Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

action number:
UPC-CoA-365/2025
UPC-CoA-367/2025

Final decision

of the Court of Appeal of the Unified Patent Court
of 17 August 2026
concerning an action for infringement
and a counterclaim for revocation

Patent EP 3 356 109

HEADNOTES:

I. If, on the basis of their own technical expertise, the person skilled in the art realises that they can find a solution in another technical field, or that the problem to be solved arises in a similar manner in a technically related field, it must be assumed that they will consult experts or specialists in that technical field or make the necessary enquiries.

II. The inclusion of a specific manufacturing process in a product claim does not alter the fact that it is a product claim. The inclusion of the manufacturing process in the patent claim serves merely to provide an indirect, more detailed description of the product. It must therefore be examined whether the specified manufacturing process is indirectly reflected in specific properties of the product. However, if these specific characteristics can only be achieved by means of the specified manufacturing process, the patent is ultimately limited to products produced by that manufacturing process. Physical and functional characteristics of the product resulting from the application of the process form part of the technical features of the claimed product. Whether such characteristics exist and, if so, which ones, must be determined by interpreting the patent claim. The decisive factor here is how the details of the manufacturing process are to be understood from a technical perspective and what conclusions the person skilled in the art draws from this with regard to the nature of the article producible by this method.

III. If a patent claim does not expressly specify the sequence of the process steps, this generally suggests that the sequence chosen in the patent claim is not mandatory.

IV. A general term does not automatically disclose all specific terms falling within its scope but not explicitly mentioned. Even if explicit mention is not required for this, the disclosure content of a prior publication can only include that which the person skilled in the art readily recognises upon careful reading and takes for granted.

V. The jurisdiction of the UPC does not require that the UPC Agreement be applicable in the matter at hand. The question of jurisdiction must be distinguished from the question of the temporal applicability of substantive law (UPC Court of Appeal, 2 June 2025, UPC-CoA-156/2025, *XSYS v ESKO*, para. 34; see ECJ, 5 September 2019, C-172/18, *AMS Neve v Heritage* and *Others*, ECLI:EU:C:2019:674, para. 63 et seq.). This

follows simply from the fact that, for reasons of legal certainty, the court must be in a position to determine, on the basis of the provisions of the UPC Agreement and the Brussels Ia Regulation (Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) to determine whether it has jurisdiction, without having to enter into an examination of the merits (see ECJ, 16 March 1999, C-159/97, *Trasporti Castelletti Spedizioni Internazionali SpA v Hugo Trumpy SpA*, EuZW 1999, 441, para. 8).

VI. The UPC Agreement contains substantive law provisions, in particular in Articles 63, 64, 67, 68 and 72 (see UPC Court of Appeal, 16 January 2025, UPC_CoA_30/2024, *Fives v Reel*, para. 66). As there is no correlation between jurisdiction and the applicable substantive law, it does not follow from the UPC's jurisdiction that these provisions also apply to facts occurring before 1 June 2023. There is no requirement to ensure that provisions are applicable only under a single legal system (ECJ, *AMS Neve v Heritage* and Others, ECLI:EU:C:2019:674, para. 64).

VII. Whilst it is generally assumed that procedural rules apply from the date of their entry into force, rules of substantive law must, in the interests of upholding the principles of legal certainty and the protection of legitimate expectations, be interpreted as applying to circumstances that arose before their entry into force only in so far as it is clear from their wording, their purpose or their structure that they are intended to have such an effect. For reasons of the protection of legitimate expectations, new legal provisions are, in principle, not applicable to legal positions that arose under the old law and have been definitively acquired; however, they do apply to the future effects of a set of facts that arose under the old law, as well as to new legal positions. An exception to this applies only – and subject to the prohibition on the retroactive effect of legal acts – if, together with the new legal provision, specific provisions are issued which specifically regulate the conditions for its temporal application. This prohibition on retroactive effect, which is recognised under general customary international law and also follows from Article 28 of the WÜRV, must also be observed when interpreting the UPC Agreement (see EPG Court of Appeal, 2 June 2025, UPC-CoA-156/2025, *XSYS v ESKO*, para. 35; ECJ, 22 June 2022, C-267/20, ECLI:EU:C:2022:494, *Volvo and Others v RM*, paras. 31–32).

VIII. The UPC Agreement contains no provisions that expressly regulate the conditions for its temporal application to past events. In particular, Article 3 UPC Agreement contains no such rule (UPC Court of Appeal, 2 June 2025, UPC-CoA-156/2025, *XSYS v ESKO*, para. 27). Article 3(c) of the UPC Agreement does, however, stipulate without restriction that, without prejudice to Article 83 of the UPC Agreement, the Convention applies to all European patents which have not yet expired at the time of the UPC Agreement's entry into force or which have been granted after that date. The same applies to European patent applications pursuant to Article 3(d) of the UPC Agreement. No explicit rule on how to deal with cases already concluded can be inferred from the rules. Nor does Article 24 of the UPC Agreement contain any explicit rule regarding the temporal application to cases already concluded. This means that, in respect of European bundle patents, national substantive law applies to cases concluded before 1 June 2023; this law is to be determined in accordance with Article 24(2)(a) of the UPC Agreement in conjunction with Article 8(1) of Regulation (EC) No 864/2007 (the Rome II Regulation). A concluded case exists where a legal position has arisen. In the case of claims for an injunction, the case is only concluded upon the final and genuine cessation of the infringement, because any threatened or actual infringement gives rise to a new claim for an injunction, which also has future effect. This means that if the patent infringer has not definitively and seriously ceased the infringing acts before 1 June 2023, the prohibition on retroactive effect does not preclude the application of Article 63 of the UPC Agreement (final orders).

IX. The same applies to remedial measures under Article 64(2)(b), (c), (d) and (e) of the UPC Agreement. The claims for recall and destruction from the distribution channels relate only to the patent-infringing articles still present in the distribution channels and thus do not concern any facts that were concluded before the action was brought after 1 June 2023. The same applies to the claim for destruction, which relates only

relates to products in the direct and/or indirect possession and/or ownership of the infringer.

X. The situation is different for the claim for damages. As each individual patent infringement gives rise to a claim for damages, the facts of the case are concluded once the individual act has ceased. Acts of use that were completed before the UPC Agreement came into force must therefore be assessed exclusively under national law with regard to claims for damages.

XI. The same applies to claims for information implementing Article 8 of the Enforcement Directive (Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004), in so far as these are not classified as procedural law under national law. By contrast, Article 67 of the UPC Agreement applies to claims for information which, under national law, are of a procedural nature.

XII. The EPC does not provide a substantive legal basis for claims for damages or compensation arising from the provisional protection afforded by a published European patent application. Article 32(f) of the UPC Agreement merely allocates jurisdiction in this respect. Consequently, the court must, on the basis of Article 24(1)(c) UPC Agreement, apply the provision of Article 67 EPC, which in paragraph 1 primarily provides for protection under Article 64 EPC (i.e. damages), but in paragraph 2 leaves the EPC contracting states a limited margin of discretion extending to the lower limit of reasonable compensation. In this respect, therefore, national law applies irrespective of the date on which the claim arose.

XIII. It is for the parties to put forward their legal arguments and the opinions of private experts on national law (see UPC Court of Appeal, 13 August 2025, UPC-CoA-446/2025, *Boehringer Ingelheim v Zentiva*, para. 72). The burden of proof and presentation regarding national law lies with the party making an appeal to a specific provision of national law. Although national law is not a fact within the meaning of Article 54 of the UPC Agreement, its determination does not depend solely on the content of the relevant statutory provisions, but also on how these are applied in legal practice and legal doctrine. This justifies an analogous application of Article 54 of the UPC Agreement.

XIV. The Enforcement Directive has been transposed by all Member States (see Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM(2010) 779 final). Under Article 13(1) of the Enforcement Directive, Member States must ensure that the competent courts, on application by the injured party, order the infringer—who knew or ought reasonably to have known that they were committing an act of infringement—to pay the rightholder appropriate damages to compensate for the loss suffered as a result of the infringement. Section 68(1) of the UPC Agreement incorporates these conditions for the award of damages almost verbatim and does not go beyond this minimum standard of protection. This gives rise to the presumption that the national provisions transposing Article 13 of the Enforcement Directive contain rules corresponding to Article 68(1) of the UPC Agreement and, in any event, do not deviate from them to the detriment of the patent holder.

XV. Since Article 67(1) of the UPC Agreement incorporates the provisions of Article 8 of the Enforcement Directive, it must be assumed, for the same reasons, that the right to information in the Member States does not fall short of the legal consequences provided for in Article 67(1) of the UPC Agreement.

KEYWORDS:

- Jurisdiction of the UPC in respect of past cases (Article 32 of the UPC Agreement)
- Law applicable to past cases
- Prohibition on retroactive effect

- Expert
- Product-by-process claim
- Subject matter of the appeal/requirements for the grounds of appeal (para. 222.2, para. 226 of the RoP)
- Late submission of arguments/new state of the art raised for the first time in the appeal proceedings (Rule 222.2 of the Rules of Procedure)

APPELLANT/DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Knaus Tabbert AG, Jandelsbrunn, Germany

(hereinafter: Knaus Tabbert)

represented by: Dr Rüdiger Pansch, Attorney-at-law, and other Attorneys-at-law of the law firm Rospatt Rechtsanwälte PartGmbB, Düsseldorf, Germany

RESPONDENTS ON APPEAL/CLAIMANTS IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

1. **Yellow Sphere Innovations GmbH,** Cologne, Germany (hereinafter: Yellow Sphere)
2. **Erwin Härtwich,** Allmersbach, Germany (hereinafter: Härtwich)

represented by: Dr Dirk Jestaedt, Attorney-at-law, of the law firm Krieger Mes & Graf von der Groeben Partnerschaft mbB, Düsseldorf, Germany

THIRD RESPONDENT ON APPEAL AND THIRD COUNTER-DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

Alexander Christ, Cologne, Germany
(hereinafter: Christ)

LANGUAGE OF THE PROCEEDINGS

German

PANEL AND DECIDING JUDGES

Panel 2
Rian Kalden, legally qualified judge and presiding judge Patricia Rombach, legally qualified judge and judge-rapporteur Ingeborg Simonsson, legally qualified judge
Marc van der Burg, technically qualified judge Erwin Wismeth, technically qualified judge

CONTESTED DECISION OF THE COURT OF FIRST INSTANCE

Date: 10 April 2025, Düsseldorf local division
Action number of the Court of First Instance: UPC_CFI_50/2024, ACT_6665/2024, ORD_68984/2024 (infringement action) and CC_30134/2024, ORD_68985/2024 (counterclaim for revocation)

PATENT AT ISSUE

EP 3 356 109

ORAL HEARING

22 January 2026; following the conclusion of the oral hearing, settlement discussions were held between the parties, which, according to the notice of 6 May 2026, were unsuccessful.

FACTS OF THE CASE AND THE PARTIES' APPLICATIONS

1. Yellow Sphere and Härtwich are bringing a claim against Knaus Tabbert for patent infringement.

2. Yellow Sphere and Härtwich are the registered proprietors of European Patent EP 3 356 109 (the patent at issue), which was filed claiming priority from 25 January 2016 and relates to a vehicle frame comprising at least one structural component made of foam resin, as well as a method of manufacturing the same.

3. Claim 1 reads as follows:

> "Frame (11) for a vehicle (10) comprising at least one structural component (15), wherein the structural component (15) is produced as a cast part (52) in a mould (50) and
>
> the mould (50) reproduces the three-dimensional external shape of the structural component (15), wherein the structural component (15) is formed by a self-expanding foam resin (20), **characterised** in that
>
> **that** the structural component (15) is at least partially coated on the outside with a protective layer (19),
>
> whereby the structural parts (15) form a load-bearing part of the frame (11)."

4. Claim 10 reads as follows:

> "A method for manufacturing a frame (11) for a vehicle (10) according to one of the preceding claims, comprising at least one structural component (15), wherein the structural component (15) is produced as a cast part (52) in a mould (50) and
>
> the mould (50) reproduces the three-dimensional external shape of the structural component (15), **and** in which at least the following manufacturing steps are provided:
>
> a) at least partially lining the mould (50) with a protective layer (19);
> b) pouring the castable foam resin (20) into the mould (50);
> c) allowing the foam resin (20) to foam up in the mould (50);
> d) allowing the foam resin (20) to cure in the mould (50);
> e) opening the mould (50) and removing the structural part (15) from it."

5. The notice of grant was published on 9 March 2022. The patent at issue is in force in, amongst others, Germany, France, Italy and Slovenia.

6. The inventors of the patent at issue are Härtwich (the second claimant and second respondent on appeal) and Christ (the third counter-defendant and third respondent on appeal). Prior to the filing of the patent at issue, Knaus Tabbert, the two inventors and the companies managed by them (Freitec Kunststoffe GmbH, Freitec Technologies GmbH and Digital Design Solutions GmbH) entered into a development agreement (Exhibit rop10). In fulfilment of this agreement, the inventors constructed three test models, which they handed over to Knaus Tabbert.

7. At least with regard to Germany, France, Italy and Slovenia, Christ transferred his rights to the patent at issue to Yellow Sphere by agreement dated 30 December 2022 (Exhibit K1 in the main proceedings).

8. Knaus Tabbert marketed caravans based on the models developed by the inventors under the names 'Travelino', 'DESEO' and 'AZUR'. Knaus Tabbert and the inventors did not conclude an agreement granting rights of use.

9. In a letter dated October 2023 (Exhibit rop12), the two inventors, Digital Design Solutions GmbH and Freitec Technologies GmbH, declared the termination of the development contract. The letter stated that the contractual relationship between Knaus Tabbert and Freitec Kunststoffe GmbH had already been terminated in 2018 by a termination agreement.

10. Yellow Sphere and Härtwich are of the view that the frames incorporated in the 'AZUR' and 'DESEO' caravan models (hereinafter: the contested embodiments) make use of the teaching of the patent at issue. They are therefore bringing a claim against Knaus Tabbert for infringement of claim 1 of the patent at issue, limited to Germany, France, Italy and Slovenia, seeking an injunction, disclosure, recall, removal from distribution channels, damages and reasonable compensation.

11. Knaus Tabbert has brought a counterclaim against Yellow Sphere and Härtwich seeking a declaration of invalidity of the patent at issue.

12. In the contested decision, the Düsseldorf local division upheld the claim in its entirety and dismissed the counterclaim for revocation.

13. Knaus Tabbert has lodged an appeal against the decision both in respect of the infringement claim (APL_19216/2025, UPC_CoA_365/2025) and in respect of the counterclaim for revocation (APL_19338/2025, UPC_CoA_367/2025).

Procedural motions by the parties

14. Knaus Tabbert requests that Annex ropBW3 be admitted in accordance with Rule 263(2) of the RoP.

15. Yellow Sphere and Härtwich object to the introduction of this new submission.

Substantive applications by the parties

16. With regard to the counterclaim for revocation, Knaus Tabbert requests that the Court of Appeal set aside the contested decision in its entirety and order the following:
    I. European Patent EP 3 356 109 is declared wholly invalid with effect for the Federal Republic of Germany, the French Republic, the Italian Republic and the Republic of Slovenia.
    II. In the alternative: In so far as the enforcement proceedings are governed by the law of the Contracting Member States (Article 82(3), first sentence, of the UPC Agreement), the appellant reserves the right to pursue any remedies and options available to it under the relevant national law to prevent enforcement.
    III. Yellow Sphere and Härtwich are to bear the costs of the proceedings.

17. With regard to the action for infringement, Knaus Tabbert requests that the Court of Appeal set aside the contested decision and order the following:
    I.1. The action for infringement is dismissed.

I.2 In the alternative:

a) The third-party counter-defendant shall transfer to Yellow Sphere its legal position as the current licensor of the rights of use under the development agreement relating to the French, Italian and Slovenian parts of European patent EP 3 356 109, in favour of Knaus Tabbert.

b) The action for infringement is dismissed.

I.3 In the further alternative: The proceedings are stayed in accordance with Rule 266(5), first sentence, of the RoP, and the following questions are referred to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 21 of the UPC Agreement in conjunction with Article 267 of the TFEU:

a) Does the legal order of the European Union require the application and interpretation of the UPC Agreement to be in accordance with the principles of the application and interpretation of treaties codified in the 1969 Vienna Convention on the Law of Treaties and recognised under customary international law?

b) Does it follow from Article 15(d) of the Rome II Regulation that the UPC, which under the UPC Agreement has no procedural powers in respect of patent infringements under national law, cannot in that respect issue orders for injunctions, remedial measures, disclosure or the award of damages?

c) Is Article 11, first sentence, of the Enforcement Directive to be interpreted as meaning that a final order may not be issued if only an imminent infringement is established?

d) Is Article 11, first sentence, of the Enforcement Directive to be interpreted as meaning that only the continuation of the established act of infringement may be prohibited – for example, in the case of a finding of infringement by way of offering for sale, the continuation of such offering – whilst acts of infringement that have not been established cannot be prohibited?

e) Is Article 3(2), first sentence, of Regulation (EU) No 1217/2010 or Article 3(2) and (3) of Regulation (EU) 2023/1066 to be understood as requiring a research and development contract to be interpreted in such a way that, in cases of doubt, it must be assumed that the contract grants the parties unrestricted access to the final results of the joint research and development, including the intellectual property rights arising therefrom and the know-how resulting therefrom?

f) Does the freedom of movement for goods under EU law require that the UPC may not exercise its procedural powers under Article 56 et seq. of the UPC Agreement against a defendant in an infringement action who can appeal to a contractual right to use the patent at issue, which was granted to him by the original co-owner of the patent at issue, who, in breach of contract, failed to transfer his legal status as licensor to the purchaser of the share in the patent at issue – who is now bringing proceedings against the defendant under that patent as the claimant – in favour of the defendant?

g) Does the *'implied powers'* doctrine under EU law require an interpretation of Article 32(1)((a) of the UPC Agreement which provides that a 'counterclaim relating to licences' may also be directed against a person who has not previously been a party to the infringement proceedings (third-party counterclaim)?

h) Does the case-law of the Court of Justice of the European Union on Union-wide exhaustion apply mutatis mutandis to the right of prior use, for example in accordance with Section 12 of the German Patents Act (PatG)?

i) Does EU law, in particular Article 9(3) of the Unification Treaty, require Article 25(a) of the UPC Agreement to be understood as an exhaustive list of the acts of use reserved to the patent proprietor?

j) Does EU law, in particular Article 9(3)(e) of the Unitary Patent Regulation, require that Article 25(a) of the UPC Agreement be interpreted as meaning that advertising does not constitute an act of offering within the meaning of Article 25(a) of the UPC Agreement?

II. In the strictest alternative: In so far as the enforcement proceedings are governed by the law of the Contracting Member States (Article 82(3), first sentence, of the UPC Agreement), Knaus Tabbert reserves the right to pursue any legal remedies and options available under the relevant national law to prevent enforcement.

III. Christ shall bear the costs of the third-party counterclaim; in all other respects, Yellow Sphere and Härtwich shall bear the costs of the proceedings.

18. Yellow Sphere and Härtwich essentially request that the appeals be dismissed and that Knaus Tabbert be ordered to pay the costs of the proceedings.

19. In the alternative, they seek an amendment to the patent at issue and its maintenance in the version set out in auxiliary claims 1 to 17 as filed at first instance, as well as the dismissal of the counterclaim for declaration of invalidity to the extent of auxiliary claims 1 to 17, and an order against Knaus Tabbert to the extent sought in the statement of claim, but in each case with reference to the upheld version of the claims in accordance with the respective auxiliary claim (1–17).

