Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Hamburg local division
UPC_CFI_1535/2026

Order

of the Court of First Instance of the Unified Patent Court,
Hamburg local division
issued on 25 August 2026

HEADNOTE

When assessing urgency, it is relevant when the applicant was able to physically obtain and examine the potentially infringing product, provided that the applicant was not able, on the basis of other information obtained earlier, such as drawings, to determine with sufficient certainty whether the potentially infringing product infringes the patent in suit.

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When assessing urgency, the relevant factor is when the applicant was able to physically obtain and examine the potentially infringing product, provided that the applicant was not able, on the basis of other information obtained earlier, such as drawings, to determine with sufficient certainty whether the potentially infringing product infringes the patent in suit.

KEYWORD

Urgency

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Urgency

APPLICANT

Cilag GmbH International, Gubelstraße 34, 6300 Zug, Switzerland,

represented by: Prof. Dr Tilman Müller-Stoy, Attorney-at-law; Dr Michael Kobler, Attorney-at-law; Dr Maximilian Vieweg, Patent Attorney; Bardehle Pagenberg

Partnership mbB, Prinzregentenplatz 7, 81675 Munich

RESPONDENTS

1) **RiVOLUTION GmbH**, Innaustraße 11, 83026 Rosenheim, Germany,

First respondent),

2) **Shanghai International Holding Corporation GmbH (Europe)**, Eiffestraße 80, 20537 Hamburg, Germany

Defendant 2),

represented by: Dr Peter Koch, Attorney-at-law, Penforce, Gabelbergerstr. 9, 80333 Munich

PATENT APPLICATION

EP 2 615 984 B1

CHAMBER

Hamburg local division

DECIDING JUDGES

The order was issued by Judge Sabine Klepsch, a legally qualified judge, as presiding judge, by Judge Thomas Adocker, a legally qualified judge, as judge-rapporteur, and by Judge Dr Stefan Schilling, a legally qualified judge.

LANGUAGE OF THE PROCEEDINGS

German

SUBJECT MATTER OF THE PROCEEDINGS

Application for provisional measures. Section 32(1)(c), Section 62(1), Section 67 of the UPC Agreement, Rule 206.1 of the RoP in conjunction with Rule 211.1 of the RoP

Oral hearing

7 July 2026

BRIEF SUMMARY OF THE FACTS

1. The applicant bases its application for provisional measures on European Patent EP 2 615 984 B1 (hereinafter also referred to as the 'patent in question'), which protects, in particular, battery-powered surgical cutting and stapling instruments. This was filed on 13 September 2011, claiming priority from 17 September 2010. The application underlying the patent in question was published on 24 July 2013. The notice of the grant of the application patent as a European patent was published on 8 May 2019; it is in force in Germany, France and Italy (Annexes BP 3 and BP 4). The applicant is registered as the proprietor in the German and French registers. An application for transfer of ownership to the applicant has been filed in the Italian register (Annex BP 12).

2. No preliminary objections have been filed against the patent in question, nor are any invalidity proceedings pending.

3. The applicant is part of the Johnson & Johnson Group, a group of companies conducting research in the field of medical devices. A company within the Johnson & Johnson Group, Johnson & Johnson Medical GmbH (hereinafter: 'J&J Medical'), markets, amongst other things, surgical stapling instruments on the German market under the 'ECHELON®' brand, which embody the teachings of the patent in application.

4. The instruments covered by the patent are among the best-selling products in J&J Medical's stapling division, to which they contribute significantly in terms of turnover. On the German market, such instruments are distributed only by J&J Medical and by the first respondent.

5. Defendant 1) is a German distribution company based in Rosenheim which distributes products from various companies in Germany. These products included, amongst others, the stapling instruments manufactured by the Chinese companies Ningbo David Medical Device Co., Ltd. and Ningbo Verykind Medical Device Co., Ltd. (hereinafter collectively referred to as 'David Medical').

6. In November 2024, the first respondent announced its study 'BARIATRIC CONCEPT by RiVOLUTION', which included, amongst other things, the 'EnDrive Beluga' instruments manufactured by David Medical.

7. As part of the 'BARIATRIC CONCEPT by RiVOLUTION' study, the first respondent markets the 'EnDrive Orca' and 'EnDrive Zero' (hereinafter also referred to as the contested embodiments) in Germany, which have replaced the 'EnDrive Beluga'. For these purposes, it also imports the aforementioned products from the Chinese manufacturers into

and holds them here.

8. The second respondent is listed as the authorised representative (‘EU REP’) on the back of the packaging of the ‘EnDrive Orca’ and the ‘EnDrive Zero’. It is also listed as the authorised representative in the European Database on Medical Devices (EUDAMED). The appointment of such an authorised representative by the manufacturer is required under Article 11(1) of the European Medical Devices Regulation (Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, EU Medical Devices Regulation) when a medical device not manufactured in an EU Member State is to be placed on the market in the EU.

9. In any event, the ‘EnDrive Orca’ product is also offered and distributed by the Chinese manufacturers in France (by the French company Echovitalis SAS) and in Italy. Distribution in these countries – just as in Germany – would not be legally possible were it not for the fact that the second respondent acts as an authorised representative in accordance with Article 11(1) of the EU Medical Devices Regulation. The ‘EnDrive Orca’ and ‘EnDrive Zero’ products are single-use, battery-powered endoscopic cutting and stapling instruments (‘Disposable Powered Endoscopic Linear Cutting Staplers’).

10. Image of the *‘EnDrive Orca*’:

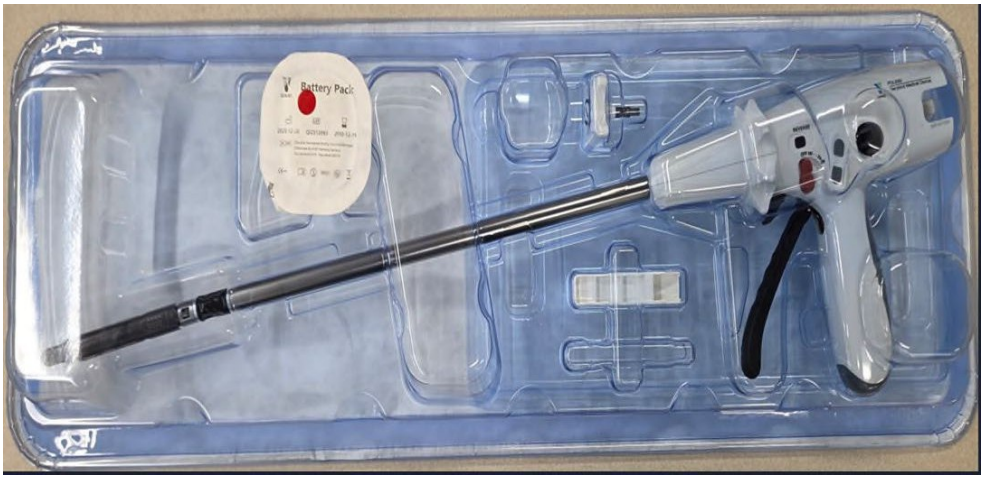
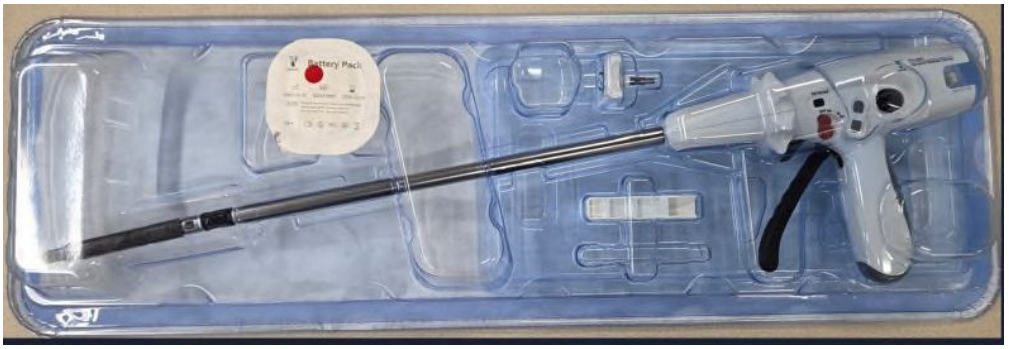


Illustration of the *'EnDrive Zero*':



11. With regard to a predecessor product from David Medical known as *the 'EnDrive Beluga',* the Munich I Regional Court issued two interim injunctions, together with a seizure order, in favour of the applicant's legal predecessor against David Medical for infringement of the German part of the European patent (EP 2 621 360 B1, also: *'EP '360'*) was issued through its sale at the MEDICA 2024 trade fair, which took place in Düsseldorf from 11 to 14 November 2024.

12. In a letter from the applicant dated 26 March 2025 (Exhibit AG 8), the first respondent was informed that the predecessor product 'EnDrive Beluga' potentially infringed further patents. The patent in question is not mentioned in this letter.

13. Furthermore, in 2025, the applicant, together with its legal predecessor Ethicon LLC, filed two applications for provisional measures against the first respondent: On 25 April 2025, an application for provisional measures concerning European Patent EP 3 689 262 (staple magazines) was filed with the local division in The Hague (Case No.: UPC_CFI_374/2025). On 29 April 2025, a further application for provisional measures concerning European Patent EP 2 515 768 (surgical stapling instrument) was filed with the Munich local division (Case No.: UPC_CFI_381/2025).

14. By decision of 6 August 2025, the Munich local division issued a provisional injunction against the first respondent for infringement of European Patent EP 2 515 768 on the grounds of the distribution of the *'EnDrive Beluga*'. The further application alleging infringement of European Patent EP 3 689 262 was dismissed by the Hague local division on 29 August 2025 on the grounds of lack of urgency, although the court clarified during the oral hearing that it regarded the patent in question as valid and infringed.

