed that some visitors to the Defendants’ website will be interested in the specific functions of the iOrtho treatment planning system and will consult the User Manual for more information. The regulatory nature of the User Manual does not change this. The description of the Live Now feature and its benefits in the User Manual then serves to offer this feature as part of the Defendants' clear aligner system. In the absence of any

information to the contrary, a potential customer reading the User Manual would assume that this feature is available as part of this system. The fact that the feature was disabled does not change the fact that reading the User Manual available on the website can create a demand for this feature, influence the choice of supplier and thereby having a potentially negative effect on the Applicant's business opportunities.

45. As the Defendants acknowledged, the User Manual was accessible after clicking on the "e-IFU (EMEA)" button in the footer of their European website. The User Manual was also available in English and in the languages of the Contracting Member States mentioned in the operative of the Order. The offer is thus directed at those Member States. Therefore, making the User Manual available on the website constitutes a violation of the Order.

(2) The Social Media Posts

46. Applying the principles stated above, the Social Media Posts also constitute an offer within the meaning of Art. 25 UPCA. All three posts promote the Live Now feature, explaining its functioning and benefits in treatment planning. Viewers of these posts will understand that the Live Now feature is part of the Defendants' offering that they can acquire. As the posts are presented on the Defendants' social media accounts directed at Europe, they are directed at the Contracting Member States mentioned in the operative part of the Order.

47. The fact that the posts were placed on the accounts in May 2025, almost a year before the expiry of the compliance period, and were followed by a significant number of posts placed subsequently, does not prevent the posts from (still) constituting an offer, as they were still visible and findable for the public. However, this factor can be taken into account when determining the amount of penalties, by assessing the severity of the breach.

(3) Amount of penalties

48. Fault on the part of the Defendants can be established with regard to both the User Manual and the Social Media Posts. Although the Defendants took measures to disable the Live Now feature for the relevant Contracting Member States, this feature was still offered via a user manual and social media posts directed at those member states. The Defendants should also have taken action to prevent this by amending the User Manual and deleting the posts, as they did after the present request was filed. The Defendants did not provide sufficient substantiation and evidence that timely and proper compliance was unreasonable or impossible. The fact that they may have overlooked these offerings and only became aware of them after filing the application does not prevent the establishment of fault. Any alleged behaviour on the part of the applicant, such as failing to check for compliance or notify the Defendants immediately of potential violations of the Order, does not alter this assessment, as compliance with the Order is the responsibility of the Defendants.

49. In terms of the severity of the breach, the Court takes into account that the Live Now feature was disabled in the relevant Member States on the day the Order was served. This meant that the method protected by the patent could no longer be used. Consequently, the most severe possible violation of the order has been discontinued well before the compliance deadline.

50. According to the uncontested statements of the Defendants, existing customers were also informed of the discontinuation, and promotional materials issued after the compliance pe-

riod either did not mention the Live Now feature, or mentioned its unavailability. The Defendants have therefore taken serious steps to comply with the Order. However, they failed to take sufficient measures to avoid other violations of the Order, such as checking the user instructions available on their website and posts on their social media accounts. This is particularly true with regard to the User Manual, which was modified after the expiry of the compliance period. Regarding the Social Media Posts, the Defendants should have been aware of potentially infringing material on their Instagram and Facebook accounts, since these accounts and/or specific posts were mentioned in the Application for provisional measures and in the Order.

51. Conversely, it can be assumed that the overall exposure of the User Manual and the Social Media Posts has been limited. The User Manual was only visible after downloading it by clicking the “e-IFU (EMEA)” button in the footer of the Defendants’ website. The Social Media Posts were more than a year old and with a significant number of posts having been added subsequently, the probability of many users actually viewing the posts is rather low. Therefore, it can be assumed that the advantage for the Defendants and the possible negative influence on the Applicant’s business opportunities has also been limited.