SUBMISSIONS OF THE PARTIES

20. Knaus Tabbert reiterates and elaborates on the arguments put forward at first instance and, in addition, submits, in summary, essentially as follows:

- Exhibit ropBW3 could not have been introduced into the proceedings at an earlier stage, even with due care. Knaus Tabbert had commissioned an extensive search of the prior art in connection with the infringement action, as evidenced by the numerous prior art citations already submitted. In Knaus Tabbert's view, these prior art citations alone were sufficient to render the patent at issue non-novel. Knaus Tabbert therefore had no reason to carry out a more extensive (and costly) search. The publication had not been discovered during the initial search.
- It was only the local division's erroneous interpretation of features 1 and 5, 'frame for a vehicle', that prompted Knaus Tabbert to carry out a further search following the issuance of the contested decision.
- The extension of the claim does not unreasonably disadvantage Yellow Sphere and Härtwich in the conduct of their proceedings. They have had sufficient opportunity to comment on the new state of the art in their response to the appeal.
- As the substantive provisions of the UPC Agreement have no retroactive effect, the temporal jurisdiction of the UPC is also limited to the period after 1 June 2023.
- Yellow Sphere and Härtwich have not yet submitted any arguments regarding the legal assessment of the alleged acts of use prior to 1 June 2023, and the Düsseldorf local division has not made any findings in this regard, meaning that the claim is unfounded in this respect.

21. Yellow Sphere and Härtwich defend the contested decision and object to the admission of the new submissions.

REASONS FOR THE DECISION

A. *Appeal against the dismissal of the counterclaim for a declaration of invalidity*

22. The appeal is unsuccessful in so far as it challenges the dismissal of the counterclaim for a declaration of invalidity.

I. Subject-matter of the patent at issue

1. The patent at issue and its technical background

23. The patent at issue relates to a structural component for a foam resin frame and a method for its manufacture.

24. According to the description of the patent at issue, structural components, in particular for vehicle construction, are known from the prior art. In the motorhome sector in particular, for example, infill elements of a frame structure are used as wall elements. These infill elements are generally plate-like

in structure, that is to say, they more or less comprise two parallel outer planes, between which an intermediate layer is ordered (para. 2).

25. Such infill elements could be used in conjunction with reinforced sandwich components. Infill elements known from publication DE 10 2013 114 770 A1 are compressed together within a mould to form a joint. Furthermore, in the automotive sector, frame parts are manufactured from metallic extruded profiles or plastic profiles to form the load-bearing part of the vehicle. Manufacture takes place using an extrusion process, as a result of which the resulting parts have a more or less linear extension. The linear extension of the frame parts also dictates a more or less square basic shape for a vehicle (paragraph 3).

26. Publication DE 10 2013 215 933 A1 (Annex WK6) discloses a structural component for a vehicle with mechanical reinforcement. These structural components do not have defined surfaces and are therefore unsuitable for use in visible areas. EP 0 670 257 A1 (Annex WK26) discloses a vehicle with prefabricated, inherently rigid bodywork elements, including a foam core. However, these bodywork elements do not form the vehicle's frame (paragraph 4).

2. Object of the invention

27. The object of the invention is to provide a lightweight yet stable and thermally insulating structural component for the frame of a vehicle, as well as the frame itself.

3. Breakdown of the features of Patent Claim 1 and Patent Claim 10

28. This objective is achieved by a frame for a vehicle (Patent Claim 1) and a method for manufacturing such a frame (Patent Claim 10) having the following features:

Patent claim 1

1	A frame (11) for a vehicle (10) comprising at least one structural component (15).
2	The structural component (15) is produced as a cast part (52) in a mould (50).
2.1	The mould (50) reproduces the three-dimensional external shape of the structural component (15).
3	The structural component (15) is formed from a self-expanding foam resin (20).
4	The structural component (15) is at least partially coated on the outside with a protective layer (19) .
5	The structural components (15) form a load-bearing part of the frame (11).

Claim 10 (differences from Claim 1 highlighted)

1^{M}	*A method of manufacturing* a frame (11) for a vehicle (10) *according to one of the preceding claims, comprising* at least one structural component (15).
2	The structural component (15) is produced as a cast part (52) in a mould (50).
2.1	The mould (50) reproduces the three-dimensional external shape of the structural component (15).
3^{V}	*The following steps, at a minimum, are provided for the manufacture:*
$3.a^{V}$	*At least partial lining of the mould (50) with a protective layer (19);*
$3.b^{V}$	*Pouring the castable foam resin (20) into the mould (50);*
$3.c^{V}$	*Allowing the foam resin (20) to foam up inside the mould (50);*
$3.d^{V}$	*Allowing the foam resin (20) to cure in the mould (50);*
$3.e^{V}$	*Opening the mould (50) and removing the structural component (15) from it.*

4. Interpretation of patent claim 1

a) Person skilled in the art

29. Patent claims must be interpreted from the perspective of a person skilled in the art.

30. The relevant person skilled in the art is to be determined by reference to who is usually entrusted with relevant development work in the respective technical field. If the person skilled in the art realises, on the basis of their own expertise, that they can find a solution in another technical field or that the problem to be solved arises in a similar way in a technically related field, it is to be assumed that they will consult experts or specialists in that technical field or make the necessary enquiries.

31. In this case, the person skilled in the art is a graduate engineer or holder of a Bachelor's degree in mechanical engineering from a university of applied sciences or a university of applied sciences, with several years' professional experience in the development and design of vehicle structural components. The expert either possesses knowledge of the materials used for this purpose – which include plastics, in particular foamed polyurethane – or, in the absence of such knowledge, is able to consult an expert specialising in the field of materials science.

b) Interpretation

32. The court bases its decision on the following interpretation of the features:

Feature 1: Frame

33. By 'frame', the person skilled in the art understands a load-bearing part of a vehicle which provides the vehicle's framework to which the infill elements can be attached.

34. The frame must be distinguished from the bodywork as a whole.

35. According to the explanations in the specification of the contested patent, the bodywork elements as described in EP 0 670 257 A1 (Annex WK26, hereinafter 'EP'257' or 'WK26') do not constitute a frame of the vehicle (para. 4, lines 40–41). EP'257 relates to a lightweight vehicle with a self-supporting body (p. 2, line 1). Since the description of the patent at issue thus distinguishes itself from a configuration such as that in EP'257, the frame is a separate component, distinct from a (self-supporting) body, which supports the body. The frame must therefore be capable of supporting the entire remainder of the body.

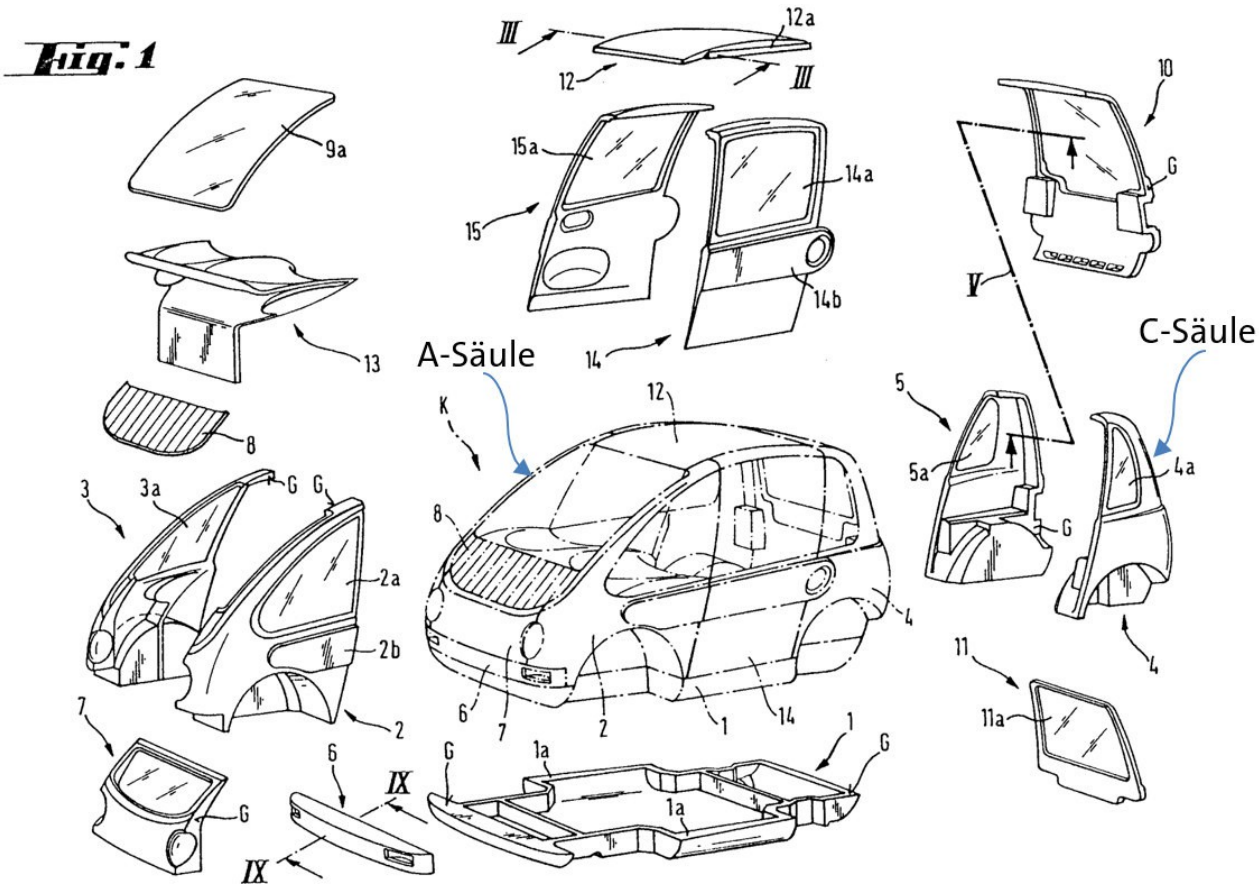
36. Knaus Tabbert argues, unsuccessfully, that the distinction set out in paragraph 4 has not been incorporated into the patent claim, which is formulated more broadly. This is because the description constitutes its own lexicon with regard to the terms mentioned in the patent claim.

37. Since a frame merely provides a structure, this interpretation is also consistent with the general understanding that a person skilled in the art has of the term 'frame'.

38. Knaus Tabbert unsuccessfully appeals to the Wikipedia entry on 'chassis' (Exhibit WK27). Where it states that the terms 'chassis, frame, underbody or running gear' refer to the load-bearing parts of vehicles and that 'in vehicles with a self-supporting body, the chassis corresponds to the floor assembly', a distinction is specifically drawn between a non-self-supporting body with a load-bearing frame or chassis and a self-supporting body with a floor assembly.

39. Contrary to Knaus Tabbert's view, nothing else can be inferred from the Wikipedia entry on the term 'underbody' (Annex WK29). That entry confirms that the underbody is 'the lower part of a self-supporting body'. The fact that a frame is not the same thing is evident from the statement found there that the equivalent in a non-self-supporting body is called a 'frame'.

40. Knaus Tabbert unsuccessfully argues that EP'257, with the 'A-pillar' and 'C-pillar' in Figure 1—which Knaus Tabbert has subsequently labelled—shows parts of the frame within the meaning of the patent at issue.



41. A person skilled in the art cannot infer from EP'257 (WK26) that these A-pillars and C-pillars are load-bearing parts of a frame which, independently of the other structural components of the body, is capable of supporting the body. Rather, it is essentially the overall construction, and not a frame, which gives the body the necessary strength and stability.

42. All prefabricated bodywork elements (1–13) – and not just the A-pillar and C-pillar – are designed to be intrinsically rigid (dimensionally stable) according to claim 1 of EP'257 (WK26). They are joined together over large areas without lamination, butt-jointed at their interfaces (G). The person skilled in the art will gather from the description of WK26 that, through the large-area connection – in particular bonding and, where applicable, additional or alternative form-fitting connections – of the individual bodywork elements edge-to-edge, a structure in the manner of a vault or an igloo (block construction) is achieved, which confers particular stability on the bodywork (p. 3, lines 32–36).

43. By contrast, according to the patent at issue, it is only individual parts of the bodywork that form a frame for the bodywork. This frame alone ensures the stability of the entire bodywork.

For a vehicle

44. The frame must be 'for a vehicle'. This constitutes an indication of purpose. Indications of function and purpose generally define the subject-matter protected by the patent merely to the extent that it must be suitable for use in performing the function and serving the purpose specified in the patent claim (see UPC Court of Appeal, Order of 14 February 2025, UPC-CoA-382/2024, *Abbot v Sibio*, para. 47).

45. It is therefore irrelevant whether the frame is actually used for a vehicle; rather, it is sufficient that it is objectively suitable for use in a vehicle.

46. Objective suitability requires that the frame be complete, so that it can actually perform the load-bearing function for a vehicle. It must therefore be a complete vehicle frame.

47. According to feature 1, the frame comprises at least one structural component. A structural component is a part of the frame that contributes to the overall structure of the vehicle.

48. Contrary to Knaus Tabbert's view, a single structural component that is suitable for supporting part of a vehicle is not sufficient to fulfil feature 1. Consequently, feature 1 is not fulfilled by a vehicle's window frame.

Feature 5

49. In accordance with feature 5, the existing structural members (15) form a load-bearing part of the frame (11).

Structural components themselves are load-bearing

50. Feature 5 is a functional specification. This means that the existing structural components must be objectively capable of contributing to the load-bearing capacity of the frame. This is the case if they are sufficiently mechanically strong (see paragraph 5) or inherently rigid (see paragraph 4).

51. Figures 4 and 5 show three-dimensional views of a frame (11) for a caravan with spaces still left open (11.1, Fig. 4) and structural components (15) and infill elements (12, Fig. 5), respectively.

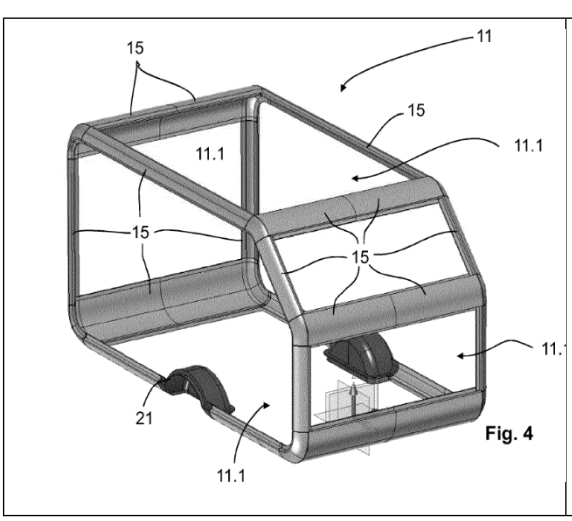


Fig. 4

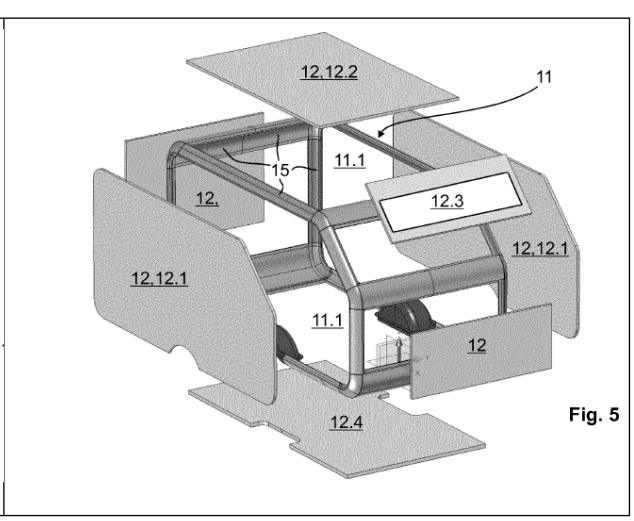


Fig. 5

Are multiple structural components required?

52. Since, according to feature 1, at least one structural component is sufficient, feature 5 allows the frame to consist of just one structural component as defined in the claims.

53. As the existing structural parts form only part of the frame, feature 5 does not preclude the possibility that further elements or structural parts with different properties are included in the frame.

Feature group 2

54. According to feature group 2, the structural part (15) is produced as a cast part (52) in a mould that reproduces the three-dimensional external shape of the structural part.

55. As feature 2 describes the method for manufacturing the structural component in more detail, the patent claim is a ‘product-by-process’ claim. Such a formulation of the claim is permissible where a description of the specific properties of the product by means of physical features is not possible or entirely impracticable.

56. The local division correctly held that the inclusion of a specific manufacturing process in a product claim does not alter the fact that it is a product claim. The inclusion of the manufacturing process in the claim serves merely to provide an indirect, more detailed description of the product. It must therefore be examined whether the specified manufacturing process is indirectly reflected in specific characteristics of the product. However, if these specific characteristics can only be achieved by means of the specified manufacturing process, the patent is ultimately – as the local division correctly held in its decision – limited to products produced by that manufacturing process.

Physical and functional characteristics of the structural component as set out in feature group 2

57. Physical and functional properties of the product resulting from the application of the process form part of the technical features of the claimed product. Whether such properties exist and, if so, which ones, must be determined by interpreting the patent claim. The decisive factor here is how the details of the manufacturing process are to be understood from a technical perspective and what conclusions the person skilled in the art draws from this with regard to the nature of the article producible by this method.

Features 2 and 2.1

58. The structural component must be a cast part. Neither party has argued that the term ‘cast part’ is a term of general technical knowledge with which the person skilled in the art associates certain properties of the product.

59. Since a cast part is usually produced in a mould, this is, in this respect, an indication that it is produced in a mould. However, this does not mean that the structural part must be produced in a mould. Rather, the person skilled in the art will infer from feature 2 that structural parts produced by an extrusion process are not intended to fall within the scope of the claim. The invention according to the contested patent seeks to distinguish itself from such a manufacturing process because the linear extension of the frame parts dictates a more or less square basic shape for a vehicle (para. 3).

60. Furthermore – as explained above (para. 56 et seq.) – the decisive factor is which specific properties of the product result from manufacture in a casting mould. This is specified in feature 2.1.

61. It follows from feature 2.1 that the three-dimensional external shape of the cast part corresponds to that of a structural part produced in a mould. This does not mean that the structural part must be produced in a mould. However, it must exhibit the characteristics achieved by such a process. The relevant process is that set out in patent claim 10, which means that the characteristics achieved by a process according to patent claim 10 are decisive. The interpretation of feature 2.1 therefore depends on the specific characteristics of the three-dimensional external shape of the cast part produced according to process claim 10. The description of the patent at issue makes it clear that features disclosed in relation to the frame according to the invention for a vehicle comprising at least one structural part also apply to the manufacturing process according to the invention, and vice versa (paragraph 7, lines 14–18).

62. Specifically, this means that the three-dimensional shape of the structural component is essentially defined by the foam body/foam core according to feature 3, and that no discernible post-processing with regard to the three-dimensional shape, such as milling or grinding, has taken place. Only this enables the mass production (paragraph 5, line 52) of structural parts with undercuts—that is, complex three-dimensional structures (paragraph 13)—as described in the patent at issue, without being limited to a square basic shape (cf. paragraph 3, lines 30–32).

63. Post-processing which has no effect on the external shape, such as painting or printing, is not ruled out. According to the description, it is conceivable that the sophisticated and attractive surface can be post-processed accordingly, e.g. by painting or printing, in order to give the entire vehicle a pleasing appearance (paragraph 14, lines 49–57).

Is production in a single mould necessary?

64. The local division was correct in assuming that, for the realisation of feature group 2, it is not necessary for the structural part to be actually manufactured using just *one* mould. In the absence of further evidence to the contrary, it cannot be assumed that the specific properties can only be achieved by means of the manufacturing process specified in the description and claim 10.

65. Knaus Tabbert unsuccessfully argues that other processes (such as the use of two moulds) cannot guarantee a precise and dimensionally identical design of the structural components to the extent required by the patent for mass production. When assembled into an overall structure in the visible area of the vehicle, this would result in significantly larger gaps and variations in gap dimensions between the components than would be the case with structural parts manufactured using the method set out in claim 10. No specific requirement regarding precision arises from the description of the patent at issue. The only essential point in this regard is that no post-processing is required to align the structural parts.