15. The representative of the first respondent mentioned during the oral hearing before the Munich local division in August 2025 in the proceedings relating to UPC_CFI_381/2025 that David

Medical was already in the process of providing a successor product that would no longer infringe the patent in question, and that it would only take a few months to replace the infringing product (*"EnDrive Beluga"*) with the successor product.

16. The claimant and its legal predecessor subsequently entered into a settlement agreement with the first respondent, with an effective date of 28 October 2025 (hereinafter: *'the Settlement'*). A key provision of this Settlement was a clearing process under which the claimant was to be provided with images/drawings of successor products to enable the claimant to assess the 'design-around' (duplicate of 18 June 2026, paras 23, 27).

17. Despite repeated requests, the first respondent did not provide the applicant with a sample of an *'EnDrive Orca*'. Against this background, the applicant ultimately decided to procure the new instrument itself. This proved difficult due to David Medical's tightly controlled distribution structure. The claimant then became aware of a source of supply on 13 February 2026 (Exhibit BP 2).

18. The subsequent steps were as follows (Exhibit BP 2):

On 20 February 2026, the products potentially infringing the patent were ordered. The applicant received them on 6 March 2026. She then commissioned an analysis in the USA at the campus of the group to which the applicant belongs. The analysis began on 18 March 2026. Various examinations, such as CT scans, were carried out on the dismantled instruments. On 2 April 2026, the applicant received the results of the examination. The final determination of an infringement (from the applicant's perspective) was made on 9 April 2026. The application for provisional measures was then filed on 4 May 2026.

APPLICATIONS OF THE PARTIES

19. The applicant requests:

A. The first respondent is ordered to refrain from and desist from using surgical

instruments comprising

an end-effector;

a handle operatively coupled to the end effector,

wherein the handle comprises a trigger for actuating the end-effector and

the handle comprises a battery dock, wherein the battery dock comprises a protruding element;

a battery unit attachable to the battery dock,

wherein, when attached to the battery dock, the battery unit is in electrical contact with at least one of the handle and the end effector, and

wherein the battery unit comprises: a housing;

and a first anode and a first cathode, positioned inside the housing; and a transferable drain,

whereby, when the battery unit is attached to the battery dock, the protruding element contacts the discharge outlet and the discharge outlet transfers with respect to the housing to electrically couple the first anode of the battery unit to the first cathode of the battery,

to offer, place on the market, use, import or possess in the Federal Republic of Germany for the aforementioned purposes (direct infringement of claim 1 of EP 2 615 984).

B. The second respondent is ordered to refrain from exercising its services as 'authorised representative' in such a way that the acts referred to in Section A are carried out by the first defendant and/or Ningbo David Medical Device Co., Ltd. and/or Ningbo Verykind Medical Device Co., Ltd. in the Federal Republic of Germany, in France and in Italy;

in particular, the second respondent is ordered to declare to the competent authorities that, with regard to the products covered by Section A, it will no longer act as an 'authorised representative' for Ningbo David Medical Device Co., Ltd. or Ningbo Verykind Medical Device Co., Ltd. in the Federal Republic of Germany, in France and in Italy.

C. In the event of any breach of the order set out in Section A or Section B, the respective respondent shall pay a (where applicable, repeated) penalty payment to the court of up to EUR 250,000 per breach (Rule 354.3 of the RoP).

D. The respondents are provisionally ordered to reimburse the costs.

E. This order is immediately enforceable.

Ea. in the alternative to E:

This order is enforceable against the applicant only if the applicant has provided security in favour of the respective respondent in the form of a deposit or a bank guarantee. The amount of the security to be provided shall be determined separately in respect of each respondent.

20. The respondents apply

(1) that the application for provisional measures dated 4 May 2026 be dismissed;

– in the alternative –

(2) that the issuance of provisional measures be made conditional upon the applicant providing security, the amount of which is to be determined by the court, but which must not be less than €
5,000,000;

(3) that the applicant be ordered to pay the costs of the proceedings;

(4) and to order the applicant to pay the respondents provisional costs of EUR 30,851.20 within 30 days of the decision being served on the applicant;

(5) to stay the proceedings against the second respondent;

(6) in the event that the court seised affirms the second respondent's standing to be sued, that the court should determine whether an authorised representative within the meaning of the Medical Devices Regulation (Regulation (EU) 2017/745)) can be regarded as an intermediary within the meaning of the UPC Agreement solely on the basis of fulfilling the duty incumbent upon them under the Medical Devices Regulation, be referred to the Court of Justice of the European Union for a preliminary ruling in accordance with Article 267 TFEU and Article 21 UPC Agreement.

FACTUAL AND LEGAL ISSUES

The applicant's submissions:

1. Standing to bring proceedings

21. The applicant takes the view that it has standing to bring proceedings. It is entered in the DPMA register as the proprietor of the German part of the patent in question, so that the presumption of ownership applies. The same applies to the French part of the patent in question. With regard to the Italian part, an application for conversion has been filed (Annex BP 12). Furthermore, the respondents' objections are not relevant.

2. Standing to be sued

22. As regards the standing to be sued of the second respondent, which is contested by the respondents, the applicant states that the first respondent could not place the infringing products on the market in the EU without the cooperation of the second respondent. In this respect, the actions of the second respondent are comparable to those of an online service provider. In this regard, the claimant refers to the reference decision of the Court of Appeal dated 6 March 2026, UPC_CoA_789/2025 and UPC_CoA_813/2025, paragraphs 30 and 31 – *Dyson v Dreame*.

3. Infringement

23. The applicant takes the view that both the *'EnDrive Orca'* product and the *'EnDrive Zero'* product from David Medical, which are offered and distributed in Germany by the first respondent and for which the second respondent acts as authorised representative in accordance with the EU Medical Devices Regulation, fulfil all the features of the patent in suit.

4. Validity

24. The claimant is of the view that the validity of the patent is sufficiently established. The objections raised by the respondents are unfounded.

5. Urgency

25. In the applicant's view, the application for provisional measures is also time-sensitive. It faces the risk of substantial damage if it were only able to enforce its claims for an injunction in proceedings on the merits. The application was filed at the earliest possible opportunity and without culpable delay (para. 211.4

RoP). The applicant only gained reliable knowledge of the infringement of the patent in question a few weeks ago, namely upon confirmation of the implementation of claim 1 of the patent in question on 9 April 2026. The earlier proceedings between the parties had concerned technical aspects of predecessor products which had nothing to do with the subject-matter of the patent in suit: EP 2 515 768 concerned the delayed activation and deactivation of a switch, and EP 2 837 262 concerned a staple magazine.

26. The claimant further argues that, in order to establish infringement, it would first have had to obtain the physical infringing article, which, due to the refusal of the first respondent to make such an item available, and the defendants' tightly controlled distribution structure, meant that it was only after numerous attempts on 13 February 2026 that a possible source of supply was identified, from which an order was then placed on 20 February 2026.

6. Balancing of interests

27. The applicant is of the view that, on weighing up the respective interests, the applicant's interest in the issuance of provisional measures to safeguard its rights under the patent in question prevails.

28. As a general rule, an injunction is, by its very nature, temporary in the event of its subsequent revocation. In principle, any act refrained from during the period in which the injunction is in force may be carried out retrospectively. In the case of a provisional injunction, therefore, prejudging the merits of the main action is ruled out on its very basis, and the respondents' interests are already reflected in this temporary restriction. Furthermore, a provisional injunction based on (monopoly) rights arising from a patent would, as such, entail economic disadvantages for the party subject to the injunction. This lies in the nature of patent law as a monopoly on inventions. Economic disadvantages associated with an injunction could therefore, in principle, not be regarded as conflicting interests of the party subject to enforcement. Only if these economic disadvantages go beyond what is normally to be expected could they be taken into account at all in the context of the balancing of interests.

29. The applicant submits that no such economic disadvantages are apparent on the part of the respondents. In particular, the first respondent has no reason to fear any unreasonable disadvantages, as, being a distribution company, it could readily switch to other products that do not infringe the patent. By contrast, the applicant would face irreparable harm if it were required to await the decision in the main proceedings: since the first respondent

No. 1) is under pressure to launch the successor product 'EnDrive Orca', which replaces the 'EnDrive Beluga', the claimant is urgently dependent on the provisional measures sought. The conduct of the first respondent does not suggest that it will, of its own accord, refrain from further acts of infringement in the future. In this respect, there is a serious risk that the applicants' sister company, 'J&J Medical', will suffer significant losses in terms of order intake, turnover and overall market share as a result of the respondents' infringing acts. Furthermore, the infringing products constitute clear copies of the J&J products.

[redacted]

7. Security

30. The applicant argues that the respondents have failed to provide a specific account of the damages and have also failed to explain why it would not be possible to obtain compensation from the applicant for any damages arising from enforcement proceedings. Therefore, no security should be required.

8. Provisional reimbursement of costs

31. The applicant argues that Rule 211.1(d) of the RoP would only permit the reimbursement of costs in favour of the applicant, meaning that the respondents' application in this regard is inadmissible.

9. Stay of proceedings, referral to the ECJ for a preliminary ruling:

32. The claimant does not comment on the substance of the respondents' relevant applications, but merely states in this regard that, in any event, a stay of proceedings pending a decision by the ECJ would only be conceivable in so far as claims are being brought against the second respondent.

Arguments of the respondents:

1. Standing to sue

33. With regard to standing to bring proceedings, the respondents take the view that, in the present case, despite the presumptive effect, there are sufficient doubts as to the legality of the assignment of the patent in question. The applicant's reference to the fact that the parties involved had mutually confirmed that the assignment

was in order is not sufficient.