52. In the Order, the penalty amount per day was set on a maximum of 20.000,00 per day in case of a continuous infringement. Taking all the specific circumstances of the case into account, a penalty of EUR 750,00 per day for the User Manual, EUR 250,00 per day for the post on the Facebook account and EUR 500,00 per day for the posts on the Instagram account (EUR 250,00 per post), in total EUR 1.500,00 per day, is considered a reasonable and proportionate penalty.

53. The deadline for compliance with the Order expired on 19 February 2026. It is undisputed that the Social Media Posts were removed on 24 March 2026. Therefore, these posts were available for 33 days after the expiry of the compliance period. Furthermore, the Defendants have sufficiently proven that the updated User Manual was uploaded on 24 March 2026, and that the PDF URL leading to the original User Manual was removed on 29 April 2026. From 24 March 2026, visitors of the Defendants’ website clicking on the button for the user manual would receive the updated manual. Therefore, the duration of the breach for the User Manual will also be set at 33 days. Even if the theoretical possibility of a third party finding and downloading the original User Manual after 24 March 2026 would be considered a violation of the Order, this violation would be insignificant.

54. The total penalty to be paid by the Defendants will therefore be set on (EUR 1.500,00 x 33) EUR 49.500,00.

II. Appeal

a) General principles

55. Orders imposing a penalty payment (Art. 82(4) UPCA, R. 354.4 RoP) are not orders as specified in Art. 73(2)(a) UPCA or R. 220.1(c) RoP. The last sentence of R. 354.4 RoP reads: "(...) the Court may make an appropriate order which may be subject to an appeal pursuant to Rule 220.2." This means that an appeal against those orders is only admissible if leave to appeal is granted by the Court of First Instance who issued the order, or the Court of Appeal granted leave to appeal after discretionary review according to R. 220.4 RoP (UPC_CoA_930/2025 Order of 4 February 2026, mn. 16 – EOFlow v. Insulet).

b) case at hand

56. In the circumstances of the present case, wherein the final Order is already issued, the Court sees reasons to grant leave to appeal.

III. Costs

57. The Applicant was successful in that the Court found a violation of the Order and imposed a penalty payment. However, as that the amount set as penalty payment is much lower than the amount requested by the Applicant, it seems appropriate that the parties each bear half of the costs.

58. The value of the case is set at EUR 580.000,00.

ORDER

A. The Defendants 1, 2, 4, 5 and 6 are imposed a penalty payment of EUR 49.500,00 payable to the Court.

B. The time period for compliance will be set at one (1) week after the service of this order.

C. 50 % of the costs of these proceedings shall be borne by Defendants 1, 2, 4, 5 and 6 and 50 % of the costs of these proceedings shall be borne by the Applicant.

D. In all other respects, the request for penalty payments is rejected.

E. The value of these proceedings is set at EUR 580.000,00.

F. Leave to appeal is granted.

Düsseldorf on 3 July 2026
NAMES AND SIGNATURES

Presiding Judge Thomas	Ronny Thomas Digital unterschrieben von Ronny Thomas Datum: 2026.07.03 09:56:57 +02'00'
Legally qualified Judge Dr Thom	Anna Bérénice Dr. THOM Digital unterschrieben von Anna Bérénice Dr. THOM Datum: 2026.07.03 10:02:26 +02'00'
Legally qualified Judge Visser	Marjolein Jeanette Johanna Visser Signature numérique de Marjolein Jeanette Johanna Visser Date : 2026.07.03 10:25:07 +02'00'
Technically qualified Judge Dr Papa	Elisabetta Papa Firmato digitalmente da Elisabetta Papa Data: 2026.07.03 10:20:18 +02'00'

INFORMATION ON APPEAL:

A party adversely affected may bring an appeal against the present order within 15 days of service of this order (Art. 73(2)(b)(ii) UPCA, R. 220.2, 354.4 RoP).

INFORMATION ON PAYMENT:

The penalty payment is payable to the Court to the following Account:

Account Holder: JURIDICTION UNIFIEE DU BREVET
Account name: JURIDICTION-PENALTIES FEES
BIC: BCEELULL
IBAN: LU38 0019 7355 1900 8000
BANK: SPUERKEESS
Address: 1 PLACE DE METZ L-2954 Luxembourg