66. Knaus Tabbert unsuccessfully points out that feature 2 was amended during the grant proceedings. Originally, feature 2 stated that the structural component could be produced as a cast part in a mould. It can be left open whether the grant proceedings are material to the interpretation of the patent. The fact that
‘can be produced’ was replaced by ‘is produced’ does not alter the fact that this is merely intended to distinguish the structural parts in question from those produced by an extrusion process.

Feature 3

67. According to feature 3, the structural component is formed by a self-expanding foam resin (20). The foam resin itself may be formed from various plastic materials. The specification of the contested patent cites, by way of example, so-called epoxy resins, hybrid foam systems, expanding polyester resins and/or so-called foamable, technical polyurethanes (PU, para. 8).

68. Since – as explained above (para. 57) – the specification of the manufacturing process serves merely to describe the product properties resulting from the manufacture, it is sufficient for the fulfilment of feature 3 if the structural component is a foamed body, i.e. a body comprising porous plastic material. It is not ruled out that other components are present in the foamed body, such as the reinforcing elements mentioned in the description – e.g. glass fibres, carbon fibres, reinforcing mats, sandwich structures, an inner core and metal (see paragraph 9) – which serve to improve the strength of the structural part.

69. It is not apparent from the patent specification what properties a structural component manufactured from a self-expanding foam resin possesses. Accordingly, it is also not demonstrated what differences result from the fact that the structural components were manufactured, for example, by expansion using a propellant gas. Therefore, the term ‘self-expanding’ has no concrete meaning with specific properties.

Feature 4

70. According to feature 4, the structural component is at least partially coated on the outside with a protective layer (19).

71. The local division correctly held that a coating as defined by the patent does not exist where two rigid bodies (shells) are joined together.

72. It is generally understood that ‘coating’ refers to the application of a firmly adhering layer of amorphous material to the surface of a workpiece. The structural component coated in this way is thus characterised by the property that it is, at least in part, surrounded by a protective layer which adheres firmly to it and envelops the structural component like an outer skin, without any significant voids forming between the coating and the foam core. The requirement that no significant voids may form between the coating and the foam core also follows from feature group 2, according to which – as explained (see paragraph 62 above) – the three-dimensional shape of the structural part is essentially defined by the foam body as per feature 3.

73. This understanding of ‘coated’ in the sense of a firmly adhering bond between the protective layer and the structural part is also consistent with the description. According to the specifications in the patent specification in dispute, this may, for example, be a protective layer made of a so-called gelcoat material and/or polyurea material. The swelling foam resin bonds accordingly with the protective layer, resulting in a more or less finished structural component that requires no surface treatment (paragraph 9, lines 14–20).

74. It follows from feature group 2 that the protective layer has a thickness that is insignificant in relation to the foam core. Otherwise, the three-dimensional shape would not be defined by the foam core. However, no further specifications regarding the thickness of the protective layer can be derived from either the claims or the description. In particular, it cannot be inferred from the description that a specific thickness or uniform thickness of the protective layer necessarily follows from compliance with the process protected by patent claim 10.

75. Contrary to Knaus Tabbert's view, the fact that the specification of the contested patent refers to a sophisticated and attractive surface (paragraph 14, lines 49–57) does not mean that further quality requirements are imposed on the surface of the structural parts beyond those set out in connection with feature group 2. Rather, even according to the specification of the contested patent, it is not precluded that the surface may be further processed accordingly, for example by painting or printing it, in order to give the entire vehicle an aesthetically pleasing appearance (see paragraph 14, lines 49–57). Against this background, it cannot be required that the structural parts be suitable for use directly in the vehicle's field of view as part of the visible surface without further processing.

76. Nor does the patent specification indicate that manufacture in a single mould results in a better bond between the foam body and the protective layer – and thus in greater durability – than is possible with other potential coating methods, such as manufacture using two moulds. Consequently, neither feature group 2 nor feature 3 indicates that the coating must necessarily be applied as provided for in patent claim 10, nor that there is a particularly good bond between the foam body and the protective layer.

Patent Claim 10,

Feature 1^{V}

77. According to feature 1, patent claim 10 protects a method for manufacturing the frame as set out in the preceding patent claims. Patent claim 10 is thus cross-referenced to patent claim 1, to which the other patent claims are cross-referenced. It is a method claim. Unlike Patent Claim 1, the process steps specified in the claim must be carried out in order for the process-related features to be realised.

78. In accordance with feature 1, the method must result in a frame for a vehicle as defined by features 1 and 5 of patent claim 1, comprising at least one structural component with the properties set out in features 2 to 5.

Feature 3a^{V} and Feature 3b^{V}

79. According to feature 3a$^{(V),}$the mould (50) is to be lined, at least in part, with a protective layer (19). If, as in this case, a patent claim contains no explicit specification regarding the sequence of the process steps, this generally suggests that the sequence chosen in the patent claim is not mandatory. However, it follows from feature 3b^{V}– according to which *castable* foam resin is poured into the mould – that the mould must necessarily be lined with the protective layer before pouring. It is no longer possible to line the mould after the foam resin has been poured in.

II. Lack of workability

80. Knaus Tabbert also appeals, in the appeal proceedings, to the ground for nullity of lack of workability within the meaning of Article 138(1)(b) EPC.

81. A disclosure sufficient for practicability is deemed to exist if the person skilled in the art is able, without inventive effort and without unreasonable difficulty, to put the teaching of the patent claim into practice on the basis of the entire disclosure of the patent specification, in conjunction with general technical knowledge as at the filing date or priority date, in such a way that the intended result is achieved.

82. Knaus Tabbert bases its claim of lack of workability on an alleged contradiction between paragraph 4 of the description of the patent at issue and the examples of embodiment shown in Figures 4 (the subsequent figure labelled by Knaus Tabbert) and 6, which featured an A-pillar and a C-pillar. In Knaus Tabbert's view, if such structural parts were not to be regarded as a frame as defined in the claims, this would mean that such structural parts—to which bodywork elements are attached and which are themselves also bodywork elements—would not constitute frame parts within the meaning of the patent claim. This would mean that the sole embodiment would not fall within the scope of the patent. In that case, however, not a single means of carrying out the invention would be disclosed. In particular, no frame would be disclosed in a manner capable of being carried out.

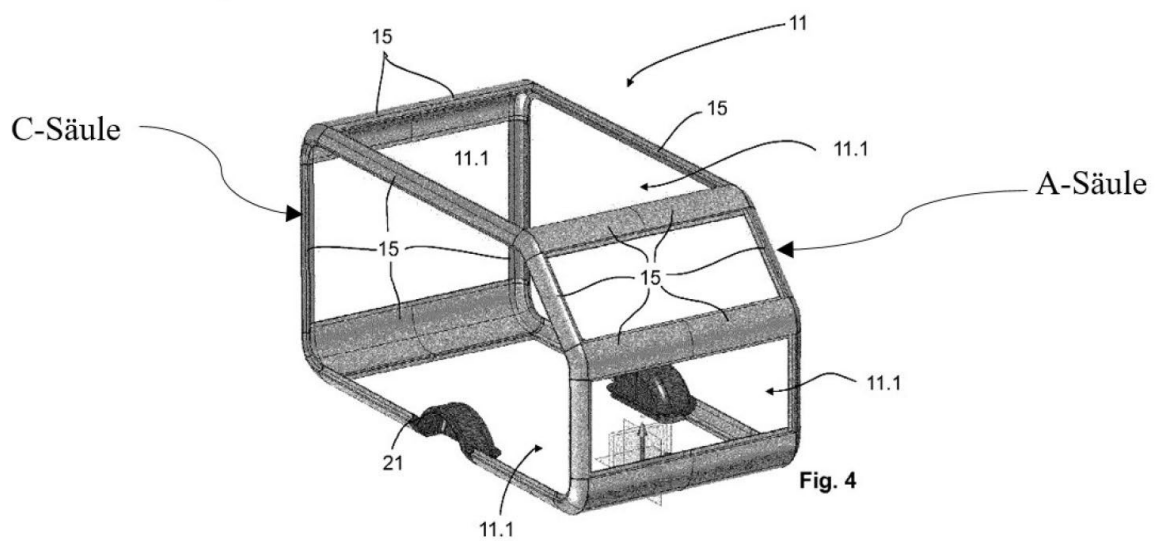


Fig. 4

83. It can be left open whether this – as the local division assumed – relates solely to the clarity of the patent claim. As explained above (para. 35), the person skilled in the art deduces from the specification of the contested patent that a separate frame is required which is in itself capable of ensuring the stability of the entire bodywork. The person skilled in the art recognises that the A- and C-pillars, as shown in Figures 4 and 6 of the patent at issue, are parts of such a frame – distinct from a load-bearing overall body – as defined in patent claim 1.

III. Novelty over DE 198 08 026 A1 (Annex WK3, hereinafter: DE'026 or WK3)

84. Knaus Tabbert unsuccessfully challenges the local division's view that the subject-matter of patent claim 1 is novel in relation to DE'026 (WK3).

Subject-matter of DE'026 (WK3)

85. DE'026 (WK3) relates to a method and an apparatus for manufacturing moulded plastic parts. Such methods and apparatus are already generally known (col. 1, lines 3–4). However, DE'026 criticises the fact that the surfaces of the moulded plastic parts produced using the known methods do not meet the requirements imposed, for example, on car roofs, in particular so-called hardtops (removable car roofs, col. 3, line 37) (col. 1, lines 17–20 and col. 1, lines 42–44).

86. On this basis, DE'026 (WK3) sets itself the task of specifying a method for manufacturing plastic moulded parts, in particular hardtops, which is simple in its process sequence and by means of which plastic moulded parts can be produced that have a highly precise and mirror-smooth surface (col. 1, lines 42–49).

87. To achieve this, DE'026 (WK3) proposes a method in which, during a first work cycle, a foam core is produced, consisting of polyurethane foam with reinforcing inserts embedded within it. In a second work cycle, the foam core is provided with a coating. To this end, the prefabricated foam core is placed into a mould, where it is held with the side to be coated precisely spaced from the base of the mould. The cavity between the mould base and the foam core is then completely filled with liquid polyurethane (col. 1, lines 50–61).

88. Figure 1, shown below with the additions S1 and S2 made by Knaus Tabbert, illustrates a hardtop.

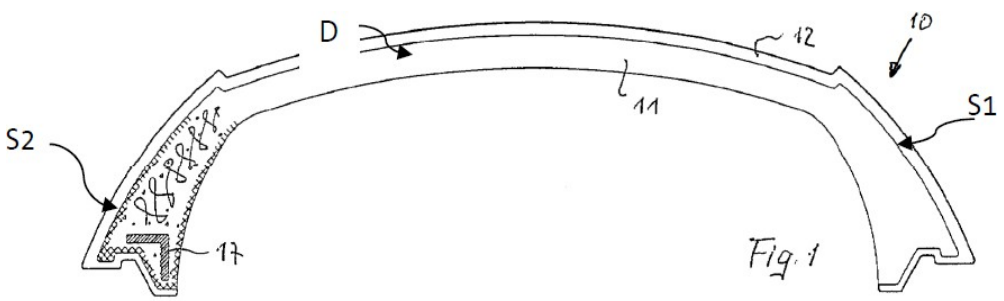


Fig. 1

89. The moulded part consists of a prefabricated foam core (11) and an upper polyurethane coating (12), which is applied to the foam core (11) in a second operation following the manufacture of the foam core (11) (col. 3, lines 35–41). The foam core (11) is manufactured in the mould (20) shown in Figure 4 below.

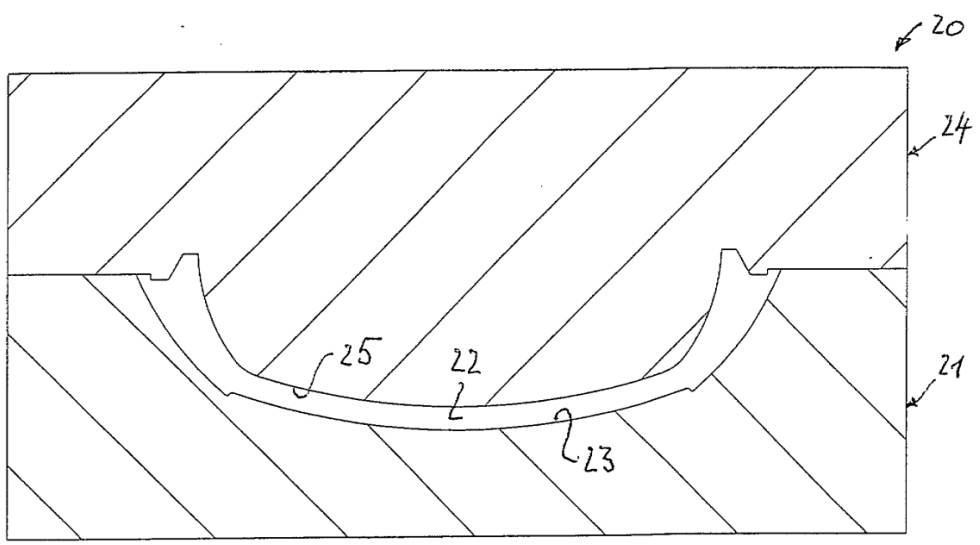


Fig. 4

90. The mould (20) comprises a lower mould half (21) with a mould cavity (22), which has a mould base (23) corresponding to the convex upper surface of the foam core (11), and a male mould half (24) with a contour adapted to the concave side of the foam core (11) (25) (col. 3, line 55 to col. 4, line 8).

Disclosure of features 2, 2.1 and 4

91. Features 2, 2.1 and 4 are thus disclosed. This is, quite rightly, not in dispute between the parties.

Disclosure of feature 3

92. Contrary to the view of Yellow Sphere and Härtwich, feature 3 is also disclosed. It is true that it is not disclosed that the PU foam – which is a foam resin within the meaning of feature 3 – is self-expanding. However, as this is not linked to any specific properties of the structural component produced therefrom, DE'026 (WK3) directly and unambiguously discloses the properties which must be present according to feature 3.

Lack of disclosure of features 1 and 5

93. As the local division correctly held in its decision, there is a lack of disclosure of features 1 and 5. It is not disclosed that the structural parts produced form load-bearing parts of a frame.

94. The person skilled in the art cannot infer from DE'026 (WK3) either that the plastic moulded parts disclosed therein form a load-bearing part of a frame, or that they are suitable for that purpose. The person skilled in the art merely infers from DE'026 that the plastic moulded parts disclosed therein have a highly precise and mirror-smooth surface (col. 1, lines 46–47, col. 4, lines 67–68). Nowhere in that document is a frame referred to as a load-bearing structure of a vehicle.

95. Furthermore, the hardtop shown in DE'026 is removable. For this reason alone, it cannot contribute in any relevant way to the mechanical stability of the vehicle.

IV. Novelty in relation to the prior art DE 10 2015 111 421 A1 (DE'421, WK4)

96. As the local division correctly held, DE'421 (WK4) also does not anticipate the subject-matter of patent claim 1 in a manner that would render it lacking in novelty.

Subject-matter of DE'421 (WK4)

97. DE'421 (WK4) relates to a panel, in particular a wall panel for a recreational vehicle, such as, in particular, a caravan or a motorhome, as well as a method for its manufacture (paragraph 1). The term 'panel' within the meaning of the invention is intended to encompass, for example, the side walls or sections of side walls of recreational vehicles. Furthermore, the term could also be understood to include the roof or sections of the roof, the floor or sections of the floor, and the rear wall or sections of the rear wall. However, the term is not limited to the external walls of a camping vehicle. Rather, it may also encompass internal walls or walls of furniture located inside a camping vehicle (paragraph 2).

98. DE'421 considers it a disadvantage that the surface elements for camper vans known from the prior art generally comprise not only metal and plastic elements but also wooden elements, such as wooden strips. Wood changes its shape and structure over time. It may swell on contact with water or water vapour. This results in an unsightly appearance. Furthermore, the wood may rot over time and lose its stabilising function. Consequently, wooden elements are frequently replaced with plastic elements, such as polyurethane strips (para. 3).

99. Against this background, the publication sets itself the task of providing a surface element or a method for manufacturing a surface element which overcomes the disadvantages of the prior art. In particular, the objective of the invention is to provide a surface element which is simple and cost-effective to manufacture, does not require loose components, and exhibits better quality, such as a smoother surface and/or improved structural integrity (paragraph 4).

100. According to the description in the prior art, this objective is achieved by a surface element comprising a frame structure formed from a curable material that can be dispensed by a dispensing device, further comprising two cover layers connected to the frame structure, between which the frame structure is ordered, as well as insulating material which at least partially fills the voids in the frame structure and is also ordered between the cover layers (para. 5).

101. The term ‘flowable material’ refers in particular to paste-like or viscous material with high viscosity. During the manufacture of a surface element according to the invention, the dispensable material of the frame structure is usually applied to a substrate from a dispensing device. This is generally carried out as part of a casting process (para. 7, para. 18).

102. The material of the frame structure is preferably one from the group consisting of plastic, fibre-reinforced plastic, natural fibre-reinforced plastic, bamboo fibre-reinforced or rice husk-reinforced plastic foam, e.g. PU foam. These materials are particularly well suited to the manufacture of a frame structure for a surface element according to the invention, e.g. by a casting process (para. 10).

103. Expanded or extruded polystyrene (EPS = Expanded Polystyrene or XPS = Extruded Polystyrene) and polyurethane foam, in particular, could be used as sheet-shaped insulating material (paras. 11–12). The outer layers may be made of sheet metal, plastic or natural fibre materials (para. 13).

104. The surface elements according to the invention, or the surface elements producible by the method according to the invention, would have various advantages over surface elements from the prior art. For instance, the surface elements according to the invention could be completely free of wooden elements, in particular wooden battens. The method according to the invention would allow a frame structure to be produced in which all structural elements, such as battens, are made of the same material. A further advantage is that any geometry of the frame structure is possible. Furthermore, both form-fitting and material bonding are possible during the manufacture of the frame structure. Specific areas can be reinforced in a straightforward manner by applying more material to the areas requiring reinforcement. These areas could, for example, serve to accommodate fasteners such as screws. In the case of surface elements from the prior art, metal plates or other structures are often used for this purpose (paragraph 8).

105. For stabilisation purposes, individual connecting structures could be produced in the required width and, if necessary, using different materials or densities. Specific areas (such as screw connections for lift beds) could be manufactured using separate materials (e.g. fibre-reinforced, higher density). Furthermore, the method according to the invention or the surface element according to the invention enables weight savings in the vehicle through optimisation of the cross-sections (para. 9).

106. According to one variant of the process, a sheet of expanded or extruded polystyrene is first produced, which later forms the insulating material. The desired contours of a frame structure are then cut out or milled from this sheet and removed. The sheet is bonded to a facing layer, which later forms the outer or inner skin. The composite structure comprising the sheet and the facing layer thus forms a template for the frame structure to be produced. A flowable plastic is then poured into the milled-out contours or cavities of the sheet, forming the frame structure. Finally, a second facing layer is bonded in place. The wall element produced in this way can then be further processed by milling out windows or doors (para. 29). In this variant of the process, the insulating material has two functions. On the one hand, it acts as insulation; on the other, it forms a mould for the material of the frame structure (para. 15).

107. In a further preferred variant of the method according to the invention, the flowable, curable material is applied – in particular by NC control – to one of two cover layers to form the frame structure. Subsequently, flowable insulating material is introduced into the gaps in the frame structure, and the second cover layer is then applied to the frame structure—in particular, by bonding—so that the frame structure and the insulating material are ordered between the two cover layers. The flowable insulating material can, for example, be introduced automatically into the gaps in the frame structure (paragraphs 16 and 30–32).