2. Standing to be sued

34. The respondents argue that the second respondent, as an authorised representative under the EU Medical Devices Regulation, does not itself carry out the acts referred to in Article 25 of the UPC Agreement. Liability as an accomplice is also ruled out due to the absence of a joint plan, as is attribution as an accessory due to lack of knowledge. Finally, liability as an intermediary within the meaning of Articles 63(1) and 62(1) of the UPC Agreement is also out of the question. As with a managing director, the mere position does not lead to the person being classified as an accomplice. Liability on the part of the managing director is ruled out if the latter has no control whatsoever over the acts. The respondents refer in this regard to the orders UPC_CoA_683/2024; UPC_CoA_19/2026, UPC_CoA_534/2024 – Belkin v Philips. In her capacity as an authorised representative pursuant to Article 11(1) of the European Medical Devices Regulation (Regulation (EU) 2017/745), the second respondent is the point of contact for the authorities, but does not carry out any specific acts that are intrinsically linked to the patent infringement or constitute an adequate causal contribution to the infringement.

3. Infringement:

35. The respondents do not dispute that the first respondent carried out offering and distribution activities in Germany, nor do they dispute the second respondent's status as an authorised representative pursuant to Article 11(1) of the European Medical Devices Regulation (Regulation (EU) 2017/745), nor do they dispute that other distribution partners of David Medical in France and Italy have carried out further acts of offering and distributing the contested embodiments. However, they contend that the contested embodiments do not make use of the subject-matter of the invention as set out in the patent in suit. The contested embodiments do not feature a configuration in which a first anode and cathode are positioned inside the housing. Furthermore, there is no transferable drain outlet, and when the battery unit is attached to the battery dock, the protruding element does not transfer the drain outlet relative to the housing in order to electrically couple the first anode of the battery unit to the first cathode of the battery.

4. Legal validity

36. The respondents are of the view that the subject-matter of the patent in suit is excluded from patentability under Article 53(a) EPC because its exploitation would be contrary to public policy. Whilst the description of the patent in suit purports to state that the subject-matter of the patent in suit is based on the safer

and thus also more cost-effective handling of used batteries, the specific configuration of the claimed subject-matter actually results in accelerated discharge.

37. Furthermore, the teaching of the patent application lacks inventive step. The teaching is rendered obvious by the combinations of the publications ZEMLOK (US 2009/0090763 A1) and WALKER (US 6 887 244 B1), as well as the combination of WALKER (US 6 887 244 B1), WAKIKAIDO (US 6 428 535 B1) and MANN (US 4 808 167).

5. Urgency

38. The respondents claim that the claimant could already have asserted the patent in suit against the 'original form of infringement' (the 'EnDrive Beluga' product). They claim that the 'EnDrive Zero' is structurally identical to the 'EnDrive Beluga' and is characterised by different clip magazines. However, the battery unit and the battery dock of the contested embodiments 'EnDrive Orca' and 'EnDrive Zero' are structurally identical to those of the 'EnDrive Beluga' and 'EnDrive Zero' and have not been altered since November 2024/early 2025. The claimant was already aware, prior to the conclusion of the settlement, that the respondents would undertake a design-around, which had also been announced to the claimant's representative by email dated 21 November 2025. In this regard, the respondents refer, with respect to the lack of urgency, to the decision of the Higher Regional Court of Düsseldorf in Case 2 U 2/21 – Insulin Pump (GRUR-RR 2021, 300).

39. Furthermore, the first respondent had already stated on 22 September 2025 that it did not intend to make a product available to the applicant. The respondents argue in this regard that the drawings provided were sufficient to establish an infringement. Furthermore, the new product 'EnDrive Orca' had already been available since 21 November 2026.

40. Furthermore, according to the respondents, despite the existence of a corresponding battery dock in the predecessor product 'EnDrive Beluga', the claimant had failed to include the patent in question in the settlement with the first respondent, 'apparently precisely in order not to establish a lasting peace between the parties'.

6. Balancing of interests:

41. The respondents point out that, in the proceedings relating to UPC_CFI_374/2025, the Hague local division of the UPC was not convinced that the facts (which were also put forward in the present proceedings) supported the existence of objective urgency.

7. Security:

42. In the alternative, should provisional measures be issued, the respondents seek the imposition of security in the amount of 'at least' EUR 5 million each. In the event of enforcement, the respondents would suffer lasting damage which would significantly impair their business. Even if this damage were predominantly reputational and indirect in nature (a decline in turnover from non-infringing products as a participant), the claims would enable the respondents to obtain secure compensation from the applicant for the damage caused by the applicant's application. The claimant has, even up to now, repeatedly attempted to stir up unrest and mistrust through deliberate misrepresentation and direct approaches to customers, thereby causing lasting damage to the respondents' reputation.

8. Suspension, referral to the ECJ for a preliminary ruling:

43. The respondents argue that, if the authorised representative, who merely ensures compliance with certain laws and is in practice unable to control the alleged infringement by the third party, is nevertheless liable as an intermediary for patent infringements, the Court of Appeal (UPC_CoA_789/2026 and UPC_CoA_813/2025 – Dyson v Dreame) has recently referred the matter to the European Court of Justice for clarification. Against this background, the respondents propose that the proceedings be stayed pending the decision of the Court of Justice of the European Union, or that the reference set out in the applications be made to the Court of Justice of the European Union.

KEY PROCEDURAL STEPS

44. By a document dated 4 May 2026, the applicant filed an application for an order for provisional measures with the Hamburg local division.

45. Within the time limit for filing a preliminary objection set by the judge-rapporteur, the respondents lodged a preliminary objection to the application for provisional measures on 26 May 2026.

46. As acknowledged by the judge-rapporteur, the applicant submitted a response to the objection on 8 June 2026 within the prescribed time limit, to which the respondents submitted a Reply on 18 June 2026, also within the prescribed time limit.

47. In a document dated 3 July 2026, the applicant, as instructed by the local division (without a deadline being set), submitted the settlement agreement between the applicant and

the first respondent, together with the relevant correspondence.

48. The oral hearing took place on 7 July 2026.

49. Following the oral hearing, a (non-subsequent) document was filed by the respondents on 10 July 2026, in which they applied for the submission of further written evidence and, where appropriate, the reopening of the oral hearing. The local division did not rule on this separately; rather, a decision on this matter is made within the framework of this order.

50. To avoid repetition, reference is made to the entire contents of the file.

REASONS FOR THE ORDER

51. The application for an order for provisional measures is admissible and well-founded.

I. (INTERNATIONAL) JURISDICTION OF THE HAMBURG LOCAL DIVISION

52. The Hamburg local division has jurisdiction both internationally and 'within the UPC'.

53. The UPC has international jurisdiction over an infringement action if the European patent asserted by the claimant is in force in at least one contracting member state and the alleged damage may occur in that contracting member state (Art. 31 UPC Agreement, Article 7(2) in conjunction with Article 71b(1) of the Brussels Ia Regulation, see the Court of Appeal's order of 3 September 2024 – UPC CoA 188/2024 – AYLO/DISH, GRUR-RS 2024, 29446). Where it is alleged that the damage was caused via the internet, the likelihood of such damage may arise from the possibility of purchasing products and/or using services from a website accessible within the territory of the Contracting Member State in which the European patent is in force (Court of Appeal, AYLO/DISH, cited above).

54. Applying these principles to the present case, the Hamburg local division (International) has jurisdiction.

55. The patent in suit is in force in all the Contracting Member States covered by the application: Germany on the one hand (with regard to the first defendant) and Germany, France and Italy on the other (with regard to the second defendant). The contested embodiments are, amongst other places, offered and sold online in Germany.

II. STANDING TO SUE

56. There are no objections to the right to bring proceedings.

57. With regard to the German and French parts of the patent in suit, standing to sue is already established by the applicant's entry in the national registers. As regards the Italian part of the patent in suit, the assignment was submitted as Annex BP 12, so that an assignment of the patent in suit to the applicant is to be expected in the near future. Overall, therefore, the presumption under Rule 8.5 of the RoP suggests that the applicant is the proprietor of the patent in question. The respondents have not raised any substantial objections to this.

III. LOCUS STANDI

58. There are no concerns regarding standing to be sued. This also applies to the standing to be sued of the second respondent, which is contested by the respondents. This is because the first respondent cannot place the infringing products on the market in the EU without the cooperation of the second respondent. In this respect, the actions of the second respondent are comparable to those of an online service provider (see the reference decision of the Court of Appeal dated 6 March 2026, UPC_CoA_789/2025 and UPC_CoA_813/2025, paras. 30 and 31 – *Dyson v Dreame*).

IV. INFRINGEMENT OF THE CLAIMED PATENT

59. It can be established with sufficient certainty that the claimant's rights are infringed by the offering and distribution of the contested embodiments (Article 25(a) of the UPC Agreement).

60. The order for provisional measures pursuant to Article 62(1) of the UPC Agreement in conjunction with Rule 211.2 of the RoP requires that the court be satisfied with sufficient certainty that the applicant is entitled to bring proceedings, that its rights are being infringed or are at risk of being infringed, and that the patent in question is valid. 'Sufficient certainty' means a preponderance of probability (Court of Appeal, UPC_CoA_889/2025, order of 27 March 2026, Onward v Niche, para. 71, referring to UPC_CoA_335/2023, Order of 26 February 2024, NanoString v 10x Genomics; UPC_CoA_182/2024, Order of 25 September 2024, Mammut Sports v Ortovox; UPC_CoA_297/2024, order of 3 December 2024, SharkNinja v Dyson; UPC_CoA_768/2024,

Order of 30 April 2025, Insulet v EOFlow; UPC_CoA_446/2025, Order of 13 August 2025, Boehringer v Zentiva).

61. In the present case, the application for provisional measures is admissible and well-founded. The local division is satisfied with sufficient certainty (Rule 211(2) of the RoP) that the first respondent, through the offering and distribution of the contested embodiments in Germany, and the second respondent, through its role as an authorised representative under Article 11 of the EU Medical Devices Regulation, without which the offering and distribution of the contested embodiments in the EU would not be possible, are infringing the applicant's rights under its patent in suit (Article 25(a) of the UPC Agreement). The validity of the patent in suit is, with a high degree of probability, sufficiently established.

1. Relevant person skilled in the art

62. The relevant person skilled in the art is an engineer, for example holding a Master's degree in mechanical engineering, who has several years' professional experience in the development and design of motorised surgical instruments, in particular stapling instruments.

2. Determination of the scope of protection

63. The patent application relates to surgical instruments powered by one or more batteries (paragraph [0001] of the patent application).

64. In paragraphs [0002] and [0003], the patent application describes, by way of background, that battery-powered surgical instruments using disposable batteries were known in the prior art. This presented the problem that such batteries must be properly discharged, as they may only be used once and may still retain a significant charge after use – otherwise, their use may result in hazardous waste (paragraph [0002]). In this context, it is also explained that numerous countries have regulations governing the transport and disposal of batteries, and that there are stricter and often more expensive safety requirements for the transport, storage and disposal of batteries with a higher stored (residual) charge.

65. In the prior art, it was proposed (US 2009/090763) to provide a user-activated or automatic switch which is activated when the power source must be completely discharged for disposal (para. [0003]).

66. In view of this prior art, the patent application sets out to enable the reliable discharge of the battery unit of a motorised surgical instrument

to ensure that the voltage level of the battery unit remains within or below a range acceptable for disposal (para. [0008]).

67. To solve this problem, the patent application proposes a surgical instrument having the following features of claim 1.

1 A surgical instrument comprising

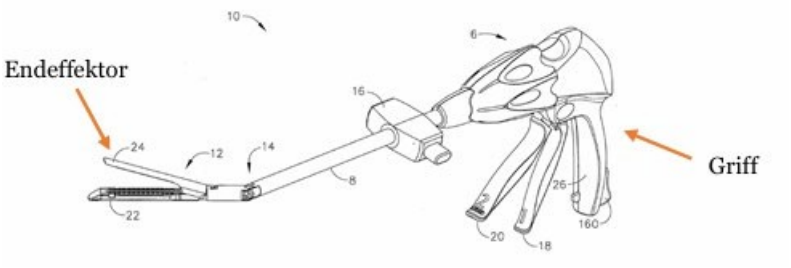
2 an end-effector;

3 a handle operatively coupled to the end effector,
3.1 wherein the handle comprises a trigger for actuating the end effector, and
3.2 the handle comprises a battery dock,
3.2.1 wherein the battery dock comprises a protruding element;

4 a battery unit attachable to the battery dock,
4.1 wherein, when attached to the battery dock, the battery unit is in electrical contact with at least one of the handle and the end effector, and
4.2 wherein the battery unit comprises: a housing; and
4.3 a first anode and a first cathode, positioned inside the housing; and
4.4 a transferable drain outlet,

5 whereby, when the battery unit is attached to the battery dock, the protruding element contacts the discharge outlet and the discharge outlet conducts with respect to the housing to electrically couple the first anode of the battery unit to the first cathode of the battery.

68. Figures 1 and 2 of the patent application show such a surgical instrument (feature 1) with an end effector (12) at the distal end of the instrument (i.e. remote from the surgeon holding the handle, cf. para. [0014]) (feature 2) and with a handle (6) (feature 3); Figure 2 is reproduced below (colour highlighting and labelling by the applicant):



69. The end effector 12 is highlighted in red, the handle 6 is highlighted in blue, and the trigger 18 for actuating the end effector is highlighted in green:

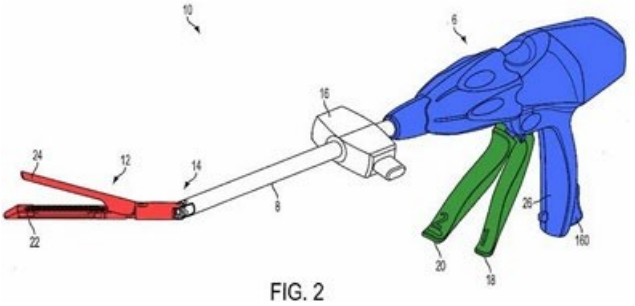


FIG. 2

70. Figure 2 of the patent application also shows the trigger (18) on the handle, which is used to actuate the end effector (feature 3.1), and which thus operatively couples the handle to the end effector (feature 3). Paragraph [0013] describes, by way of example, that the surgeon pulls the trigger to close the anvil (24) and thereby clamp tissue between the anvil (24) and the channel (22).

71. As the claimed surgical instrument is a battery-powered instrument, it must have a battery dock for accommodating a battery unit (see paragraph [0021]), as shown, for example, in the exploded view in Figure 7 of the application patent:

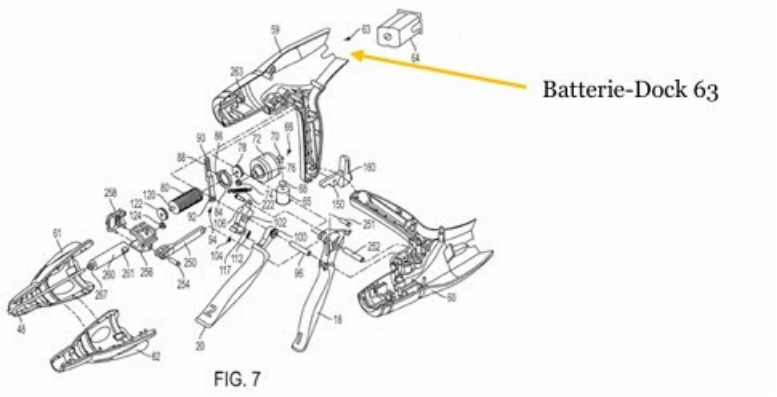


FIG. 7

72. Fig. 7 shows that the battery dock is located at the proximal end of the handle (top

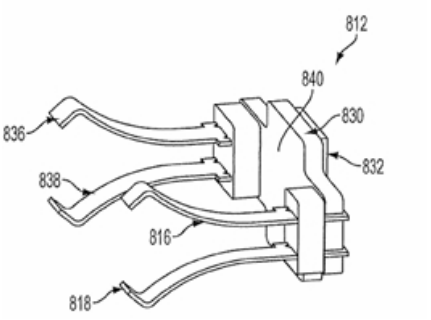
right in Figure 7) (feature 3.2). An electrical contact exists at the battery dock between the battery unit and/or the end effector (paragraph [0004]).

73. The battery dock features a 'protruding element' (feature 3.2.1). When the battery unit is attached to the battery dock, this protruding element pushes the movable drain valve of the battery unit from an open to a closed position, in which the drain valve electrically connects a first anode to a first cathode of the battery unit (feature 5) (paragraphs [0004] and [0005]), thereby discharging the battery. This is described in detail by way of example in paragraph [0085], which
refers, amongst other things, to Figures 54A and 54B shown below:

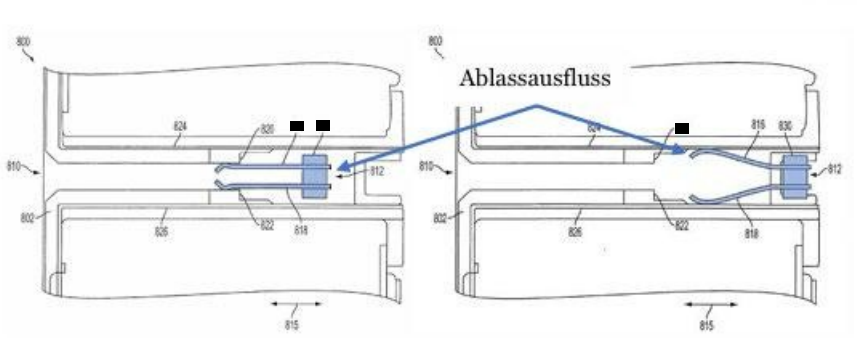
> *"Figure 56 illustrates the battery unit 800 attached to a battery dock 850. For clarity, various components have been removed. Referring now to Figures 54A, 54B, 55 and 56, the battery dock 850 comprises a protruding member 858 sized to fit into the cavity 810 (Figure 51) of the battery unit 800. Prior to attachment, the drain 812 is in the open position (Figure 54A). During attachment of the battery unit 800 to the battery dock 850, the protruding member 858 is inserted into the cavity 810 and the battery unit 800 is moved relative to the battery dock 850 in the direction indicated by arrow 862. Eventually, the distal end 860 of the protruding member 858 comes into contact with the contacting surface 840 of the drain 812. As the user continues to attach the battery unit 800, the drain 812 is moved relative to the casing 802 in the direction indicated by arrow 864 and moves into the closed position (Figure 54B). In this position, the battery unit 800 begins to discharge slowly. When the battery unit 800 is removed from the battery dock 850, the drain 812 may remain in the position shown in Figure 54B. In this way, the cells (not shown) of the battery unit 800 may discharge any remaining charge across a resistive element either before or during disposal."*

74. A drain outlet (feature 4.4) is shown separately in Figure 55 and within the battery unit in Figures 54A and 54B in an open and a closed (discharge) position:

Fig. 55:



Figs. 54A and 54B:



75. The arrows (815) in Figs. 54A and 54B indicate the directions in which the discharge outlet is movable (‘translatable’, translated as ‘transferable’ in the claim).