108. Figure 2 schematically illustrates the sequence of a variant of the method. Here, flowable material (8) is first dispensed from a dispensing device in a desired shape onto a work table, thereby initially forming a base frame structure (9). This base frame structure (9) already has, for example, a contour (10) for a door (step a), para. 30). Subsequently, additional structures (11) are applied to the workbench. In this case, the additional structures consist of a different flowable, curable material. In the present case, polyurethane foam was used for the additional structures (11). Finally, a finished frame structure (12) is produced (step b), para. 31). A top layer (13) is now bonded to the frame structure (step c)). Flowable insulating material (15) is then introduced into the gaps (14) of the frame structure (12) (step d)). Once the frame structure (12) has cured, the open surface is calibrated. In the next step, a second cover layer (16) is bonded to the frame structure (para. 32).

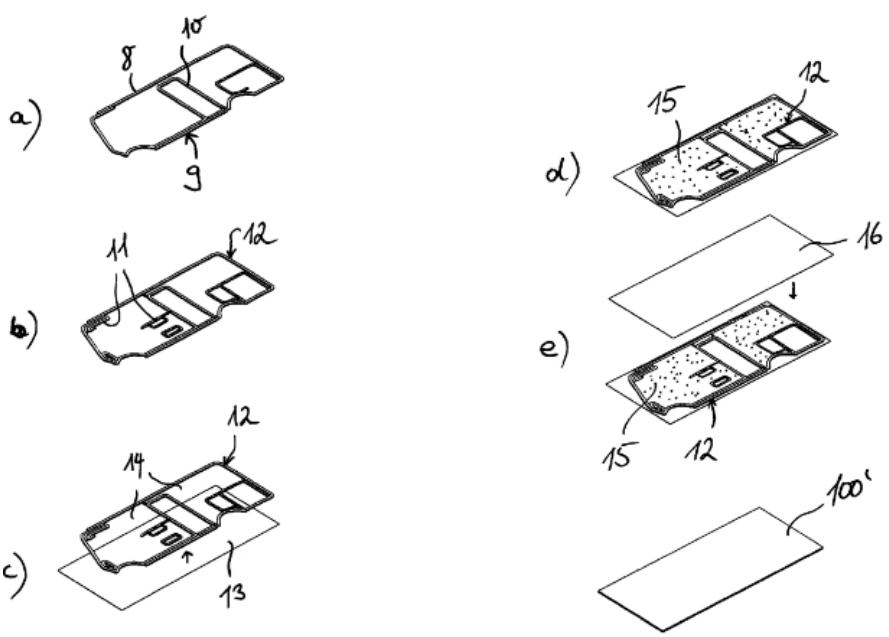


Fig. 2

109. Figure 4, reproduced below, shows the frame structure (12) of the manufactured surface element.

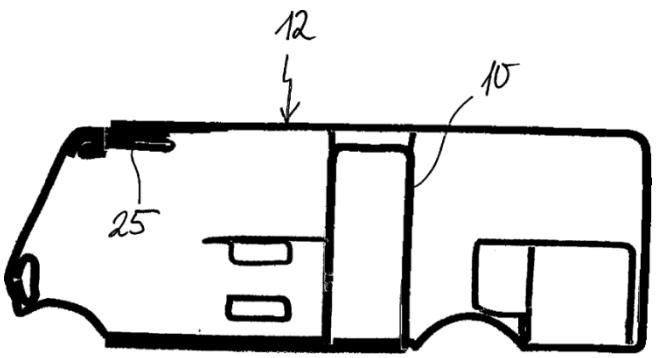


Fig. 4

Disclosure of features 2, 2.1 and 4

110. Features 2, 2.1 and 4 are thus directly and unambiguously disclosed, a fact which neither Yellow Sphere nor Härtwich dispute.

Disclosure of feature 3

111. Feature 3 is also directly and unambiguously disclosed. What is disclosed is a frame structure made of polyurethane foam. Although it is not disclosed that the polyurethane foam is self-expanding, this is irrelevant, as explained above with regard to interpretation.

Disclosure of Features 1 and 5

112. The local division correctly held that there is no disclosure of feature 5. Furthermore, feature 1 is also not disclosed.

113. Knaus Tabbert argues, unsuccessfully, that it can be inferred from Figure 3 that the finished frame structure is composed of a plurality of interconnected structural parts. For example, the frame structure (12) comprises a door section (10). This is intended to accommodate a side door. Consequently, these structural parts naturally form a load-bearing part of the frame.

114. The prior art does not deal with the frame of a vehicle within the meaning of features 1 and 5. Where reference is made to a 'frame structure', this evidently refers to the panel elements. The prior art does not address the question of whether these are merely bodywork elements or parts of a separate frame supporting the bodywork.

115. As explained above, the frame is a separate load-bearing component distinct from a (self-supporting) body. The frame must be capable of supporting the entire body independently of any other existing body parts.

116. Furthermore, feature 1 requires a complete frame and not merely a single component which performs a load-bearing function.

V. Novelty in relation to the prior art DE 10 2013 006 300 A1 (DE'300, WK5)

117. DE'300 (WK5) also does not destroy novelty, as the local division correctly held.

Subject-matter of DE'300 (WK5)

118. The invention disclosed in DE'300 (WK5) relates, amongst other things, to a method for manufacturing a structural component (paragraph 1). In the prior art, structural components are regarded as elements which can be used as support elements or load-bearing components. In particular, these are elements which, for example, are fixed at at least one end to a mounting area and are capable of absorbing forces at at least a second end or at a section situated away from the mounting end. Examples cited include mounting elements for lights such as indicator or position lights on vehicles, or elements for mounting mudguards and mirrors on vehicles (paragraph 2).

119. According to the description in the prior art, such components are manufactured from die-cast aluminium or as injection-moulded plastic parts. The known manufacturing methods take into account that the elements must be designed to be sufficiently rigid in bending to withstand the stresses to be expected over their service life (para. 3).

120. Against this background, DE'300 (WK5) sets out to describe a new manufacturing process (para. 4).

121. To this end, DE'300 proposes first producing a lightweight core, consisting, for example, of PU foam (para. 6). This lightweight core is positioned in an openable and closable mould with the aid of spacer elements (para. 11), so that it is spaced away from the inner wall surfaces of the mould on all sides (para. 12, last line). A liquid, curable foam composition is then introduced into the mould, which flows around the lightweight core on all sides (para. 22). This foam composition may be a polyurethane casting compound (paragraph 23). Once the foam composition has cured, the structural component can be removed from the mould (paragraphs 27–28, claim 1).

122. The key point is that, within the framework of the method according to the invention, the lightweight core can be completely surrounded on all sides, and that the flooding material is distributed evenly along the surface (28) of the lightweight core (11), thereby enabling a shell of substantially uniform thickness
(19) along the entire outer peripheral surface (29) of the lightweight core (11). This enables the required bending stiffness of the structural component (10) as a whole to be achieved whilst using the minimum conceivable amount of material.

Disclosure of features 2 and 2.1

123. Features 2 and 2.1 are directly and unambiguously disclosed. Even though it is not relevant to the realisation of features 2 and 2.1 of patent claim 1 that the structural component was actually manufactured in a mould, it is sufficient for the disclosure of the properties resulting from this method of manufacture if the structural components were in fact manufactured in a mould. This is because the properties required by features 2 and 2.1 follow from this.

Disclosure of feature 3

124. Feature 3 is also disclosed directly and unambiguously. As explained, the lightweight core may consist of PU foam. As explained in the interpretation, it is not necessary for the foam resin to be self-expanding.

Disclosure of feature 4

125. As Knaus Tabbert rightly argues, the curable foam composition with which the lightweight core is encased discloses a protective layer within the meaning of feature 4. As explained in the interpretation, feature 4 requires that the structural component be at least partially surrounded by a protective layer which adheres firmly to it and encloses the structural component like an outer skin without any voids.

126. This is disclosed directly and unambiguously in the prior art. According to the description in the prior art, the foaming of the foam composition whilst the mould is closed ensures that the foam composition can foam and cure, and that the foam composition envelops the lightweight core on all sides and, in particular, uniformly or substantially uniformly (paragraph 26), thus at least partially surrounding it like an outer skin.

Disclosure of features 1 and 5

127. The local division was correct in finding that features 1 and 5 are not directly and unambiguously disclosed.

128. DE'300 (WK5) does indeed disclose mounting elements for mudguards which thereby support the mudguards independently and hold them securely. However, as the frame must be capable of supporting the entire body of the vehicle, this is not sufficient to disclose features 1 and 5.

VI. Novelty vis-à-vis DE 10 2014 204 369 A1 (DE'369, WK7)

129. The local division was correct in finding that DE'369 (WK7) does not anticipate the subject-matter of claim 1 of the patent at issue in a manner that would render it lacking in novelty.

Subject-matter of DE'369 (WK7)

130. DE'369 (WK7) relates to a load-bearing vehicle structure, in particular an axle carrier, a body or a frame of a vehicle, as well as methods for their manufacture (paragraph 1).

131. Load-bearing vehicle structures of sandwich construction are known from the prior art. In this context, for example, glass-fibre-reinforced plastic is laminated onto a foam core. This is relatively labour-intensive and is not suitable for effective mass production. Furthermore, there are load-bearing vehicle structures made from hollow metal elements, in which the cavities are filled with foam by injection moulding. In this process, the geometry of the cavity is predetermined and cannot be freely selected. Moreover, there is either no bond or an undefined bond between the foam core and the metal elements (paragraph 2).

132. On this basis, DE'369 sets out to describe a method for manufacturing a load-bearing vehicle structure which, when carried out cost-effectively, results in a very lightweight yet stable vehicle structure (paragraph 3).

133. The vehicle structure is used in particular in a motor vehicle. The vehicle structure is preferably an axle carrier, a component of the bodywork or a frame of the vehicle. The method comprises at least the following steps: (i) moulding a core, (ii) moulding at least one shell, and (iii) placing the shell onto the core. A denser material is selected for the shell than for the core. Furthermore, the shell is preferably much thinner-walled than the core. This results in a lightweight sandwich structure for the load-bearing vehicle structure. The core is fully moulded and at least partially cured before the shell is fitted. The shell is also moulded before fitting and does not acquire its shape only upon being fitted onto the core. The geometry of the core can therefore be designed independently of the shell

, so that, for example, the core may only be in contact with the shell in certain places, whilst cavities remain in other areas (para. 5).

134. It is preferably envisaged that the at least one shell is bonded to the core (para. 6).

135. It is preferably envisaged that the at least one shell is made of metal, in particular aluminium or sheet steel, or fibre-reinforced plastic (para. 7).

136. The core is preferably made of foam. Plastic foam or metal foam is used for this purpose. The foam is preferably moulded in a mould (para. 8).

137. Figure 1, reproduced below, shows a load-bearing vehicle structure according to the invention, manufactured in accordance with the method of the invention as per an embodiment (paragraph 21); Figure 3 shows the section B-B indicated in Figure 1.

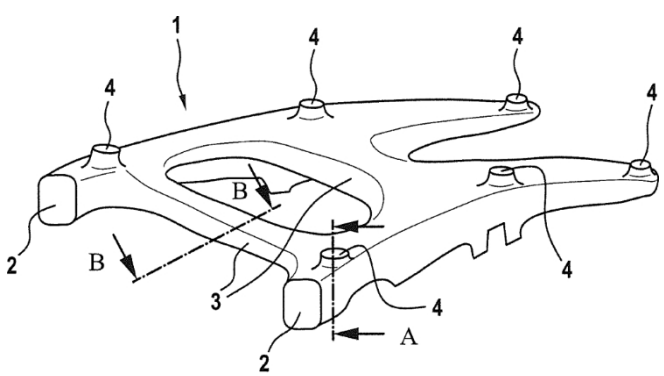


Fig. 1

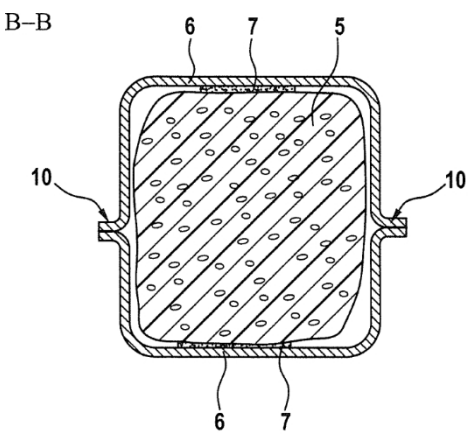


Fig. 3

138. In the embodiment, the vehicle structure (1) is designed as an axle carrier (para. 26). Figure 3 shows a core (5) enclosed by two shells (6) (para. 28). The shells are connected to the core via bonding points (7) and to one another via joining points (10) (para. 33). The core may fill approximately the entire cavity (para. 33). However, cavities may also remain between the core and the shells (para. 34).

Disclosure of features 1 and 5

139. Features 1 and 5 are thus disclosed. According to the description in DE'369, the invention relates not only to axle carriers but also to other vehicle structures such as the bodywork or a vehicle frame (paragraph 1, paragraph 5).

140. Yellow Sphere and Härtwich argue, unsuccessfully, that the structural component made of foamed plastic is not a vehicle frame. They contend that the foamed plastic core does not meet any requirements regarding strength properties. Nor, they argue, does it have a load-bearing function. A load-bearing function arises exclusively from the shell, which is made of metal or fibre-reinforced plastic.

141. The structural component consists of a shell and a plastic core. Yellow Sphere and Härtwich rightly do not dispute that the structural component, understood in this way, performs a load-bearing function within a frame as described in DE'369.

Disclosure of feature 3

142. Feature 3 is also disclosed. Plastic foam constitutes foam resin within the meaning of feature 3. As explained, the foam resin according to the patent may be formed from various plastic materials (see paragraph 67 above; description of the patent at issue, paragraph 8).

143. As explained in the section on interpretation, it is irrelevant whether the foam resin is self-expanding, as this does not confer any particular properties on the structural component.

Disclosure of features 2 and 2.1

144. The local division was correct in not considering feature group 2 to be directly and unambiguously disclosed. In WK7, the three-dimensional shape of the vehicle structure is not defined by the foam body, but by the two shells.

Disclosure of feature 4

145. Since, in the disclosed solution, only two rigid bodies (shells 6) are connected to one another, the local division was also correct in not considering a coating in the shell in accordance with feature 4 to be disclosed. As explained in the interpretation (para. 71 et seq.), the connection of two rigid bodies is not sufficient for a coating.

VII. Novelty over EP 0 670 257 A1 (EP'257, WK26)

1. Patent claim 1

146. The local division also correctly held that EP'257 (WK26) does not disclose all the features of claim 1 of the patent at issue and therefore does not prejudge its novelty.

147. As already explained in relation to the interpretation (see para. 35 above), EP'257 relates to a lightweight vehicle with a self-supporting body made of fibre-reinforced plastic, which is assembled from prefabricated body elements joined together along their joint lines (p. 2, lines 1–3).

148. According to the description in the citation, in the prior art, self-supporting plastic bodies for lightweight vehicles – apart from a few specialised designs – were generally manufactured using the conventional lamination process. The body is composed of laminated individual parts of varying sizes, which are also joined together using lamination technology. The manufacture of vehicle bodies in this manner is largely manual and is not suitable for mass production. Furthermore, this method merely replicates traditional design principles known from metal construction using the means of plastics technology, without making use of the specific possibilities offered by plastics technology (p. 2, lines 7–13).

149. According to the state of the art recognised in the citation, the bus body consists of two interconnected half-shells made of a plastic composite material with a sandwich structure, which comprises a central foam core layer onto which fibre-reinforced plastic layers are laminated on both sides (p. 2, lines 14–19). The body is moulded in a negative mould consisting of two symmetrical half-shells, which are opened for the purpose of filling (p. 2, lines 32–33). The two half-shells are lined on the inside with fibre mats (reinforcing fibres), the foam core layer and further fibre mats (reinforcing fibres) (p. 2, lines 36–37). In the vacuum process, the outer skin, filler material (foam core layer) and inner wall are then pressed together (with each mould half still treated separately), resulting in the fibre-reinforced plastic composite material. The prefabricated components are then inserted into the

produced bodywork halves and bonded to them using lamination technology. The two negative halves would then be positioned and the negative mould closed. Subsequently, the two bodywork halves would be bonded together within the mould, typically by means of lamination technology, i.e. by laminating fibre mats across the joint between the parts to be joined. Once the bond between the two body parts has cured, the negative mould is opened and the finished body is formed. After demoulding, fibre mats are also laminated over the joint on the outside of the body (p. 2, lines 38–47).

150. The two body halves, each manufactured as a single piece, could not be demoulded individually because, due to their dimensions, they would not be sufficiently inherently rigid (dimensionally stable) and it would therefore be practically impossible to assemble them with a precise fit outside the negative mould. The negative mould would have to be lined by hand (p. 3, lines 48–53).

151. Against this background, EP’257 sets out to provide a completely new design principle for a lightweight vehicle made of fibre-reinforced plastic with a self-supporting plastic body, which does greater justice to the material fibre-reinforced plastic, makes better use of its potential and allows for efficient mass production of the body and thus of the entire lightweight vehicle (p. 2, lines 12–15).

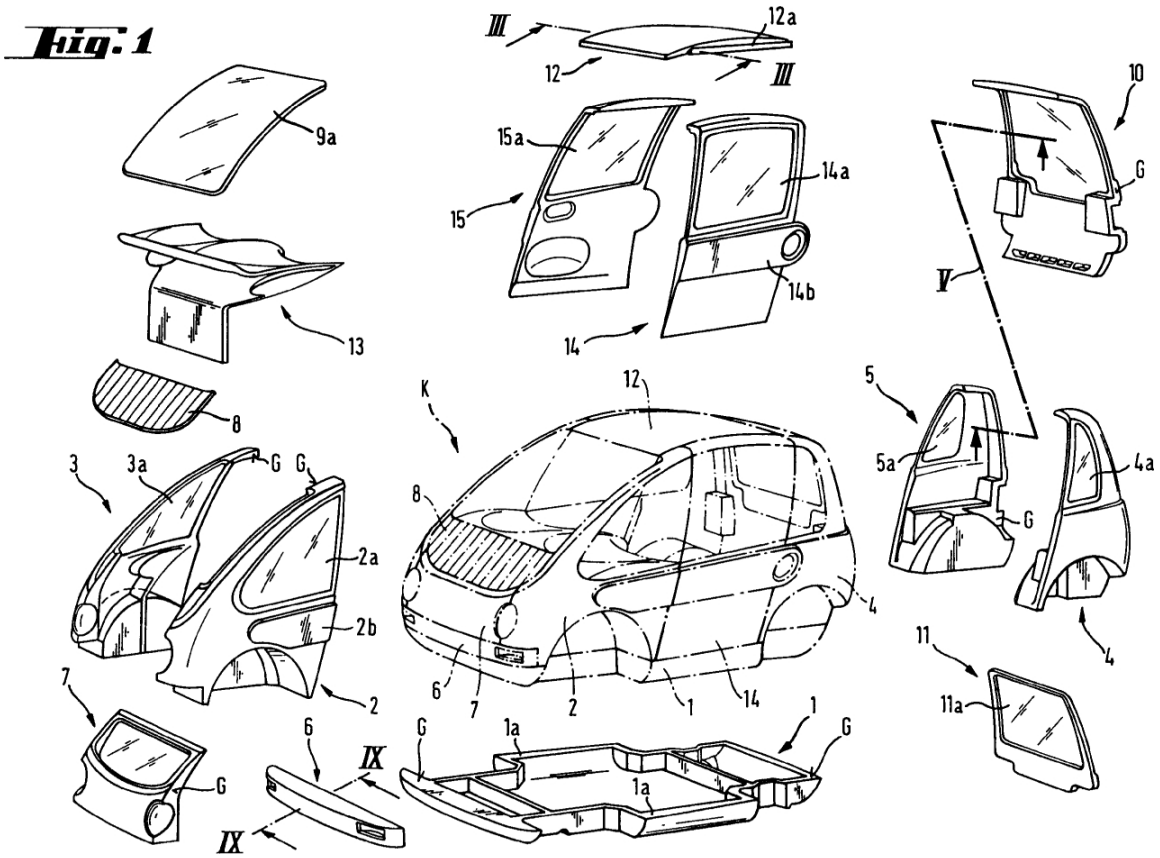
152. The lightweight vehicle designed to fulfil this objective has a self-supporting body made of fibre-reinforced plastic, which is assembled from prefabricated body elements joined together along their joint lines by a curing synthetic resin, and is characterised by the invention in that the prefabricated body elements are inherently rigid (dimensionally stable) and have large-area interfaces with their respective neighbouring body elements, and in that the body elements are joined together over large areas at their joints—without the use of lamination—solely in the region of the interfaces between them. In this context, the individual body panels are preferably designed as a box-like structure comprising a foam core and a preferably fibre-reinforced plastic material, either as a whole or at least in the vicinity of their joint or interface surfaces, which are bonded to the adjacent body panels and, where applicable, partially connected by positive locking. The self-supporting body of the invention is designed accordingly (p. 3, lines 17–26).