76. The battery unit (feature 4) powers the surgical instrument and is attached to the battery dock for this purpose. In order for the battery to fulfil its function, there must be an electrical contact at the battery dock between the battery and the handle and/or the end effector (feature 4.1). An example of a battery unit (800) is shown in Figure 52 of the patent application:

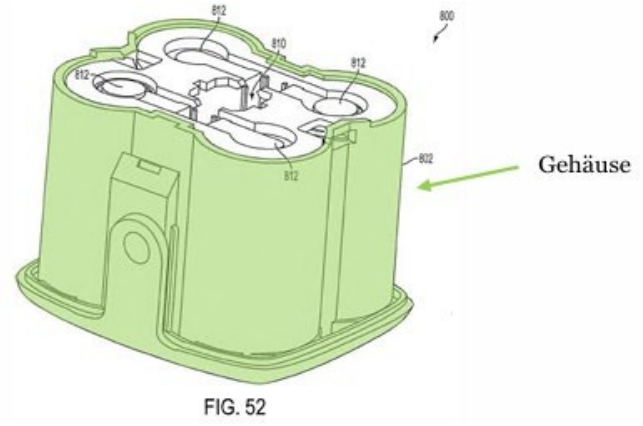


FIG. 52

77. The housing (802) of the battery unit can also be seen there (feature 4.2). Finally,

the battery unit must comprise, within the housing – like any battery – a first anode and a first cathode, so that the drain outlet can fulfil its function (feature 4.3).

3. Some features of the claim require explanation.

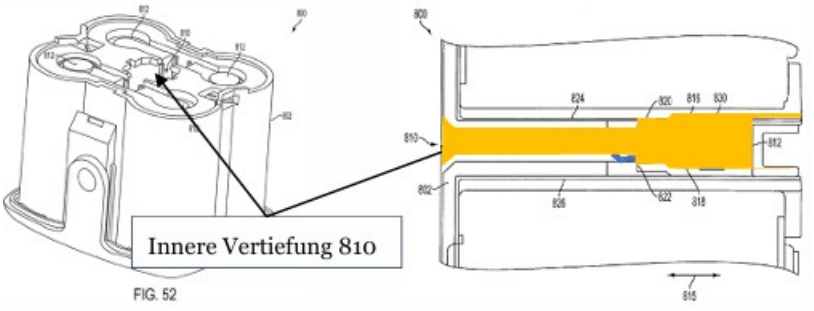
78. Pursuant to Article 69 EPC, read in conjunction with the Protocol on its interpretation, the patent claim is not merely the starting point but the decisive basis for determining the scope of protection of a European patent. The interpretation of a patent claim does not depend solely on its exact wording in the linguistic sense. Rather, the description and the drawings must always be taken into account as aids to the interpretation of the patent claim and should not be used merely to resolve any ambiguities in the patent claim. However, this does not mean that the patent claim serves merely as a guideline and that its subject-matter also extends to what, following an examination of the description and the drawings, appears to be the patent proprietor's claim to protection. In applying these principles, appropriate protection for the patent proprietor should be combined with sufficient legal certainty for third parties. The patent claim must be interpreted from the perspective of a person skilled in the art. These principles for the interpretation of a patent claim apply equally to the assessment of infringement and the validity of a European patent (Court of Appeal, UPC_CoA_335/2023, Order of 26 February 2024; Court of Appeal, UPC_CoA_1/2024, Order of 13 May 2024; Court of Appeal, UPC_CoA_182/2024, Order of 25 September 2024).

79. The person skilled in the art always interprets a feature of a patent claim in the light of the claim as a whole (see Court of Appeal, UPC_CoA_768/2024, order of 30 April 2025). From the function of the individual feature in the context of the patent claim as a whole, the person skilled in the art will deduce the technical function of the feature, both individually and in its entirety. With regard to the terminology used in a patent specification, this may lead the person skilled in the art to attribute a meaning to a term that differs from its general linguistic usage. The patent specification may define terms independently and, in this respect, constitutes its own glossary (Munich local division, UPC_CFI_248/2024, decision of 22 August 2025; Munich Central Chamber, UPC_CFI_1/2023, decision of 16 July 2024; Paris Central Chamber, UPC_CFI_309/2023, decision of 5 November 2024).

Feature 4.3 provides for 'a first anode and a first cathode, positioned inside the housing',

80. The first anode and the first cathode are positioned inside the housing so that they can be contacted there by the drain outlet (see feature 5). A connection from the

housing to the outside is not necessary to fulfil this function; rather, it is sufficient for the contact points to be located inside the housing and to form part of the battery unit, which continues to discharge even after being removed from the surgical instrument, in order to ensure the most complete discharge possible. Accordingly, in the embodiments described in the patent application, the first anode and the first cathode are also located in a 'recess' 810 in the housing, which is open to the outside, and into which the protruding element of the battery dock (feature 3.2.1) engages in order to move the discharge channel. This is illustrated, for example, by Figures 52 (left) and 54A (right) of the patent application [yellow highlighting added]:



81. This is also supported by [0082] of the description of the patent application, which states:

"The battery unit 800 may comprise a casing 802 defining an interior cavity 810."

82. The interior cavity is open to the outside – a cap 804 may be provided to cover it (see paragraph [0082]: 'The casing 802 may be covered by a cap 804…') – and in the embodiment shown in Fig. 54A, the two electrodes 824 and 826 are located therein (paragraph [0083]).

Feature 4.4 'Translatable discharge drain'

83. The patent application defines a 'translatable discharge drain' – as is also evident from the English version of the claims and the designation of this feature as 'translatable discharge drain' – as a discharge drain that can be translated and is therefore movable. This follows from paragraphs [0006], [0008] and [0083], all of which describe a movable discharge drain intended to effect the discharge of the battery by changing position ("The translatable battery drain may translate from the first position to the second position upon attachment of the battery unit to the battery dock", para. [0006]). As batteries are discharged by the flow of current, the discharge drain must cause a current flow that discharges the battery. To do so, the discharge drain must be electrically conductive. Furthermore, the discharge drain must form part of the current path through which the battery is discharged. It also follows from the requirement that the discharge drain must be movable

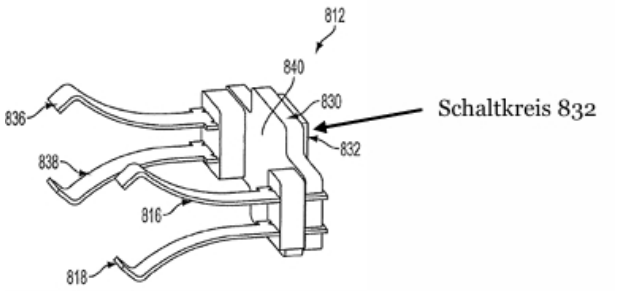
that it must be a mechanical component ("When moved to its closed position, the discharge drain may create a discharge circuit between an anode of the battery unit, a cathode of the battery unit, and a resistive element, for example.", para. [0008]).

Feature 5: "wherein, when the battery unit is mounted on the battery dock, the protruding element contacts the discharge drain and the discharge drain transfers, with respect to the housing, to electrically couple the first anode of the battery unit to the first cathode of the battery"

84. The protruding element referred to in feature 5 shifts the discharge path in such a way that the discharge path couples the cathode and the anode of the battery. This short-circuits the battery, resulting in its discharge.

85. Feature 5 does not require direct contact between the protruding element and a movable, electrically conductive part of the current path through which the battery is discharged. Even an indirect interaction between the protruding element and the discharge path is covered by the wording of the claim. Further measures, such as the subsequent creation of the short circuit by a timer or counter once the battery has already been fitted to the instrument, after a predetermined period of time has elapsed or after a predetermined number of actuations of the end-effector, are also permissible under feature 5.

86. This follows from a consideration of dependent claim 2, according to which the discharge path additionally comprises a resistive element, 'wherein the discharge path […] electrically couples the first anode to the first cathode via the at least one resistive element'. This demonstrates that the electrical connection may comprise additional elements and is not limited to a mechanical switch. Accordingly, the patent application describes, on the basis of the embodiment shown in Fig. 55 (illustrated below), that the contacts 816 and 818 are connected to one another via a resistive element mounted on a circuit board 832 (para. [0084]:
'According to various embodiments, the contacts 816, 818 may be electrically connected to one another via a resistive element (not shown) mounted to a circuit board 832':



87. Fig. 55 also shows a base portion 830, which is evidently non-conductive. Otherwise, the electrical connection between contacts 816 and 818 would be made directly via this portion and not via the resistive element on the circuit board.

4. Implementation of the features:

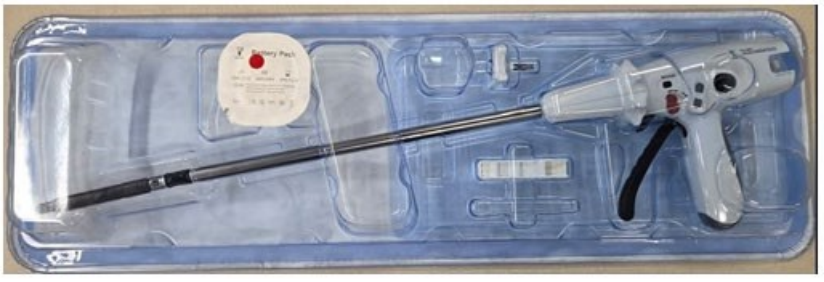
88. Upon a summary examination, it can be established with sufficient certainty (Rule 211(2) of the RoP) that the surgical instruments *'EnDrive* Orca' and *'EnDrive* Zero' embody all the features of claim 1 of the patent application to the letter. It must therefore be concluded that the respondents have infringed the patent. In detail:

a) Features 1 and 2

'A surgical element comprising an end-effector'

89. The 'EnDrive Orca' is a surgical instrument (feature 1). On the packaging, it is described as a 'Disposable Powered Endoscopic Linear Cutting Stapler[s]':

90. It can also be seen on the packaging and in the photograph of the instrument shown below that the 'EnDrive Orca' has an end effector (feature 2):



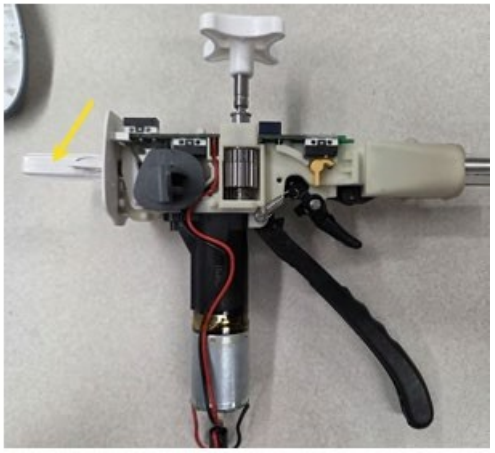
91. Features 1 and 2 are therefore fulfilled.

b) Feature group 3

3 a handle operatively coupled to the end effector,
3.1 wherein the handle comprises a trigger for actuating the end effector and
3.2 the handle comprises a battery dock,
3.2.1 wherein the battery dock comprises a protruding element;

92. The ‘EnDrive Orca’ features a handle (feature 3) operatively coupled to the end effector, with a trigger for actuating the end effector (feature 3.1). The black trigger handle of the ‘EnDrive Orca’ is clearly visible in the photograph shown last above, and in order to fulfil its function as a surgical instrument, the trigger must be capable of actuating the end-effector.