153. The term ‘intrinsically rigid’ means that the individual bodywork elements are so rigid or dimensionally stable that no negative mould or other jig is required for the assembly of the bodywork (p. 3, lines 29–31). The inherently rigid (dimensionally stable) design of the prefabricated bodywork elements thus eliminates the need for a negative mould when joining the individual elements. The large-area joints – in particular bonding and, where necessary, additional or alternative form-fitting joints between the individual body panels where they meet – result in a structure resembling a vault or an igloo (block construction), which lends the body exceptional stability (p. 3, lines 32–36).

154. Owing to the box-like structure of the individual body panels, the interconnected—in particular, bonded—boundary areas of the body panels form a strength-enhancing structure similar to an I-beam or T-beam, which can be advantageously incorporated into the overall construction. Thus, the joined—in particular, bonded—joint surfaces of the bodywork elements, which act to increase strength, can be positioned in areas requiring increased strength and/or where there is an increased risk of impact, so that the bodywork is particularly stable at the critical points (p. 3, lines 37–42).

155. Figure 1, reproduced below, shows the body of an embodiment of a lightweight vehicle according to the invention.

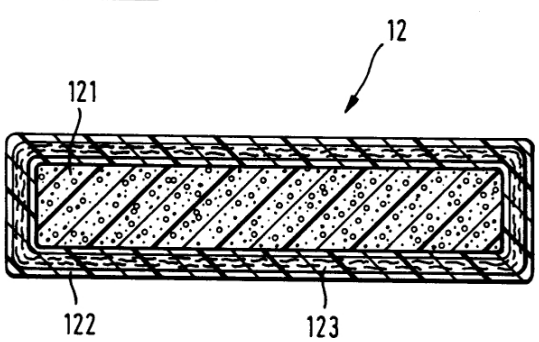
Fig. 1



156. The individual bodywork elements comprise a floor pan (1), two front side elements (2, 3) with bonded side windows (2a, 3a), two rear side elements (4, 5) with bonded side windows (4a, 5a), a bumper (6), a front element (7), a front cover (8), a windscreen (9a), a rear element (10), a rear window element (11) with a bonded rear window (11a), a roof element (12), a storage element (13) and two sliding doors (14, 15) with bonded side windows (14a, 15a). With the exception of the two sliding doors (14, 15), all bodywork elements (1–13) are firmly bonded together (p. 4, lines 8–16).

157. Figure 3 shows a cross-section through a body panel along line III-III in Figure 1 (p. 3, lines 52). It illustrates the box-section structure of the body panels, using the roof panel (12) (p. 3, lines 32–33).

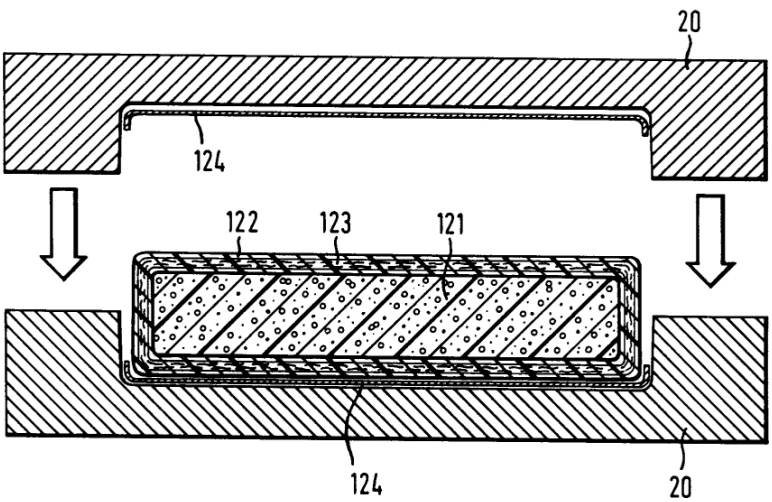
Fig. 3



158. The foam core (121) consists of a lightweight foam, preferably polystyrene. The shell (122) enclosing the foam core (121) consists of polyurethane or, preferably, an epoxy resin system. Depending on requirements, glass, carbon or other high-strength reinforcing fibres (123) are embedded in the shell (122) (p. 4, lines 32–38).

159. Figure 4 shows a schematic diagram illustrating a manufacturing process for bodywork components (p. 3, lines 53–54).

Fig. 4



160. In this process, a heated mould (20) – usually consisting of two parts – whose cavity, when closed, corresponds exactly to the (negative) shape of the body panel to be produced, is first fitted with a lining (124), which later forms the surface of the finished body panel. This lining (124) may, for example, be an inserted film or a spray-applied plastic coating (p. 4, lines 54–58).

161. The foam core (121) coated with reinforcing fibres (123)—preferably a polystyrene core—and a foamable (expanding) plastic system, in particular an expanding epoxy resin system (122), are then placed into the mould (20) and the mould is closed. The expanding plastic system (122) can, for example, be introduced by overmoulding the foam core (121), which is coated with the reinforcing fibres (123), with the plastic system (122) outside the mould (20) and then inserting it into the mould (20). Alternatively, the plastic system (122) may also first be applied, for example, to the lower mould half, then the foam core (121) inserted, and finally the remaining plastic system (122) applied to the inserted foam core (121) (p. 5, lines 2–9).

Disclosure of features 2, 2.1, 3 and 4

162. This thus discloses features 2, 2.1, 3 and 4, which is not disputed by Yellow Sphere and Härtwich.

Disclosure of features 1 and 5

163. As already set out in the discussion on interpretation, however – as the local division correctly pointed out – EP’257 (WK26) does not show a vehicle frame and therefore does not show any structural parts that form a load-bearing part of the frame.

2. Patent claim 10

164. No different assessment applies to patent claim 10. It is not directly and unambiguously disclosed in WK26 that the structural parts produced by the method disclosed therein are suitable for forming self-supporting parts of a self-supporting frame.

VIII. Novelty vis-à-vis DE 10 2013 008 364 A1 (DE'364, WK31)

165. Patent claim 1 of the patent at issue is also novel in relation to the German publication DE'364.

Subject-matter of DE'364 (WK31)

166. The invention according to DE'364 (WK31) relates to a method for manufacturing a structural component for external applications with a high-quality surface (paragraph 1). For the purposes of the invention, structural components for outdoor applications are understood to include, for example, bodywork parts or other vehicle parts, such as bonnets for tractors or their components, radiator cowls, front panels, skirts, covers, or other structural components used in a vehicle or any other piece of equipment in an outdoor environment (paragraph 2).

167. The structural component to be manufactured has a high-quality surface. This may, for example, be a high-gloss surface and/or a very hard, in particular impact-resistant, UV-resistant surface (para. 3).

168. According to the invention, a flat component made from a cured foam composition is first provided (para. 13). To this end, a liquid, curable foam composition is introduced into the interior of the mould (para. 90). The component is then placed into a further mould, known as a structural component mould (para. 103). The closed structural component mould has a gap between its upper and lower surfaces, into which a curable polyurethane casting compound is introduced (para. 107).

169. In some variants of the invention, the entire side of the flat component facing the top surface of the lower mould half is covered by the casting compound (para. 40).

Disclosure of features 2 and 2.1

170. Features 2 and 2.1 are disclosed. Yellow Sphere and Härtwich argued at first instance that features 2 and 2.1 were not directly and unambiguously disclosed because the structural part is a two-component component, with only the second step being carried out in a mould. The mould does not reproduce the three-dimensional external shape of the structural part, as the external shape is already determined by the manufactured component element. This applies all the more to the configuration involving the deep-drawn part, into which material is then merely poured.

171. This argument cannot be accepted. For the realisation of feature groups 2 and 2.1, it is sufficient for the three-dimensional shape to be essentially defined by the foam body (see paragraph 62 above). The fact that two moulds are used does not preclude this – as explained (see paragraph 64 above).

Disclosure of feature 3

172. Feature 3 is also disclosed directly and unambiguously, a point which is not disputed by Yellow Sphere and Härtwich.

Disclosure of feature 4

173. Feature 4 is also disclosed directly and unambiguously. The prior art emphasises that a key innovation of the structural component according to the invention, as compared with the state of the art, lies in the provision of a high-quality polyurethane surface that is ready for final use and *suitable for painting* (emphasis added by the Court) (para. 68). This directly and unambiguously discloses a paint finish. This constitutes a coating within the meaning of feature 4.

Disclosure of features 1 and 5

174. The local division correctly held that the prior art does not disclose a frame for a vehicle comprising at least one structural component which forms a load-bearing part of the frame.

175. Knaus Tabbert challenges this unsuccessfully, arguing that the frame shown in Figures 4 to 6 of the specification of the contested patent constitutes a self-supporting body. As already explained in the section on interpretation, the person skilled in the art distinguishes between a frame and a self-supporting body with a floor assembly.

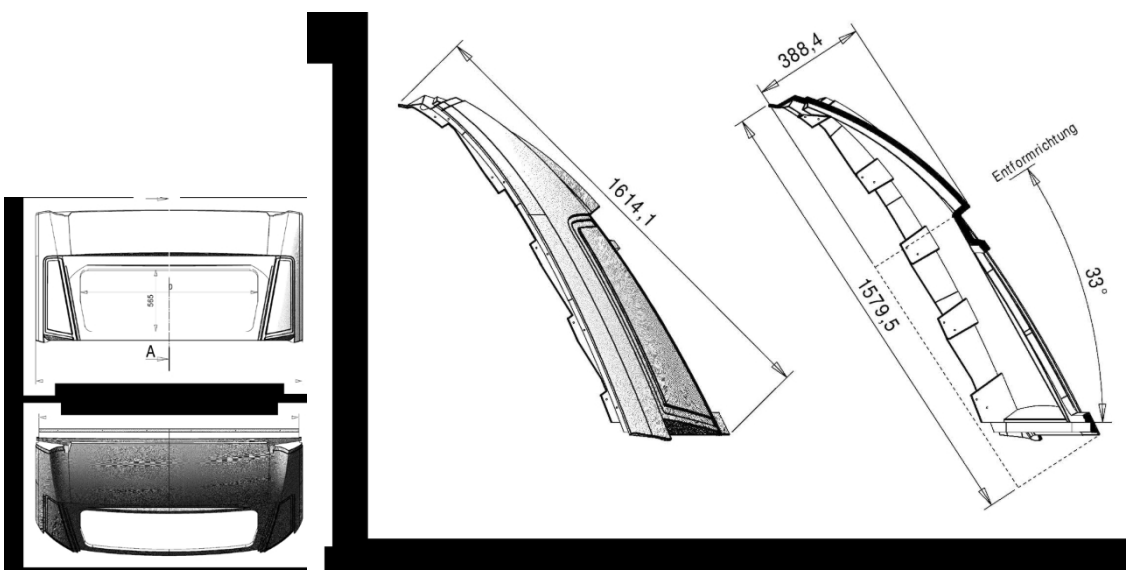
IX. Technical drawings dated 1 February 2012 and August 2014 (Annexes WK15 and WK37)

1. Novelty of patent claim 1

176. The local division correctly held that the subject-matter of patent claim 1 is not anticipated by the technical drawings set out in Annexes WK15 and WK37.

Subject matter of the technical drawings

177. The technical drawings in Annex WK15 are reproduced below and show so-called LFI front sections:



178. The drawings in Annex WK37 show LFI rear sections.

179. According to the information in WK15 and WK37, the LFI moulded parts have an outer skin 3 mm thick, which is described as a deep-drawn part made of ABS-PMMA (typically an acrylonitrile-butadiene-styrene carrier layer with a polymethyl methacrylate top layer) with a PE protective film (PE = polyethylene). This is back-foamed with a glass fibre-polyurethane mixture of a density of 0.5 kg/dm³. A deep-drawing and foaming mould is used for production.

180. Knaus Tabbert unsuccessfully challenges the local division's view that WK15 and WK17 do not destroy novelty and that there is no obvious prior use.

Disclosure of features 2 and 2.1, 3 and 4

181. However, features 2 and 2.1 are directly and unambiguously disclosed. The fact that the outer skin was produced as a deep-drawn part rather than in a mould does not preclude the disclosure of feature group 2. As explained, it is sufficient for the realisation of feature group 2 if the structural part has a three-dimensional shape which is essentially defined by the foam body.

182. The outer skin also discloses the protective layer according to feature 4.

182. Feature 3 is also disclosed, as it is irrelevant whether the foam resin is self-expanding.

Disclosure of features 1 and 5

183. The local division was correct in not considering features 1 and 5 to be directly and unambiguously disclosed. It cannot be inferred from Annexes WK15 and WK37 that the LFI moulded parts are parts of a frame or parts of a self-supporting body distinguishable from it, or that they are designed in such a way that they can be used as such.

2. Patent claim 10

184. No different assessment applies to patent claim 10. This follows simply from the fact that features 1 and 5 of patent claim 1 are not directly and unambiguously disclosed. Furthermore, there is no disclosure of features $3.a^{V}$ and $3.b^{V}$. The outer skin is produced by deep-drawing and not by lining the mould prior to the application of the castable foam resin.

X. Obvious prior use by caravans incorporating the LFI front and rear sections

185. The state of the art comprises everything which, before the filing date of the European patent application, has been made available to the public by means of a written or oral description, by use or in any other way (Article 54(2) EPC). Use means any use which, by its nature, is such that third parties can recognise the technical teaching. This includes acts of use which may consist of a product being manufactured, offered for sale, placed on the market or used, or a process or its application being offered for sale, placed on the market or the process being carried out.

186. The local division was correct to rule out such obvious prior use.

187. Knaus Tabbert claims that the structural components shown in Annexes WK15 and WK37 were assembled into a complete structure using PU strips. The technical drawing reproduced below (Annex WK40), which is submitted for illustrative purposes, shows that these were assembled into a complete frame. A corresponding vehicle was
5 December 2012 and delivered on 16 January 2013.

Obvious prior use of features 1 and 5

LFI rear and front sections together with the PU strips

188. The local division correctly rejected a claim of obvious prior use of features 1 and 5 by the rear and front sections.

189. It cannot be inferred from the illustration in Annex WK40 that the LFI components form part of a frame intended to ensure the stability of the overall structure. In so far as Knaus Tabbert refers to the statement by the witness [redacted] , according to which polyurethane (PU) strips running the full length of the side walls are fitted as a frame and serve to connect the side panels to the floor and the roof (a combination of gluing, screwing and sealing, see text in Annex WK40), this does not substantiate the claim that the LFI parts, together with the PU strips, ensure the stability of the caravan. Nor does the witness statement submitted pursuant to Rule 175.1 of the RoP (Annex ropZA3) indicate anything more than that the structural component supports a window (para. 1) and that the structural components
'must, of course, be assembled in some way to form a frame' (para. 7). The witness statement does not address the question of whether the frame supports the bodywork.

Are LFI parts in the 'with window' version each a frame in their own right?

190. Knaus Tabbert argues, unsuccessfully, that, at least in the 'with window' version, the LFI front and rear sections each constitute a load-bearing frame for a window. This is because their function is to support a window and to frame it. Furthermore, the LFI front and rear sections – each individually – serve to provide load-bearing support for the overall structure. As explained in the interpretation (para. 48 above), the sole determining factor is whether the LFI front and rear sections, as parts of a frame, form a self-supporting structure for the bodywork. Whether the windows are supported, on the other hand, is irrelevant.

XI. Fendt-Caravan product catalogue dated August 2024 (Annex WK19)

191. In so far as the local division rejected the argument that Annex WK19 was detrimental to novelty, this is not contested on appeal.

XII. Novelty of patent claim 10 in relation to EP 1 484 150 A2 (EP'150, WK11)

192. Knaus Tabbert argued at first instance that EP'150 (WK11) anticipates the subject-matter of patent claim 10 in a manner prejudicial to novelty.

193. Knaus Tabbert's appeal does not address this point. Consequently, this ground for invalidity has not become the subject of the appeal.

194. Irrespective of this, EP'150 does not anticipate method claim 10 in a manner prejudicial to novelty, as is evident from the following considerations

Subject-matter of EP'150 (WK11)

195. The invention according to EP'150 relates to a foaming mould comprising a first mould part and a second mould part, which define a mould cavity between them. In particular, the invention relates to a foaming mould with which vehicle body parts or attachments such as doors, bonnets, bumpers, etc. can be manufactured, which consist of a substrate and a layer of a foamable plastic applied to the substrate or outer layer (paragraph 1).

196. According to the description in EP'150, the body panel is usually manufactured by placing the substrate into one mould half of the open foaming mould. A predetermined quantity of the foamable plastic material is then applied to the preferably impermeable substrate. The second mould half is then fitted tightly onto the first mould half, so that the mould cavity of the foaming mould is sealed. In the process, air is inevitably trapped within the mould cavity. As the foamable plastic material reacts and expands within the mould, the air migrates towards the parting line between the first mould half and the second mould half, so that it remains in the peripheral region of the mould cavity. This creates a risk of air entrapments forming in the foamed plastic material, which could lead to surface defects or voids (para. 2).

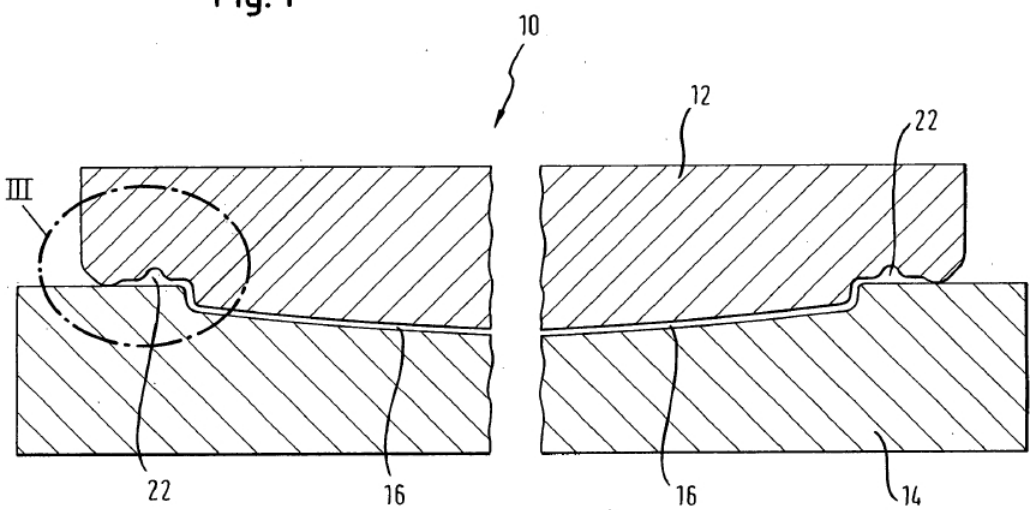
197. Against this background, EP'150 sets out to create a foaming mould that results in a higher quality of the component produced using it (paragraph 3).

198. To this end, the invention provides for a foaming mould comprising a first and a second mould half, which together define a mould cavity. A vent groove is provided in one of the mould halves, which serves to collect gases trapped within the mould cavity. Several overflow channels are provided between the vent groove and the mould cavity. The overflow channels are suitably ordered so that air pockets contained within the mould cavity are directed towards the vent groove, from where they can be discharged from the mould cavity (paragraph 4).

199. Figure 1 shows a foaming mould (10) comprising a first mould half (12) and a second mould half (14). The two mould halves abut one another near their outer peripheries, thereby defining a mould cavity (16) between them. A substrate (18), for example a thermoplastically deformable plastic film, can be ordered within the mould cavity (16), upon which, in turn, a foamable plastic material (20) can be ordered. The substrate (18) and the foamable plastic material (20) bond together within the mould cavity (16) to form a stable

component, which may, for example, be a body part for a motor vehicle, such as a roof module (para. 11).

Fig. 1



200. It is not disclosed that the structural component is mechanically stable to such an extent that it is suitable for forming part of a load-bearing frame of a vehicle (feature 1^V). Furthermore, it is not directly and unambiguously disclosed that the material is a castable foam resin which is poured into the mould (feature $3b^V$).

XIII. Inventive step with regard to patent claim 1, based on DE 10 2013 215 933 A1 (DE'933, WK6) in conjunction with the prior art or in combination with any of the publications WK3, WK4 and WK5 or the European patent application EP 1 484 150 A2 (WK11)

201. Nor is the appeal successful in so far as it challenges the local division's view that the subject-matter of patent claim 1 is not suggested by DE'933 (WK6) in combination with the prior art, or by DE'026 (WK3), WK4 and WK5 or the European patent application EP 1 484 150 A2 (WK11).

202. As the local division found, uncontested (contested final decision, para. 176), Knaus Tabbert's invalidity plea is based, in this respect, on the assumption that DE'933 discloses all the features of patent claim 1 with the exception of feature 4. However, this is not the case, as features 1 and 5 are not directly and unambiguously disclosed.

Subject-matter of DE'933 (WK6)

203. The invention according to DE'933 (WK6) relates to a structural component of a vehicle and its manufacture (paragraph 1).

204. DE'933 (WK6) states that structural components for vehicles are known in the prior art. These are, in particular, body components which, depending on their location, transfer mechanical loads. In order to save weight whilst still achieving sufficient structural volume, it is known that such structural components may comprise foam bodies with three-dimensional dimensions. This would allow, for example, door panels,

insulation materials, which provide noise damping and, at least to a small extent, mechanical stabilisation (paragraph 2).

205. A disadvantage of known structural components with foam bodies is that their mechanical load-bearing capacity is limited to a narrow range. In particular, high mechanical loads, such as those that might occur within a vehicle body, can only be transmitted by such foam bodies with great difficulty or not at all. Crash situations, in particular, are a limiting factor for the use of foam bodies. Consequently, structural components incorporating such foam bodies have, to date, not been suitable for use in the vehicle's essential load-bearing structures (para. 3).

206. Against this background, the present invention sets itself the task of enabling mechanical stabilisation of the structural component in a cost-effective and simple manner and of at least partially overcoming the disadvantages described above (paragraph 4).

207. To solve this problem, DE'933 (WK6) proposes a structural component comprising a foam body (20) with a three-dimensional configuration, characterised in that at least one reinforcing element (30) for mechanically reinforcing the foam body is ordered, at least in sections, within the foam body. The reinforcing element comprises at least one form-fitting section (32) via which it is connected to the foam body by a form-fit (paragraph 6, paragraph 33). An embodiment is shown in Figure 1 (reproduced below).

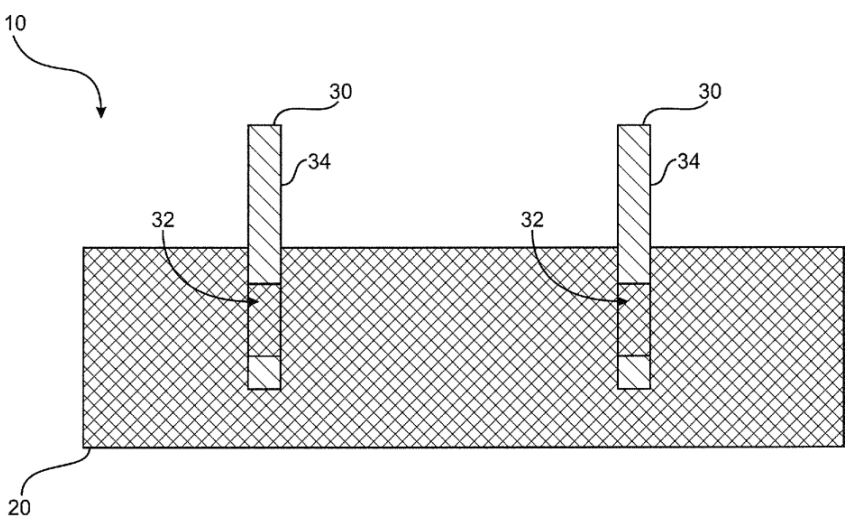


Fig. 1

208. In this embodiment, a total of two reinforcing elements (30) are ordered in sections within the foam body (20). Each of these reinforcing elements has a form-fitting section (32), which is formed here as a hole. During the foaming process and manufacture of the foam body (20), the corresponding foam material was foamed through this hole, so that, during the form-fitting process, an upward tensile force (as shown in Figure 1) no longer causes the reinforcing elements to be pulled out. As can also be seen from Figure 1, the two reinforcing elements (30) protrude partially beyond the surface of the foam body (20). In this area, they each form a fastening section (34) (para. 33). This is provided for the fastening of an adjacent component (para. 35).

209. The form-fitting section is a section which can withstand tensile loads to a greater extent. Thus, this form-fitting section could also be described as a tensile fastening section of the reinforcing element within the foam body (para. 7).

210. Possible examples of form-fitting sections include holes, undercuts or angled areas of the entire reinforcing element. Naturally, it is also advantageous to provide several form-fitting sections in order to make the form-fit as mechanically stable as possible (para. 8).

211. A structural component of a vehicle is, in particular, a structurally loaded component. In this context, for example, bodywork components or outer skin components of the vehicle could be provided by such foam bodies. Consequently, such foam bodies, through the reinforcement provided by the reinforcing element, could offer increased mechanical stability even in the event of a vehicle crash (para. 10).

212. It is further advantageous if, in a structural component according to the invention, the foam body comprises expanded polypropylene as a material or consists of expanded polypropylene. This provides a particularly cost-effective and simple solution for the foam body (para. 11, para. 21).

213. It is also advantageous if the structural component according to the invention is designed as a body component of the vehicle. This refers in particular to components which absorb the vehicle's dynamic loads, especially during crash situations. DE'933 cites, by way of example, areas of the vehicle's A-pillar, B-pillar or C-pillar. Parts of the vehicle's outer skin, such as the outer door trim, the bonnet or the boot lid, can also be provided with such structural components within the scope of the present invention. Thanks to the mechanical reinforcement provided by the invention with the aid of the reinforcing element, it is now possible to achieve a significantly wider range of applications for the lightweight foam body as a material. This means that, whilst maintaining the same mechanical stability of the respective structural component – or even improving it through the reinforcing elements – a positive contribution can be made towards reducing the vehicle's overall weight (paragraph 12).

214. Furthermore, DE'933 proposes a method for manufacturing the structural component of the invention, in which at least one reinforcing element with at least one form-fitting section is first inserted into a foaming mould and the foam body is foamed in the mould whilst forming a form-fit with the at least one reinforcing element (paragraphs 23, 36).

Disclosure of features 1 and 5

215. The local division correctly held that features 1 and 5 were not disclosed by the prior art.

216. It cannot be inferred from the prior art that the aforementioned A, B and C pillars form parts of a frame. The prior art does not address the question of whether these parts form part of a self-supporting body or whether the body is supported by a separate body-supporting component, namely the frame.

217. Contrary to Knaus Tabbert's view, it is not sufficient for a direct and unambiguous disclosure if the prior art is cited as having the disadvantage that structural components comprising such foam bodies are not used for the essential load-bearing structural elements of the vehicle. Nor is it sufficient for a direct and unambiguous disclosure that the structural component of a vehicle is, in particular, a structurally loaded component

(para. 10). The same applies to the statement that it is possible 'to achieve a significantly wider range of applications for the lightweight foam body as a material' (para. 12).

218. A general term (in this case: 'mechanically loaded structural component') does not automatically disclose all specific terms falling under it but not explicitly mentioned. Even if explicit mention is not required in this regard, the scope of disclosure of a prior publication can only include that which the person skilled in the art readily recognises upon careful reading and takes for granted. The statement that the structural components are capable of withstanding mechanical loads says nothing as to whether they are objectively suitable for the loads within a vehicle frame in accordance with feature 1.

219. Knaus Tabbert has not argued that features 1 and 5 are obvious. The defendant, who has brought a counterclaim for revocation, must set out in detail the reasons why inventive step should be denied. It must be substantiated why a particular prior art document is of interest to the person skilled in the art as a starting point for solving the problem addressed by the invention and, where applicable, why this prior art document is combined with other prior art documents. In doing so, it must be substantiated for each feature why it is obvious to the person skilled in the art in the respective prior art document. Knaus Tabbert has failed to do so with regard to features 1 and 5.

Disclosure of feature 4

220. Feature 4 is not directly and unambiguously disclosed, a point on which there is rightly no dispute. The citation makes no mention of a coating. Since Knaus Tabbert does not argue, with regard to features 1 and 5, that these features are suggested in the prior art documents DE'933 (WK6), DE'026 (WK3), WK4 and WK5 or the European patent application EP'150 (WK11), there is no need to decide whether feature 4 is suggested.

XIV. Inventive step with regard to patent claim 10, taking DE 10 2013 215 933 A1 (DE'933, WK6) as the starting point, in conjunction with the prior art or in combination with any of the publications WK3, WK4 and WK5 or the European patent application EP 1 484 150 A2 (WK11)

Disclosure of the features of patent claim 10

221. No different assessment arises for patent claim 10. The feature $1^V$is not even fulfilled, as features 1 and 5 are in any event neither disclosed nor suggested. Nor are all the features of patent claim 10 directly and unambiguously disclosed in DE'933 (WK6). A method in which the mould is provided with a protective layer (feature $3.a^V$) is not described in the prior art. Nor is it described that the foam resin is castable (feature $3b^V$).

222. Knaus Tabbert's submissions do not provide any evidence that these features were obvious on the basis of general technical knowledge or the cited prior art.

XV. Inventive step with regard to patent claim 1, based on EP 1 212 189 B1 (EP'189, WK25) in conjunction with the prior art or in combination with one of the publications WK3, WK4 and WK5 or the European patent application EP 1 484 150 A2 (WK11)

The subject-matter of EP'189 (WK25)

223. WK25 relates to a device and a method for manufacturing a composite structure, in particular a vehicle structure (paragraph 1).

224. It is known to produce a composite structure by placing a plurality of fibres into a portion of a mould having the desired shape and introducing a resin material either during the lamination process or thereafter, in order to ensure the bonding of the fibres and to produce a product in the desired shape. It is also known to use a mould comprising an inner and an outer part, which reproduces the outer shape of the respective component. Furthermore, it is known to employ an injection process in which resin is injected or drawn into the mould cavity (paragraph 2).

225. These processes are not readily suited to the manufacture of complex three-dimensional structures. They may also result in structures that are somewhat bulkier than desired, as the production of stable and slender corners and joints can be problematic (para. 3).

226. Although complex, multi-node frame structures, such as vehicle frames, could theoretically be produced using known hand-lay-up processes, However, the costs involved are prohibitive, and the crash resistance and stiffness of a cage formed by the frame, which carries passengers, require great care and control in forming the joints at the nodes and in continuing the reinforcement through a node to ensure coherence and strength (paragraph 4).

227. Furthermore, if only fibres were used as reinforcement, this would result in a dense and heavy structure. Reinforcement in the form of a carbon-fibre-bonded foam core with a constant cross-section does indeed result in a more desirable weight-to-strength ratio. However, there may still be significant voids between such reinforcements, which would be filled with resin, meaning that the desired weight-to-strength ratio might not be achieved (para. 5).

228. Against this background, WK25 wishes to provide a machine and a method for manufacturing a composite structure that is suitable for forming complex three-dimensional structures (para. 7) whilst reducing the weight of the composite moulded structure (para. 14).

229. To this end, WK25 proposes, as a reinforcement, a ‘cored reinforcement’ comprising a shell of strength-imparting fibres, preferably carbon fibres, which surrounds a core of expandable material, preferably closed-cell foam. The core is expandable under reduced pressure applied to a closed mould—for example, to draw resin into the mould—so that the finished article contains few, or ideally no, voids between the reinforcements that could be filled with resin. Instead, the resin impregnates and envelops only the strength-providing fibre structure (para. 14).

230. To manufacture the composite article, at least one length of reinforcement with a constant cross-section is placed in a mould. The constant cross-section need not be related to the shape of the mould. The reinforcement has a core made of an expandable material, preferably closed-cell foam. The pressure is then reduced whilst the mould is closed. This causes the reinforcement element to expand, thereby minimising the void around the reinforcement. The resin surrounding the reinforcement is then cured and the mould removed. The strength-imparting fibre is preferably a carbon fibre. The curing, which takes place at an elevated temperature, may lead to the complete or partial destruction of the foam core (para. 15).

231. Figure 1 is an isometric projection of a vehicle sub-structure which could be manufactured in accordance with the method and apparatus of the present invention (para. 20).

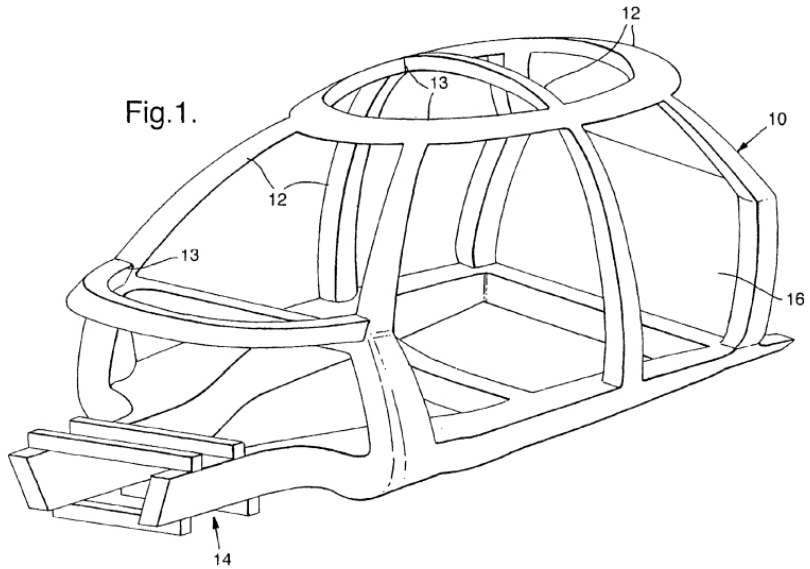


Fig.1.

232. The structure comprises a number of frame members (12) which converge at nodes (13) and may include sub-assemblies such as the ‘crush subsection’ (14) and a rear reinforcement element (16) (para. 21).

233. Figure 10, reproduced below, shows the feeder head (64) (paragraph 33). The reinforcing element (38) from the roll (65) or another source is fed at the required speed through the die (46) with guide vanes (47) by driven feed rollers (45) (para. 33) The reinforcement (38) shown comprises a carbon fibre filament (50) surrounding a central core (52), which preferably comprises a compressible core, for example made of a foam material, preferably an expandable closed-cell foam core (para. 34, col. 6, line 55 to col. 7, line 3).

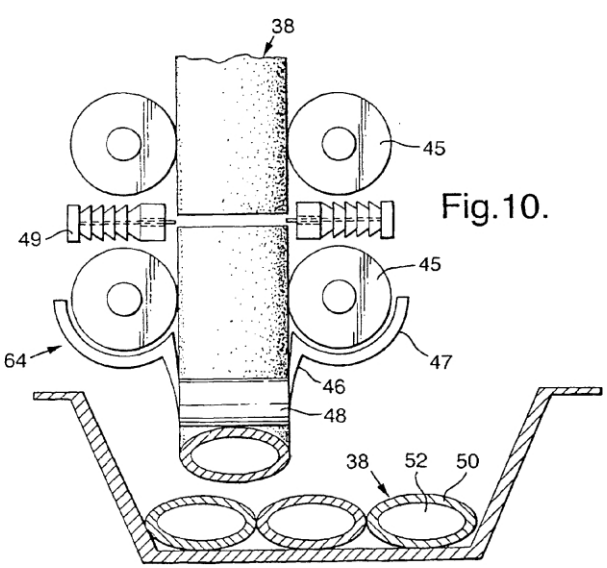
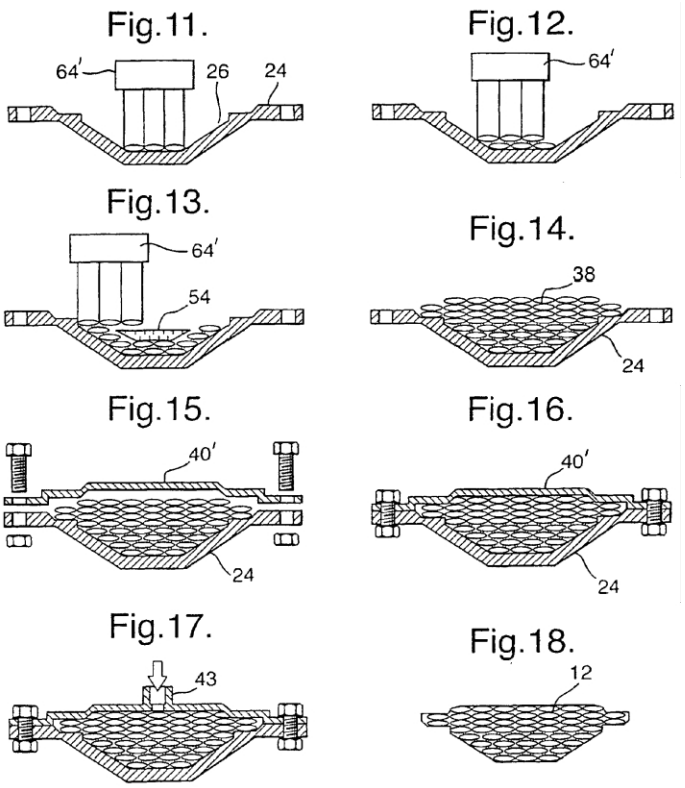


Fig.10.

234. The manufacturing process for a frame element (12) is illustrated in Figures 11 to 18 below.



235. The mould (24) (mould structure) is filled with the raw material (38) from the feed head (64'), shown here as the feeding of a plurality of reinforcements (38) in a single pass. In addition to feeding reinforcements of discrete lengths, it is possible to introduce additional fabric, foam and metal inserts into the wound structure whilst the reinforcement is being fed. However, such additions could also be incorporated after the winding process has been completed. These serve to enable the structure to withstand high or localised loads during use and/or to provide attachment points for components that need to be secured to the base mould structure (col. 7, lines 15–24).

236. The mould is overfilled by a small amount (Figure 14), so that the reinforcement is compressed when the mould is closed by the second mould half (40') (Figs. 15, 16).

237. Resin is then fed through the resin inlet (43) to impregnate the cavities, and the resin is cured (Fig. 17). After the mould halves (24, 40') have been removed, the moulded frame element (12) remains (para. 34, col. 7, lines 24–35).

238. Figure 23 below shows a finished frame element with thickened honeycomb lines (107) of a honeycomb structure.

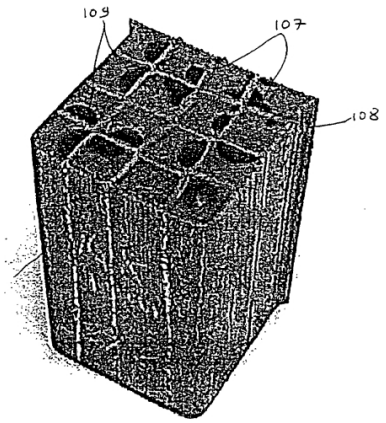


Fig. 23

239. During the curing process, which takes place at an elevated temperature, the foam core of the reinforcement may be partially or even completely destroyed or melted, though this is of no consequence. The rigid walls (108) have a very satisfactory strength-to-weight ratio. Cavities in which the foam has been destroyed can be seen in the dark areas (109) (para. 36).