93. At its upper proximal end, the handle of the ‘EnDrive Orca’ incorporates a battery dock for holding the battery unit (feature 3.2), which is supplied in a separate container with the packaging. The photograph shown below depicts the protruding element of the battery dock (feature 3.2.1) of the ‘EnDrive Orca’:



94. The features of feature group 3 are thus realised.

c) <u>Feature group 4</u>

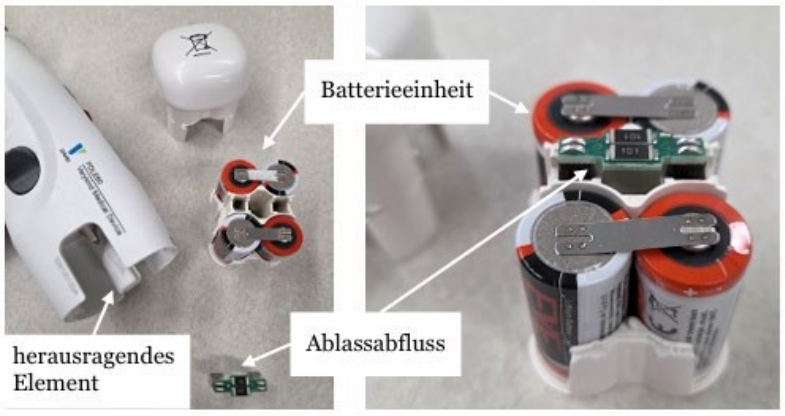
4 a battery unit that can be attached to the battery dock,
4.1 wherein, when attached to the battery dock, the battery unit is in electrical contact with at least one of the handle and the end effector, and
4.2 wherein the battery unit comprises: a housing; and
4.3 a first anode and a first cathode, positioned inside the housing; and
4.4 a removable drain outlet,

95. The ‘EnDrive Orca’ comprises a battery unit that can be attached to the battery dock (feature 4). The photograph shown below depicts this battery unit (‘Lithium Battery Pack’):

96. As can be seen from this photograph, the battery unit comprises a housing (feature 4.2) and a movable drain outlet (marked by a pink arrow as 16 in the photograph above), which is located in an opening provided for the protruding element of the battery dock (feature 4.4). As is apparent from the designation ‘Lithium Battery Pack’ and from the functionality of the drain outlet, the interior of the battery pack’s housing necessarily contains a first anode and a first cathode (feature 4.3).

97. The respondents’ view that the claim is not met because the anode and cathode are visible and accessible from the outside and are therefore not ‘inside’ the housing is based on an incorrect understanding of feature 4.3. Reference is made in this regard to the above comments on the interpretation of the feature.

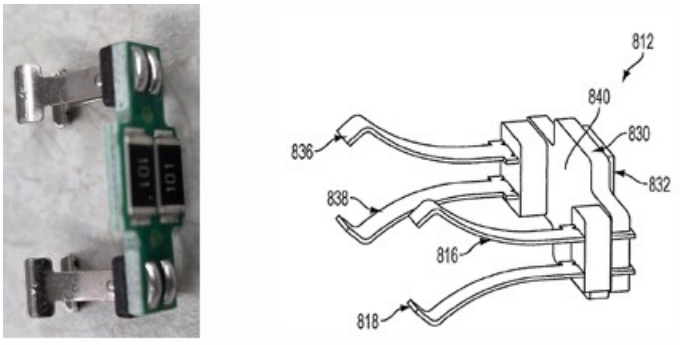
98. The embodiment of feature 4.3 can be seen in the photographs below.



Ill. 1 *Fotografien der Batterieeinheit und des Ablassabflusses*

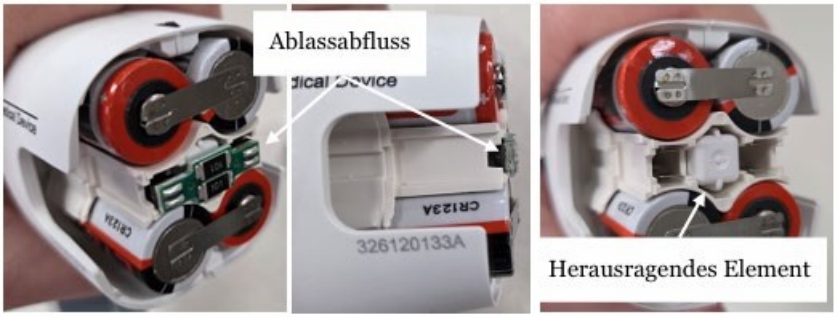
99. The photograph on the left shows the battery dock of the surgical instrument with the protruding element for moving the drain tube, the battery unit, and the drain tube removed from the battery unit; the photograph on the right shows the battery unit in operation, i.e. with the drain tube contained within it.

100. The photograph below shows the drain tube separately, which corresponds to the embodiment shown in Figure 55 of the patent application:



Ill. 2 Fotografie des Ablassabflusses (links) und Figur 55 des Verfügungspatents (rechts)

101. The following photographs show the battery unit attached to the battery dock, with and without the drain outlet, as well as the protruding element for moving the drain outlet, from slightly different angles:

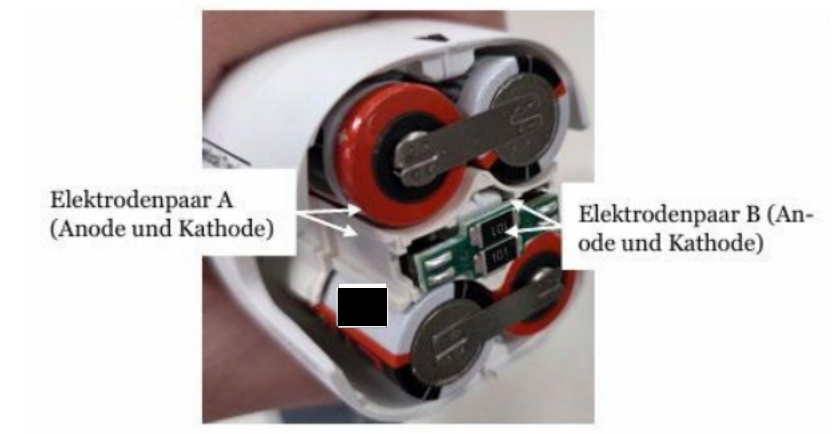


Ill. 3 Batterieeinheit mit Ablassabfluss (links und mittig), und ohne Ablassabfluss

102. The photographs below show the battery dock with the protruding element and the battery unit with the drain outlet slightly extended, again shown separately:

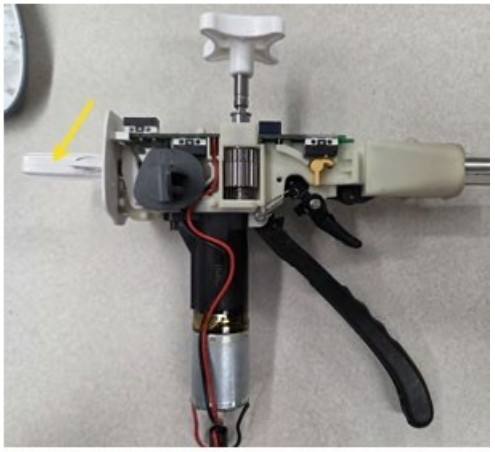
Ill. 4 Batterie-Dock (links) und Batterieeinheit mit Ablassabfluss

103. The first anode and the first cathode can be seen on the battery unit (without the drain plug) in the battery dock of the EnDrive Orca handle – there are two pairs of anodes and cathodes:



Ill. 5 Batterieeinheit des EnDrive Orca im Batteriedock

104. The attached battery unit is in electrical contact with the battery dock, at least via the handle of the
'EnDrive Orca' – in particular with the motor in the instrument's handle (and, via this, also with the end effector) (feature 4.1). This is evident not only from its function as a battery-powered instrument but also from the photograph below



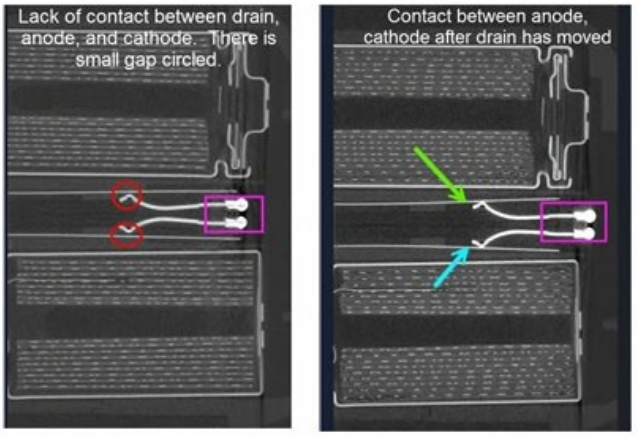
in which a red cable can be seen connecting the battery dock and the motor of the ‘EnDrive Orca’.