Disclosure of features 1 and 5

240. Features 1 and 5 are thus directly and unambiguously disclosed, which is undisputed.

Features 2, 2.1 and 3

241. Knaus Tabbert unsuccessfully challenges the local division's view that feature group 2 and feature 3 are not directly and unambiguously disclosed. The fact that the three-dimensional shape is essentially defined by the foam is not directly and unambiguously disclosed in the prior art. The three-dimensional shape is essentially defined by the resin and not by the foam core, as evidenced, amongst other things, by the fact that the foam core of the reinforcement may be partially or even completely destroyed or melted during the curing process.

Feature 4

242. Feature 4 is not directly and unambiguously disclosed. This is, quite rightly, not in dispute between the parties.

Obviousness of patent claim 1

243. It can be left open whether the local division was correct in assuming that it was not obvious to apply a coating, for example in the form of paint, to the vehicle frame disclosed in the prior art. In any event, there was no reason to modify the disclosed composite structure in such a way that the three-dimensional shape is essentially defined by the foam core. Knaus Tabbert has not put forward any substantiated arguments on this point either.

XVI. Inventive step based on DE'364 (WK31) in combination with WK3 to WK7, WK15 and WK26

244. The local division held that the invention according to the patent at issue was not suggested by a combination of DE'364 (WK31) with WK3 to WK7, WK15 and WK26 either. The mere general

statement that WK3 to WK7, WK15 and WK26 disclose that the structural components described therein could also form a load-bearing part of the vehicle frame is not sufficient for this purpose.

245. The appeal rightly does not challenge this.

XVII. Novelty vis-à-vis JP 2010-221502 A (JP'502, ropBW3-1, with English translation ropBW3-2)

246. It can be left open whether an extension of the claim within the meaning of Rule 263(1) of the RoP has already taken place where, in the context of a counterclaim for the revocation of the patent, new prior art or new combinations of prior art are introduced into the proceedings. The prior art JP 2010-221502 A (ropBW3-1), which was raised for the first time in the appeal proceedings, is, in fact,
Rule 222 of the RoP.

247. The subject-matter of the appeal proceedings is determined in accordance with Rule 222 of the RoP. Pursuant to Rule 222.1 of the RoP, the applications, facts, evidence and legal arguments put forward by the parties in accordance with Rules 221, 225, 226, 236 and 238 constitute the subject-matter of the proceedings before the Court of Appeal, subject to paragraph 2. The Court of Appeal shall take into account the file of the proceedings before the Court of First Instance. Under paragraph 2 of Rule 2, applications, facts and evidence not put forward by a party during the proceedings before the Court of First Instance may be disregarded by the Court of Appeal.

248. In exercising its discretion, the court takes into account, in particular, whether the party wishing to introduce new submissions can justify that these new submissions could not reasonably have been introduced during the proceedings before the Court of First Instance (a), the relevance of the new submissions to the appeal decision (b), and the other party's position regarding the introduction of new submissions (c). The overall assessment of all the circumstances leads the Court of Appeal in this case to exercise its discretion to disallow the submission.

249. Knaus Tabbert has failed to demonstrate that the new argument could not reasonably have been raised during the proceedings before the Court of First Instance. Knaus Tabbert argues, without success, that it was only the local division's erroneous interpretation of features 1 and 5 that prompted Knaus Tabbert to carry out a further search after the contested decision had been issued, in the course of which the document was discovered.

250. Since Yellow Sphere and Härtwich had, at the latest in their defence to the counterclaim for revocation, argued to that effect that the patent at issue differed from WK26 in having an independent load-bearing structure in the form of a frame, distinct from the bodywork, there had already been grounds, prior to the contested decision being issued, to carry out a further search and to introduce the prior art into the proceedings (see UPC Court of Appeal, 30 March 2026, UPC-CoA-899/2025, Sinocare v Abbott, para. 124). The fact that this further search would have been 'costly' is not sufficient to justify admitting the argument for the first time at the appeal stage. The parties are required to present their arguments in full as early as possible in the proceedings (see paragraph 7 of the preamble to the RoP). Cost considerations do not, as a rule, justify an exception to this principle.

251. Yellow Sphere and Härtwich objected to the admission of the new argument. The admission of JP'502 impairs their conduct of the proceedings, as the first-instance decision failed to address this prior art and, given the large number of prior art documents already forming the subject-matter of the appeal proceedings, it is unreasonable to expect them to address an entirely new submission of facts.

B. *Appeal concerning the infringement claim*

252. Knaus Tabbert's appeal regarding the infringement claim is also unsuccessful.

1. Jurisdiction over past cases

253. Knaus Tabbert unsuccessfully argues that the UPC has no jurisdiction over claims arising from acts of infringement committed prior to the entry into force of the UPC Agreement. According to the case law of the Court of Appeal, the UPC's jurisdiction over infringement claims relating to acts committed prior to the entry into force of the Convention is not precluded by the prohibition on retroactive effect in accordance with the principles of customary law and Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969 (WÜRV) (UPC Court of Appeal, 2 June 2025, UPC_CoA_156/2025, *XSYS/ESKO,* para. 35).

254. The UPC's jurisdiction does not require that the UPC Agreement be applicable in the matter at hand. The question of the temporal applicability of substantive law must be distinguished from the question of jurisdiction (UPC Court of Appeal, 2 June 2025, UPC-CoA-156/2025, *XSYS v ESKO*, para. 34; see ECJ, 5 September 2019, C-172/18, *AMS Neve v Heritage* and *Others*, ECLI:EU:C:2019:674, para. 63 et seq.). This follows simply from the fact that, for reasons of legal certainty, the court must be in a position to decide, on the basis of the provisions of the UPC Agreement and the Brussels Ia Regulation (Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) to determine whether it has jurisdiction, without having to enter into an examination of the merits (see ECJ, 16 March 1999, C-159/97, *Trasporti Castelletti Spedizioni Internazionali SpA v Hugo Trumpy SpA*, EuZW 1999, 441, para. 48).

2. Merits

a) Applicable law –

Principles

255. The UPC Agreement contains substantive law provisions, in particular in Articles 63, 64, 67, 68 and 72 (see UPC Court of Appeal, 16 January 2025, UPC_CoA_30/2024, *Fives v Reel*, para. 66). As there is no correlation between jurisdiction and the applicable substantive law (see para. 255 above), it does not follow from the UPC's jurisdiction that these provisions also apply to facts occurring before 1 June 2023. There is no requirement to ensure that provisions are applicable only under a single legal system (ECJ, *AMS Neve v Heritage* and Others, ECLI:EU:C:2019:674, para. 64).

256. Whilst procedural rules are generally deemed to apply from the date of their entry into force, rules of substantive law must, in the interests of upholding the principles of legal certainty and the protection of legitimate expectations, be interpreted as applying to circumstances that arose prior to their entry into force only in so far as it is clear from their wording, their purpose or their structure that they are intended to have such an effect. For reasons of the protection of legitimate expectations, new legal provisions are, in principle, not applicable to legal positions that arose under the old law and have been definitively acquired; however, they do apply to the future effects of a set of facts that arose under the old law, as well as to new legal positions. An exception to this applies only – and subject to the prohibition on the retroactive effect of legal acts – if, together with the new legal provision, specific provisions are issued which specifically regulate the conditions for its temporal application. This prohibition on retroactive effect, which is recognised under general customary international law and also follows from Article 28 of the WÜRV, must also be observed when interpreting the UPC Agreement (see EPG Court of Appeal, 2 June 2025, UPC-CoA-156/2025, *XSYS v ESKO*, para. 35; ECJ, 22 June 2022, C-267/20, ECLI:EU:C:2022:494, *Volvo and Others v RM*, paras. 31–32).

257. The UPC Agreement contains no provisions that expressly regulate the conditions for temporal application to past events. In particular, Article 3 UPC Agreement contains no such rule (UPC Court of Appeal, 2 June 2025, UPC-CoA-156/2025, *XSYS v ESKO*, para. 27). Article 3(c) of the UPC Agreement does, however, stipulate without restriction that, without prejudice to Article 83 of the UPC Agreement, the Convention applies to all European patents which have not yet expired at the time of entry into force of this Convention or which have been granted after that date. The same applies to European patent applications pursuant to Article 3(d) of the UPC Agreement. No explicit rule on how to deal with cases that have already been concluded can be inferred from the rules. Nor does Article 24 of the UPC Agreement contain any explicit rule regarding the temporal application to cases that have already been concluded. This means that, in respect of European bundle patents, national substantive law applies to cases concluded before 1 June 2023; this law is to be determined in accordance with Article 24(2)(a) of the UPC Agreement in conjunction with Article 8(1) of Regulation (EC) No 864/2007 (the Rome II Regulation).

258. A concluded set of facts exists where a legal position has arisen. In the case of claims for an injunction, the set of facts is only concluded upon the final and genuine cessation of the infringement, because any threatened or actual infringement gives rise to a new claim for an injunction, which also has effect into the future.

259. This means that – if, as in the present case, the patent infringer has not definitively and seriously ceased the infringing acts before 1 June 2023 – the prohibition on retroactive effect does not preclude the application of Article 63 of the UPC Agreement (final injunctions).

260. The same applies to remedial measures under Article 64(2)(b), (c), (d) and (e) of the UPC Agreement. The claims for recall and destruction from the distribution channels relate only to the patent-infringing articles still present in the distribution channels and thus do not concern any such articles that were removed from the distribution channels prior to the filing of the action under the
Facts of the case as at 1 June 2023. The same applies to the claim for destruction, which relates only to products in the direct and/or indirect possession and/or ownership of the infringer.

261. The situation is different for claims for damages. As each individual patent infringement gives rise to a claim for damages, the facts of the case are concluded once the individual act has ceased. Acts of use that were completed before the UPC Agreement came into force must therefore be assessed exclusively under national law with regard to claims for damages.

262. The same applies to claims for information implementing Article 8 of the Enforcement Directive (Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004), in so far as these are not classified as procedural law under national law. By contrast, Article 67 of the UPC Agreement applies to claims for information which, under national law, are of a procedural nature.

263. Contrary to the view held by some, the UPC Agreement does not provide a substantive legal basis for claims for damages or compensation arising from the provisional protection afforded by a published European patent application. Article 32(f) of the UPC Agreement merely allocates jurisdiction in this respect. Consequently, the court must, on the basis of Article 24(1)(c) UPC Agreement, apply the provision of Article 67 EPC, which in paragraph 1 primarily provides for protection under Article 64 EPC (i.e. damages), but in paragraph 2 leaves the EPC contracting states a limited margin of discretion extending to the lower limit of reasonable compensation. In this respect, therefore, national law applies irrespective of the date on which the claim arose.

264. These principles also apply in the present case. The opt-out declared in relation to the patent at issue, but subsequently withdrawn, does not alter this. It affects only the jurisdiction of the UPC, but not the question of which substantive law is applicable.

b) Standing to sue

265. The local division held that Yellow Sphere and Härtwich also had standing to bring proceedings in respect of claims arising before 30 December 2022, as the assignment agreement dated 30 December 2022 also covered past claims. Knaus Tabbert confines itself in this respect to a general reference to the statement of facts in the first instance.

266. This does not satisfy the requirements for a statement of grounds of appeal under Rule 226 of the RoP. Pursuant to Rule 226 of the RoP, the grounds of appeal must specify the parts of the decision or order that are being challenged (a), the grounds for setting aside the contested decision or order (b), and the facts and evidence on which the appeal is based in accordance with Rule 222.1 and Rule 222.2 of the RoP. Under Rule 222.1 of the RoP, the applications, facts, evidence and legal arguments put forward by the parties in accordance with Rules 221, 225, 226 and 236 constitute, subject to paragraph 2, the subject-matter of the proceedings before the Court of Appeal. The Court of Appeal shall take into account the file of the proceedings before the Court of First Instance. If the contested decision contains findings of fact or legal arguments to the detriment of the appellant, a general reference to the submissions made at first instance is not sufficient. Rather, these findings and legal arguments only become the subject matter of the appeal proceedings if the appellant challenges them and sets out grounds for their alleged incorrectness. The specific requirements for the submission in this regard depend on the circumstances of the individual case and are essentially determined by the level of detail in the reasoning of the contested decision (see UPC Court of Appeal, 9 October 2024, *SharkNinja v Dyson*, para. 12). As the local division dealt comprehensively with Knaus Tabbert's arguments, it would have been necessary to address these grounds for the decision and to explain why the local division's view is incorrect. Furthermore, the contested decision is not open to criticism in this respect. To avoid repetition, reference is made to the relevant grounds of the contested decision.

c) Prohibition

267. The local division was correct to prohibit Knaus Tabbert, pursuant to Article 63(1) of the UPC Agreement, from acts of use of the contested embodiments within the meaning of Article 25(a) of the UPC Agreement. Since Knaus Tabbert has not definitively and in good faith ceased the acts of use after 1 June 2023, Article 63(1) of the UPC Agreement applies for the reasons set out above (para. 260).

Acts of use

268. Knaus Tabbert has carried out acts of use within the meaning of Article 25(a) of the UPC Agreement.

269. The local division was correct in regarding the advertising as an offer within the meaning of Article 25(a) of the UPC Agreement (see UPC Court of Appeal, 3 October 2025, UPC_CoA_534/2024, UPC_CoA_19/2024, UPC_CoA_683/2024, *Belkin v Philips*). The fact that the offer is directed not only at customers in Germany but also across Europe is evident from the fact that, as the local division uncontestedly found, the website allows for a corresponding selection of countries.

270. Furthermore, Knaus Tabbert has not contested the submission by Yellow Sphere and Härtwich, according to which just under 600 'Deseo' caravans and 70 'Azur' caravans had been sold by the end of 2023.

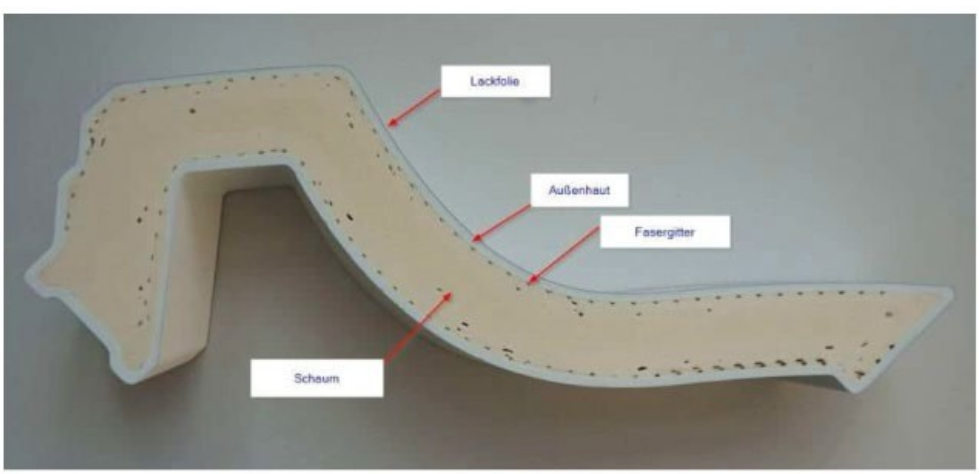
Patent infringement

271. Knaus Tabbert has unsuccessfully challenged the local division's view that the contested embodiments infringe patent claim 1 of the patent at issue.

Description of the contested embodiments

272. A frame of the contested embodiments is shown in the figure below.

273. An A-pillar of the contested embodiments is shown below in cross-section (Annex K16).



274. In cross-section, this structural component comprises a paint film, an outer skin, a fibre mesh and a foam core. The material of the foam core is a closed-cell, two-component polyurethane with a density of approximately 114 kg/m³.

275. To manufacture the contested structural components, the foam core is first fully formed in a first mould. This then cools and cures. Subsequently, spacers are inserted into the foam core, which is then positioned in a second, larger mould in such a way that the spacers centre the foam core and hold it in position at a distance from the larger mould, so that the material for the protective layer can flow around the core.

276. Knaus Tabbert claims that, during the manufacture of the structural components, wax must be added to the mould so that the foam core can be released from the mould and the mould can be reused. The released foam core therefore has a layer of wax on it. This results in a poorer bond when the protective layer is subsequently applied.

Implementation of features 1, 3 and 5

277. The parties rightly do not dispute that the contested embodiments fulfil features 1, 3 and 6.

Fulfilment of feature group 2

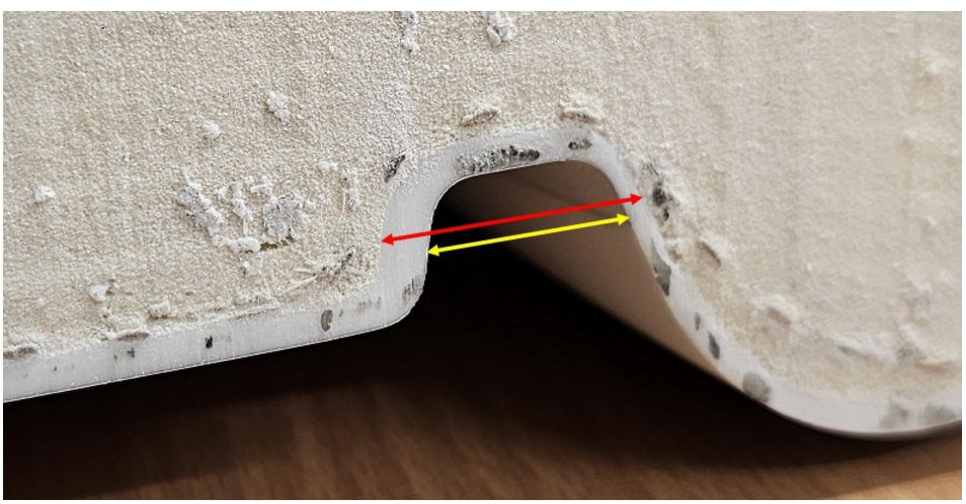
278. The appeal unsuccessfully challenges the local division's view that the contested embodiments fulfil feature group 2.

279. As explained in the interpretation, the fact that two moulds are used to manufacture the contested embodiments does not preclude the fulfilment of feature group 2 (see para. 64).

280. The three-dimensional shape of the structural part is essentially defined by the foam body. There are no cavities between the foam body and the outer skin (protective layer) (see para. 72).

281. Knaus Tabbert unsuccessfully argues that the protective layer has varying thicknesses, as can be seen from the figure below (red double arrows).

282. This does not result in any significant deviation of the structural component from the three-dimensional shape of the foam body that would necessitate reworking. Nor can any significant deviation from the three-dimensional shape of the foam body be inferred from the following figures:



283. Even though the width of the groove in the outer shape of the structural component is approximately a quarter less than that of the mould at the corresponding point, this does not constitute a significant deviation. The specific manufacturing process is irrelevant. It is sufficient that the product is characterised by the fact that the deviations are so minor that no post-processing is required. This is clearly the case, as no post-processing was carried out in order to place the product on the market.

Feature 4

284. The outer skin fulfils feature 4.

285. For feature 4 to be fulfilled, it is not necessary for the protective layer to be applied in the mould used to manufacture the foam core (see para. 76). Any other coating process that results in a firmly adhering bond between the protective layer and the structural component is sufficient. Feature 4 does not require a particularly good bond (see para. 76 above). This does not preclude the presence of a wax layer between the foam body/foam core and the protective layer.

286. Since feature 4 does not require a high-quality and attractive surface that can be used directly as a visible surface in the vehicle interior (see para. 75 above), the realisation of feature 4

It does not preclude the spacers, which position the foam core in the second mould, from still being visible on the outer surface of the structural component after the protective layer has been applied.