105. The features of feature group 4 are thus fulfilled.

d) Feature 5:

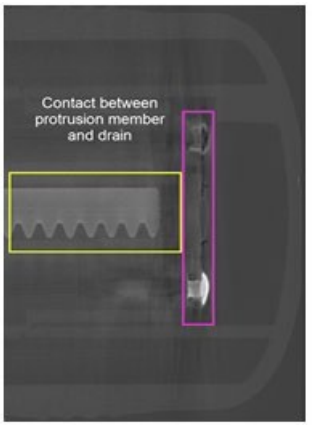
‘whereby, when the battery unit is attached to the battery dock, the protruding element contacts the drain outlet and the drain outlet acts as a reference with respect to the housing in order to electrically couple the first anode of the battery unit to the first cathode of the battery,’

106. When the battery unit of the ‘EnDrive Orca’ (and also that of the ‘EnDrive Zero’) is attached to the battery dock, the protruding element comes into contact with the drain outlet and moves the drain outlet into a position in which the first anode is electrically connected to the first cathode of the battery unit. This can be seen in the following CT scans of the ‘EnDrive Orca’:



107. In the open position (top left), a gap can be seen between the arms of the drain outlet and the electrodes (anode and cathode) (circled in red), whilst this gap no longer exists in the closed position (right), meaning that the discharge circuit is closed.

108. In the further CT scan shown below, the contact between the protruding element and the drain outlet becomes visible:



109. Feature 5 is therefore fulfilled.

110. The respondents' objection that the contested products contain a timer module which, once the battery pack has been attached to the instrument for the first time, remains in an energy-consuming operating state until the battery is empty, does not alter the fulfilment of feature 5.

111. This is because an electrical connection is established via this timer module. The timer module of the infringing products is also displaced laterally so that it electrically couples the first anode and a first cathode. The presence of further digital circuits or control elements that delay the flow of current does not preclude claim 1 in accordance with the above interpretation.

V. LEGAL VALIDITY

112. The legal validity of the patent in suit is sufficiently established.

113. The court must be able to satisfy itself with sufficient certainty that the asserted patent claims are valid. A sufficient degree of certainty is lacking if, after weighing up the probabilities, the court concludes that it is more likely than not that the

patent claims are invalid (Düsseldorf local division, Order of 12 February 2026, UPC_CFI_723/2025 – Align v Angelalign).

114. The respondents' objections to the validity of claim 1 of the patent in suit on the grounds of a breach of public policy (Article 53(a) EPC) and lack of inventive step, based on the following combinations: ZEMLOK (US 2009/0090763 A1) and WALKER (US 6 887 244 B1) as well as WALKER (US 6 887 244 B1), WAKIKAIDO (US 6 428 535 B1) and MANN (US 4 808 167)
are unsuccessful.

1. Offence against public policy

115. The subject-matter of the patent application is not already excluded from patentability under Article 53(a) of the EPC. There is no breach of public policy. The fact that the specific design of the claimed subject-matter results in accelerated discharge of the battery does not alter this.

116. This is because surgical instruments, such as those at issue here, are subject to the highest standards of sterility. Disposable products and components are not only common in the surgical environment but are, for reasons of patient safety, absolutely essential in many areas. This is described in the patent application and also in the publication WALKER (US 6 887 244 B1), which is explained in more detail below.

117. The use of disposable batteries, which are disposed of after a single use, is not a morally reprehensible business practice, but rather complies with the medical and hygienic requirements for surgical instruments. Replaceable or reusable components that come into contact with the surgical site or are used in its vicinity inherently carry risks of contamination and infection.

118. Furthermore, the teaching of the patent application is specifically intended to address the problem that arises during disposal when primary cells are not fully discharged. Charged or partially charged lithium batteries pose a significant safety risk, as they can overheat and explode if handled improperly, damaged or compressed within the waste stream. The controlled discharge of the batteries serves to bring them into a state in which they can be safely disposed of as non-hazardous waste or sent for recycling. Without such discharge, the safe recycling of the valuable raw materials contained in lithium batteries would be considerably more difficult or even impossible, as charged batteries pose a risk of explosion and fire during the recycling process.

119. There is therefore no breach of public policy that would preclude patentability.

2. Inventive step

120. Furthermore, the subject-matter of the patent application is not excluded from patentability under Article 56 EPC on the grounds of a lack of inventive step. In assessing whether the subject-matter of the claimed version is based on an inventive step within the meaning of Article 56 EPC, the general principles developed by the Court of Appeal must be applied (UPC_CoA_335/2023, Order of 26 February 2024, Nanostring/10X Genomics; UPC_CoA_464/2024, decision of 25 November 2025, Meril v Edwards, UPC_CoA_528/2024, decision of 25 November 2025, Amgen v Sanofi).

121. Firstly, it must be determined what the subject-matter of the invention is, i.e. what the objective problem is. This must be assessed from the perspective of a person skilled in the art, based on their general technical knowledge as at the priority date. This is done by determining the contribution the invention makes in relation to the state of the art, not by considering individual claim features in isolation, but by comparing the claim as a whole in the context of the description and drawings, taking into account the inventive concept (the technical teaching) underlying the invention, which must be based on the technical effects that the person skilled in the art, on the basis of the patent, understands to be achieved by the claimed invention.

122. To avoid a retrospective approach, the objective problem must not contain any references to the claimed solution.

123. The claimed solution is obvious if, on the relevant date, the person skilled in the art, starting from a realistic starting point in the state of the art of the relevant technical field and with the aim of solving the objective technical problem, would have arrived at the claimed solution (and not merely could have arrived at it).

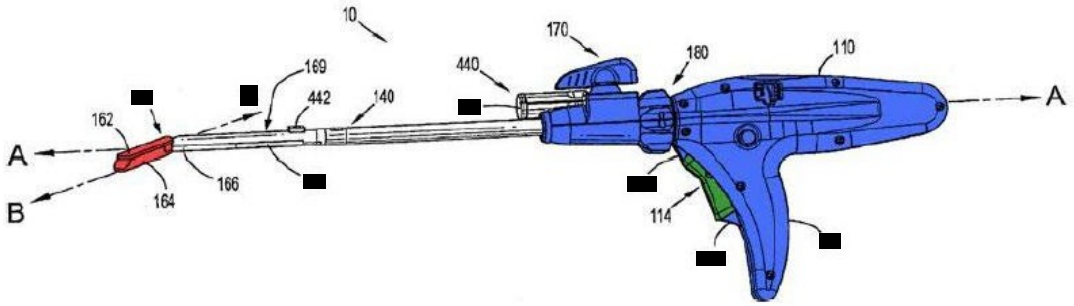
124. A starting point is realistic if its teaching would have been of interest to a person skilled in the art seeking to solve the objective problem on the relevant date. This may be the case, for example, if the relevant document in the state of the art already discloses several features similar to those of the claimed invention and/or addresses the same or a similar underlying problem as the claimed invention.

125. The person skilled in the art possesses neither ‘inventive skill’ nor

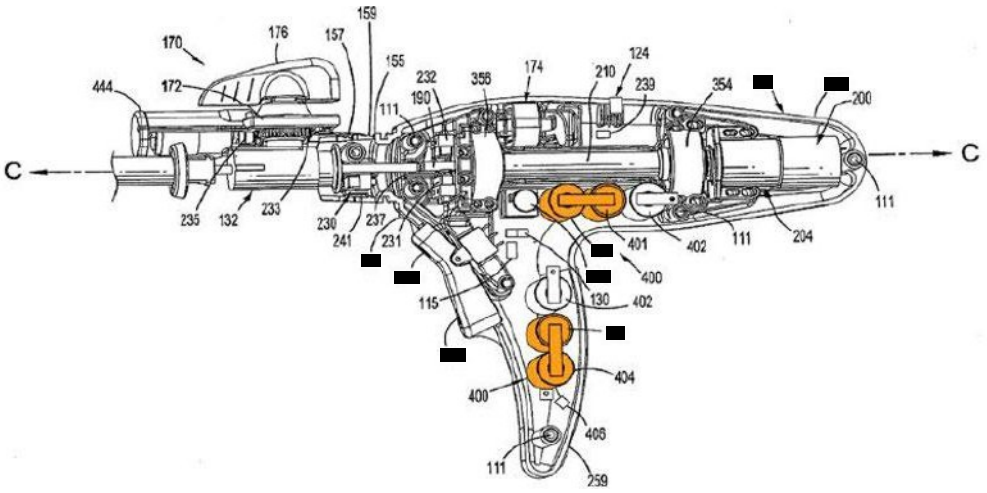
imagination, and requires a hint or motivation (‘impetus’) which, starting from a realistic point of departure, prompts them to take the next step towards the claimed invention. In principle, a claimed solution is to be regarded as non-inventive or obvious if, on the basis of such a hint or as a matter of routine, the person skilled in the art not only could have taken this next step, but would have taken it and thereby arrived at the claimed invention.

a) Combination of ZEMLOK (US 2009/0090763 A1) and WALKER (US 6 887 244 B1)

126. ZEMLOK discloses a surgical stapler 10 as an example of a powered surgical instrument (para. [0048]). Figure 1 shows an example of a surgical stapler 10.