287. Nor does the layer of paint applied to the outer skin preclude a patent infringement, as feature 4 does not exclude the application of a further layer of paint (see paragraph 75 above).

288. In the contested embodiments, the protective layer has a thickness that is insignificant in relation to the foam core, as required by feature 4 in conjunction with feature group 2 (see paragraph 74 above)

Right of prior use

289. As set out above (para. 189 et seq.), the 'Eurostar', 'Grande Puccini' and 'Tabbert Supreme' vehicles did not make use of features 1 and 5 of the patent at issue. Knaus Tabbert cannot therefore appeal to a right of prior use under Section 12 of the PatG (German Patent Act) due to a lack of inventive step.

Licence

290. Nor can Knaus Tabbert appeal to a right of use based on a licence agreement in respect of the contested embodiments.

291. On valid grounds, to which reference is made to avoid repetition, the local division held that the development agreement submitted as Annex rop10 to the file grants Knaus Tabbert a right to use the patent at issue solely in respect of the 'Travelino' caravan, but not in respect of the 'Deseo' and 'Azur' caravans at issue. Section 6(1) of the development agreement expressly provides that the parties agree that Knaus Tabbert's exclusive and unrestricted right to use all developments is to be 'regulated in a separate licence agreement in return for appropriate remuneration'. As the parties were unable to agree on the remuneration, no such agreement was concluded.

292. Furthermore, Knaus Tabbert relied in the first instance on a settlement agreement between Härtwich and Knaus Tabbert. In this regard, the local division found that no such agreement could be established. However, no challenges to this finding can be inferred from the grounds of appeal; in this respect, the judgment is therefore not subject to review by the Court of Appeal.

d) Damages

293. The infringements established since 1 June 2023 justify a finding that Knaus Tabbert is liable for damages in accordance with Article 68(1) of the UPC Agreement. As the local division has found, unchallenged, Knaus Tabbert could, had it exercised due care, have recognised that the offering and distribution of the contested embodiments constituted an infringement of the patent at issue.

294. For the reasons set out above (para. 262), the liability for damages arising from acts prior to 1 June 2023 is governed by the relevant national law. Knaus Tabbert unsuccessfully argues that Yellow Sphere and Härtwich failed to submit arguments regarding the legal assessment of alleged acts of use prior to 1 June 2023 under the applicable law, and that the Düsseldorf local division made no findings on this matter, meaning that the claim is unfounded.

295. As the local division correctly held, it is for the parties to put forward their legal arguments and the reports of private experts on national law (see UPC Court of Appeal, 13 August 2025, UPC-CoA-446/2025, *Boehringer Ingelheim v Zentiva*, para. 72). The burden of presentation and proof regarding national law lies with the party which relies on a

particular provision of national law. Whilst national law is not a fact within the meaning of Article 54 of the UPC Agreement, its determination does not depend solely on the content of the relevant statutory provisions, but also on how these are applied in legal practice and doctrine. This justifies an analogous application of Article 54 of the UPC Agreement.

296. Article 22(1) of the Rome II Regulation does not preclude the analogous application of Article 54 of the UPC Agreement. According to that provision, the law applicable to non-contractual obligations under this Regulation is to be applied in so far as it establishes legal presumptions or allocates the burden of proof in respect of non-contractual obligations. This constitutes an exception to the principle set out in Article 1(3) of the Rome II Regulation, namely that the Rome II Regulation does not apply to evidence and procedure. The presumptions or rules of evidence must relate 'to non-contractual obligations'. A distinction must be drawn between these and the rules on the burden of proof and the presentation of evidence, which merely enable the court seised to determine the applicable law.

297. Yellow Sphere and Härtwich have also confined themselves, in respect of acts committed prior to 1 June 2023, to setting out the conditions of Article 68(1) of the UPC Agreement. This satisfies the requirements for substantiating the claim for damages asserted. It must not be overlooked that, under the Enforcement Directive, Member States are obliged to provide, in their national law, for rules on damages, amongst other things (Article 13 of the Enforcement Directive). The Enforcement Directive has been transposed by all Member States (see Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM(2010) 779 final). The provisions issued to transpose the Directive must be interpreted in accordance with the Directive. In this respect, it is not the practice of individual national courts – which may deviate from the Directive – that is relevant, but the requirements of the Directive itself, which must be taken into account by the UPC when applying the relevant national law and interpreted as an autonomous European provision. Under Article 13(1) of the Enforcement Directive, Member States must ensure that, on application by the injured party, the competent courts issue an order requiring the infringer – who knew or ought reasonably to have known that they were committing an act of infringement – to pay the rightholder appropriate damages to compensate for the loss suffered as a result of the infringement. Article 68(1) of the UPC Agreement adopts these conditions for the award of damages almost verbatim and does not go beyond this minimum standard of protection. It follows from this that the national provisions transposing Article 13 of the Enforcement Directive contain rules corresponding to Article 68(1) of the UPC Agreement and, in any event, do not deviate from them to the detriment of the patent proprietor. Knaus Tabbert has not rebutted this presumption.

298. Knaus Tabbert argues that Article 66(2)(a) of the Italian Industrial Property Code does not provide for acts of use involving an offer. This argument is insufficient, as Knaus Tabbert has not explained how this provision is applied in legal practice, in particular that, according to case law, it is excluded that damages may be awarded for mere acts of offering.

Limitation period for claims for damages relating to acts committed before 1 June 2023

299. For the reasons set out above, national substantive law applies to claims for damages arising from acts committed before 1 June 2023.

300. Accordingly, German law applies to infringements committed in Germany prior to 1 June 2023. Pursuant to Section 195 of the German Civil Code (BGB), the standard limitation period is three years. Pursuant to Section 199 of the BGB, unless another starting point for the limitation period is specified, the standard limitation period begins at the end of the year in which the claim arose and the creditor became aware, or ought to have become aware without gross negligence, of the circumstances giving rise to the claim and the identity of the debtor. The

The local division was correct in finding that the submission by Knaus Tabbert – who bore the burden of proof and presentation in this regard – regarding the knowledge of Yellow Sphere and Härtwich was insufficient. The general reference to the parties' development cooperation since 2016 is no more sufficient for this purpose than the general assertion that Yellow Sphere and Härtwich, or their legal predecessors, had, or ought to have had, knowledge of all acts since 8 September 2018.

301. It does not follow from Knaus Tabbert's submissions that the defence of limitation is also raised in respect of damages for acts of use committed in Italy, France and Slovenia prior to 1 June 2023. In this regard, Knaus Tabbert appealed solely in the first instance to Article 72 of the UPC Agreement and Sections 195 and 199 of the BGB. Knaus Tabbert has not demonstrated that Yellow Sphere and Härtwich were aware of acts of infringement in Italy, France and Slovenia.

Limitation period under Article 72 of the UPC Agreement in respect of acts since 1 June 2023

302. Article 72 of the UPC Agreement applies to acts of use since 1 June 2023. Accordingly, 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. In this respect too – as the local division correctly held – Knaus Tabbert has failed to put forward and prove, with the requisite substance, that these conditions are met in this case.

e) Provisional damages

303. The local division has awarded provisional damages in the amount of EUR 100,000. The local division justified the claim for damages on the basis of a corresponding settlement offer from Knaus Tabbert, and further supported it by the fact that, by the end of 2023, Knaus Tabbert had sold just under 600 'DESEO' model caravans at a list price of EUR 28,100 and 70
'AZUR' model at a price of EUR 41,400 by the end of 2023. This is not open to challenge.

Provisional claim for damages for acts since 1 June 2023

304. Pursuant to Rule 119 of the RoP, the court may, in its decision on the merits of the case, award provisional damages to the successful party, subject to conditions determined by the court. These damages are intended to cover, at the very least, the anticipated costs of the damages and compensation proceedings on the part of the successful party. This is a procedural provision which enables the court, already in its decision on the merits of the case – and thus before proceedings are instituted to determine damages and compensation in accordance with Rule 125 et seq. of the RoP – to order the patent infringer to pay a minimum amount of damages suffered by the patent proprietor, which can be determined without further taking of evidence.

305. The calculation of this minimum loss, in so far as it was caused by acts committed since 1 June 2023, is governed by Article 68(2) of the UPC Agreement. According to this provision, the injured party must, as far as possible, be restored to the position in which it would have been had the infringement not occurred. The infringer must not derive any benefit from the infringement. However, the damages are not punitive in nature. Pursuant to Article 68(3) of the UPC Agreement, the court shall proceed as follows when determining the amount of damages: It shall take into account all relevant aspects, such as the negative economic consequences, including the loss of profits suffered by the injured party and the profits wrongfully obtained by the infringer, as well as, in appropriate cases, factors other than economic ones, such as the non-economic damage suffered by the injured party; or, in appropriate cases, it may instead set the damages as a lump sum, based on factors such as, at the very least, the amount of the remuneration or fee that the infringer would have had to pay had they obtained permission to use the patent in question.

306. Since a settlement is generally characterised by mutual concessions, the local division was entitled to assume that the sum offered by Knaus Tabbert during settlement discussions corresponded to the minimum damages owed to Yellow Sphere and Härtwich. The local division was entitled to assume that Knaus Tabbert would have been prepared to pay at least this amount as a licence fee for the use of the patent.

Provisional claim for damages for acts prior to 1 June 2023

307. There is no grounds for objection to the fact that provisional damages were also awarded for acts committed prior to 1 June 2023. As this is a procedural rule, it also applies to acts committed prior to 1 June 2023 (see para. 257 above).

308. It is true that the calculation of the minimum amount of damages arising from acts committed before 1 June 2023 must be based on the relevant national law. However, as Article 68(3) of the UPC Agreement essentially corresponds to Article 13(3) of the Enforcement Directive, it must be assumed, for the reasons set out above, that an assessment of damages which complies with the criteria of Article 68(3) of the UPC Agreement also complies with the relevant national law. It does not appear from Knaus Tabbert's submissions that the amount awarded exceeds the amount due for acts committed in Germany, Slovenia, Italy and France under the respective national laws.

309. Irrespective of this, the amount awarded is not open to challenge on the basis of Section 139(2) of the Patents Act (PatG) alone. According to this provision, a person who commits an act intentionally or through negligence is obliged to compensate the injured party for the resulting damage. In assessing the damages, the profit which the infringer has realised through the infringement of the right may also be taken into account. The claim for damages may also be calculated on the basis of the amount which the infringer would have had to pay as reasonable remuneration had they obtained permission to use the patent. Since, in the absence of any other evidence, the local division was entitled to assume that Knaus Tabbert would have been prepared to pay at least the amount offered by Knaus Tabbert during the settlement negotiations as a licence fee for the use of the patent (see para. 304 above), this minimum amount of damages may also be determined on the basis of Section 139(2) of the Patents Act.

f) Disclosure

310. The obligation to provide information imposed by the local division arises, in respect of acts of use since 1 June 2023, from Article 25(a) of the UPC Agreement in conjunction with Article 67(1) of the UPC Agreement.

311. With regard to acts of use prior to 1 June 2023, the obligation to provide information is assessed in accordance with the relevant national law. Since Article 67(1) of the UPC Agreement incorporates the provisions of Article 8 of the Enforcement Directive, it must be assumed that the right to information in the Member States at issue here does not fall short of the legal consequences provided for in Article 67(1) of the UPC Agreement (see para. 298 above). Knaus Tabbert has not rebutted this presumption. Furthermore, as regards German law, which governs Knaus Tabbert's acts of use in Germany, it is well established in case law that the scope of the information to be provided is not less extensive than that provided for in Article 67(1) of the UPC Agreement. Pursuant to
Section 140b(1) of the Patents Act (PatG), any person who uses a patented invention in contravention of Sections 9 to 13 may be required by the injured party to provide immediate information regarding the origin and distribution channels of the products used. Pursuant to Section 140b(3) of the PatG, the person obliged to provide information must disclose the names and addresses of the manufacturers, suppliers and other previous owners of the products or users of the services, as well as the commercial customers and points of sale for which they were intended, and the quantity of products manufactured, delivered, received or ordered, as well as the prices paid for the products or services in question.

312. With regard to the defence of limitation, reference is made to the relevant comments on damages (paragraphs 300 to 303).

g) Recall, permanent removal and destruction

313. The obligations imposed by the local division to recall the contested embodiments from the distribution channels, to permanently remove them from the distribution channels and to destroy them derive from Article 64(2)(b), (d) and (e) of the UPC Agreement. In this respect, for the reasons set out above, national law is not applicable (see para. 261 above).

314. When examining an application for the order of remedial measures under Article 64 of the UPC Agreement, the court takes into account, in accordance with Article 64(4) of the UPC Agreement, the requirement of proportionality between the seriousness of the infringement and the remedial measures to be ordered, the infringer's willingness to bring the material into a non-infringing state, and the interests of third parties. The local division held that the sought-after remedial measures were not disproportionate. Knaus Tabbert does not challenge this finding either in the notice of appeal or in the grounds of appeal. It is not sufficient that Knaus Tabbert based its application for the order to have suspensive effect on the alleged lack of proportionality. This follows simply from the fact that Yellow Sphere and Härtwich were not heard in the proceedings concerning the application for the order to have suspensive effect. The question of proportionality is therefore not the subject of the appeal pursuant to Rule 226 of the RoP
in conjunction with Rule 222.1 of the RoP.

h) Compensation

315. The local division correctly found that Knaus Tabbert is obliged to pay Yellow Sphere and Härtwich reasonable compensation for the period from 8 September 2018 to 8 April 2022 in respect of the patent-infringing acts concerning Germany. In this respect, the local division correctly based its decision on national law (Art. II § 1(1) of the International Patent Act) (see para. 264 above).

i) Penalty payment

316. In accordance with Article 63(2) of the UPC Agreement, the local division was correct to impose a penalty payment of up to
EUR 250,000.

j) Security

317. The local division refrained from making the order conditional upon the provision of security in accordance with Article 82(2) of the UPC Agreement, paragraph 118.8, second sentence, of the RoP in conjunction with paragraph 352.1 of the RoP. Knaus Tabbert no longer challenges this in the appeal proceedings. It is therefore not subject to review by the Court of Appeal.

k) No order regarding the reservation of national legal remedies to avert enforcement

318. The local division was correct to reject Knaus Tabbert's application that the legal remedies and options available to Knaus Tabbert under the relevant national law to prevent enforcement should be reserved, in so far as the enforcement proceedings are governed by the law of the contracting Member States. It correctly held that the relevant national court or enforcement authority must, where necessary, examine whether Knaus Tabbert has access to such national remedies.

C. *Third-party counterclaim*

319. The local division dismissed the third-party counterclaim seeking an order requiring the third-party counter-defendant to transfer his legal status as the current licensor of the rights of use under the development agreement in respect of the French, Italian and Slovenian parts of the patent at issue on 'Yellow Sphere' to Knaus Tabbert. The local division essentially justified this on the grounds that no such agreement could be established. As set out above, the grounds of appeal do not address this issue. The question has therefore not become the subject of the appeal proceedings (see para. 293 above).

D. *No referral to the Court of Justice of the European Union (CJEU)*

320. There is no reason to stay the proceedings pursuant to Rule 266(5), first sentence, of the RoP and to request a ruling from the CJEU pursuant to Article 21 of the UPC Agreement, Rule 266(1) of the RoP in conjunction with Article 267 TFEU on the questions raised by Knaus Tabbert. As a common court of the Contracting Member States and part of their judicial system, the UPC, in accordance with Article 21, first sentence, of the UPC Agreement – like any national court – cooperates with the Court of Justice of the European Union to ensure the correct application and uniform interpretation of Union law, in particular in accordance with Article 267 TFEU. Pursuant to Rule 266(1) of the RoP, at any stage of the proceedings where a question is referred to the Court which it considers must be decided by the Court of Justice of the European Union before it can issue a judgment, the Court of Appeal must request a ruling from the Court of Justice on that question. A reference is not required in the case of questions that are not relevant to the decision or in the case of questions that have already been clarified by the CJEU or where the answer is obvious.

321. It is clear that the application and interpretation of the UPC Agreement, as an international agreement between states, are governed by the principles of treaty application and interpretation codified in the Vienna Convention on the Law of Treaties and recognised under customary international law (see ECJ, C-15/17*, Bosphorus Queen Shipping Ltd Corp v Rajavartiolaitos*, ECLI:EU: C:2018:557, para. 67; UPC Court of Appeal, 16 January 2025, UPC-CoA-30/2024, *Fives v REEL*, para. 41;
2 June 2025, UPC-CoA-156/2025, *XSYS v ESKO,* para. 23).

322. The question of whether it follows from Article 15(d) of the Rome II Regulation that the UPC cannot issue orders for injunctions, remedial measures, disclosure of information or a declaration of liability for damages, in so far as these arise under national substantive law, has already been clarified. As set out above (para. 255), unless expressly provided for, there is no correlation between jurisdiction and the applicable substantive law under EU law.

323. In so far as Knaus Tabbert wishes the ECJ to clarify whether Article 11, first sentence, of the Enforcement Directive is to be interpreted as meaning that a final order may not be issued where only an imminent infringement has been established, and that only the continuation of the established infringing act may be prohibited, for example, in the case of a finding of infringement through offering, the continuation of such offering may be prohibited, whilst acts of infringement that have not been established cannot be prohibited, the ECJ has already clarified that the Directive on the enforcement of intellectual property rights generally lays down a minimum standard (ECJ, 9 June 2016, C-481/14, *Hansson v Jungpflanzen Grünewald*, EuZW 2016, 543, para. 36). As the local division has correctly pointed out, there is no doubt that Article 11(1) of the Enforcement Directive also merely sets out a minimum standard, as is clear from the wording 'Member States shall ensure'.

324. The question of whether Article 3(2), first sentence, of Regulation (EU) No 1217/2010 or Article 3(2) and (3) of Regulation (EU) 2023/1066 are to be understood as requiring a research and development contract to be interpreted in such a way that, in cases of doubt, it must be assumed that the contract grants the parties unrestricted access to the final results of the joint research and

development, including any intellectual property rights arising therefrom and the know-how resulting therefrom, is not at issue in the present case, as the local division has found, without objection, that the patent at issue is not based on joint development.

325. As the issue is not relevant to the decision, there is also no need to clarify whether the free movement of goods under EU law requires that the UPC may not exercise its procedural powers under Article 56 et seq. of the UPC Agreement against a defendant in an infringement action who can appeal to a contractual right to use the patent at issue, which was granted to him by the original co-owner of the patent at issue, who, in breach of contract, failed to transfer his legal status as licensor to the purchaser of the share in the patent at issue – who is now bringing proceedings against the defendant under that patent as the claimant – in favour of the defendant. As set out above (para. 293), the question of a licence agreement between Härtwich and Knaus Tabbert is not the subject of the appeal.

326. Since the grounds of appeal do not address the dismissal of the third-party counterclaim, the question of whether the EU-wide *'implied* powers' doctrine requires the admissibility of a third-party counterclaim in relation to licences does not arise.

327. Since Knaus Tabbert cannot make an appeal to a right of prior use, the question of whether the case-law of the Court of Justice of the European Union on EU-wide exhaustion applies mutatis mutandis to the right of prior use is also not relevant to the decision.

328. It is also clear that the EU Trade Mark Regulation (Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the EU trade mark) cannot be relied upon for the interpretation of the term 'offer' in Article 25(a) of the UPC Agreement.

E. *Costs*

329. The decision on costs is based on Article 69(1) of the UPC Agreement.

DECISION:

I. Knaus Tabbert's appeals are dismissed.

II. Knaus Tabbert shall also bear the court fees incurred in the appeal proceedings and in the proceedings for an order granting suspensive effect to the appeal, as well as the costs of the legal proceedings and other costs incurred by Yellow Sphere and Härtwich.

III. The value in dispute for the appeals relating to the infringement claim and the counterclaim for annulment is set at 500,000.00 euros in each case.

Issued on 17 August 2026

Rian Kalden, legally qualified judge and presiding judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Marc van der Burg, technically qualified judge

Erwin Wismeth, technically qualified judge