127. The surgical instrument 10 comprises an end-effector 160 (highlighted in red in the figure above) and a handle (‘housing 110’, specifically ‘handle portion 112’; highlighted in blue in the figure above), which are operatively coupled via an endoscopic section 140 (para. [0048]). The handle comprises a trigger 114 (‘main drive switch’; highlighted in green in the figure above), which is divided into a first and a second switch 114a and 114b (para. [0053]). The first and second switches 114a and 114b are used to control an anvil 162 and a magazine 164 of the end-effector (para. [0054]; see also para. [0049]). The surgical instrument further comprises a power source 400 consisting of disposable batteries, which is arranged within the handle. The power source comprises battery cells 401 (paragraphs [0089] and [0090]). Figure 4 shows the battery cells 401 within the handle 110 (highlighted in orange):



128. Together with the battery cells 401, the surgical instrument also comprises a battery unit that can be attached to the battery dock. The battery cells are coupled to a drive motor in the handle and are therefore in electrical contact with the handle (para. [0010]). Furthermore, the power source is in electrical contact with an articulation mechanism mounted on the handle and supplied with power via the handle (para. [0072]). The power source is surrounded by an insulating shield 404, which protects components of the surgical instrument from heat or chemicals emitted by the battery unit (para. [0092]). An anode and a cathode are not expressly disclosed; however, this is obvious to a person skilled in the art simply from the term ‘battery’. The surgical instrument further comprises a discharge circuit coupled to a switch and a resistive load, which in turn are coupled to the power source. The switch can be activated by the user or automatically, so that it short-circuits the power source via the resistive load and discharges the battery cells (paras. [0095] and [0096]).

129. ZEMLOK thus discloses features 1–3.2 and 4 to 4.3.

130. Feature 4.4 – a transferable discharge path – is not disclosed in ZEMLOK. Even on the basis of the respondents’ view that the discharge outlet is realised by a switch activated by the user, it cannot necessarily be concluded that the person skilled in the art would typically design the switch as a mechanical switch. Consequently, ZEMLOK does not, in any event, directly and unambiguously disclose a discharge outlet in accordance with feature 4.4.

131. Feature 5, ‘wherein, upon attachment of the battery unit to the battery dock, the protruding element contacts the discharge outlet and the discharge outlet transmits with respect to the housing in order to electrically couple the first anode of the battery unit to the first cathode of the battery’, is likewise not fulfilled by ZEMLOK; it is not

possible.

132. Feature 3.2.1 – “wherein the battery dock comprises a protruding element” – is likewise not disclosed in ZEMLOK.

133. Consequently, ZEMLOK lacks features 3.2.1, 4.4 and 5 of claim 1 of the patent application.

134. WALKER likewise discloses a surgical instrument (‘surgical handpiece 10’) with an end-effector (‘tool 18 at its forward end’), a handle (‘housing 12’) operatively coupled to the end effector, a motor for driving the end effector (‘brushless DC motor for moving the tool member 18’) and a trigger (‘trigger 16’) arranged on the handle for controlling the motor. Furthermore, the surgical instrument comprises a disposable battery pack (‘disposable battery pack 20’) with a housing (‘housing 22’) and batteries (‘internal batteries 24’) housed therein. The battery pack is contained within the surgical instrument and supplies the surgical instrument with electrical power. The surgical instrument is shown in Fig. 1a by WALKER, and the battery pack in Fig. 1b. Here too, the handle is highlighted in blue, the trigger in green, the end effector in red and the battery unit in orange.

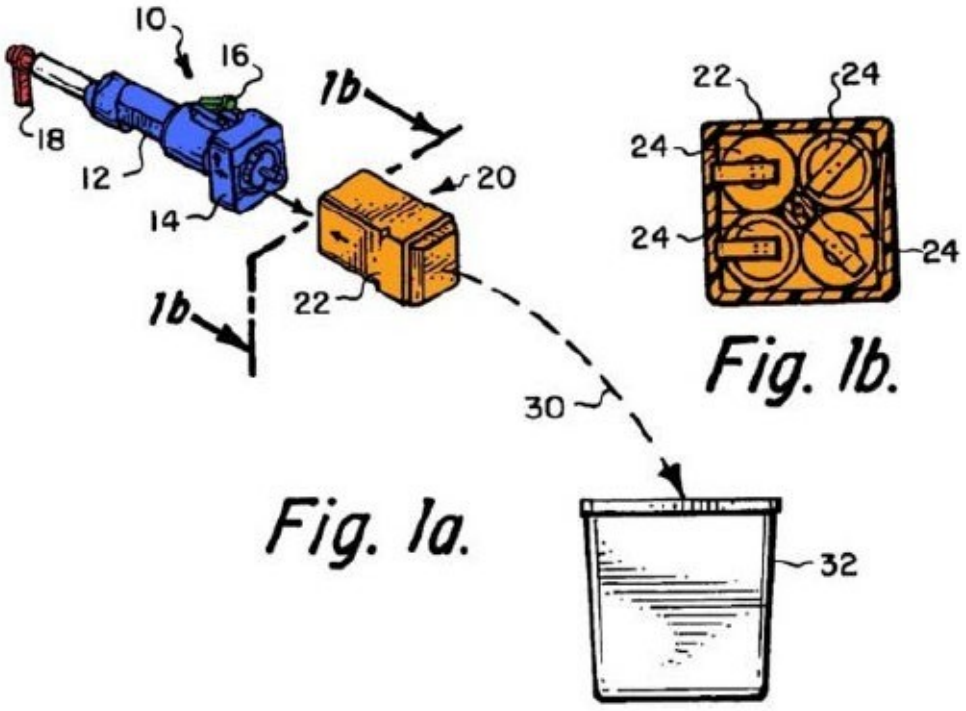


Fig. 1a.

Fig. 1b.

135. Furthermore, Figure 3 shows a battery dock.

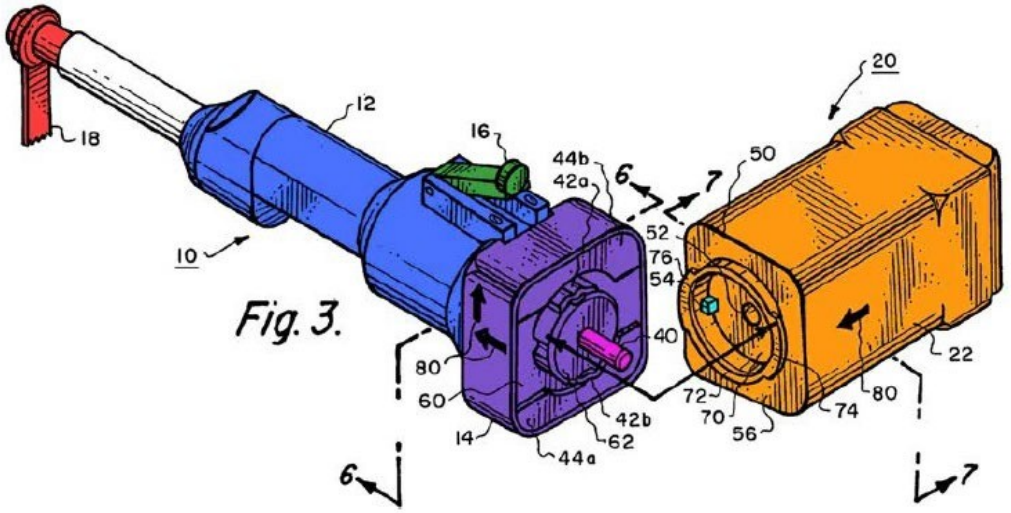
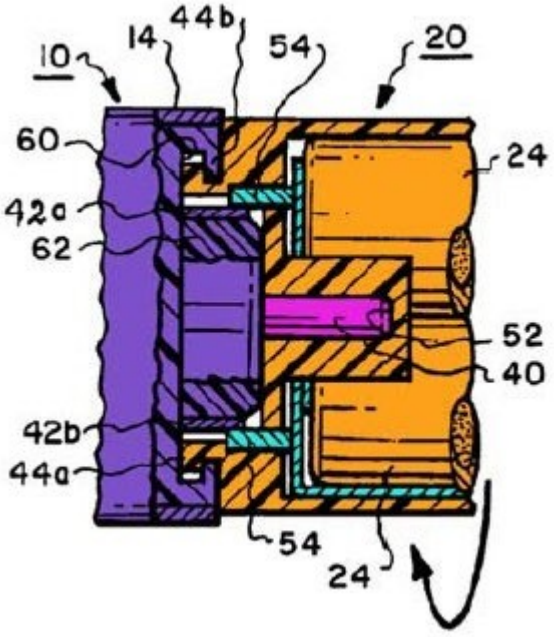


Fig. 3.



136. This features a pink alignment post 40. Its purpose is explained in column 4, lines 64 et seq.:

> *"The central opening 52 in the disposable battery pack 20 is adapted to receive the alignment post 40 in an insertable manner so as to establish a mutual alignment axis between the handpiece 10 and the battery pack."*

137. The battery pack is therefore aligned with the handpiece by means of the positioning pin and connected mechanically and electrically by a rotational movement (col. 4, lines 14–34, lines 55–67). The positioning rod has no electrical function and serves only for alignment (col. 4, lines 64–67). It does not come into contact with any electrically conductive element. The

The electrical contacts 42a, 42b and 54 are ordered separately and concentrically around the rod. WALKER thus discloses neither a discharge mechanism nor any functionality of the positioning rod that goes beyond purely mechanical coupling.

138. A combination of ZEMLOK and WALKER does not in any obvious way lead to the subject-matter of the teaching set out in the patent at issue. A person skilled in the art who, starting from ZEMLOK, is reasonably seeking a solution to activate the discharge mechanism disclosed therein automatically and without further action by the user each time the instrument is used would look into the field of switch technology and circuit design, rather than the field of mechanical battery positioning. ZEMLOK already provides for this, as it were. Paragraph [0096] expressly states that a switch 414 is activated (either by the user or automatically). When the switch is activated, the load 417 is connected to the power source 400. The publication offers no suggestion that the positioning rod in WALKER, which serves only for simple assembly and is not connected to any current-carrying components, could be used for this purpose. There is no plausible reason to combine these two documents.

139. Even if one were to assume that it is used for this purpose, the subject-matter of claim 1 of the patent application would not be fully disclosed. There is no indication in either document that the positioning rod 40 in WALKER could activate a switch or any other discharge mechanism. The positioning rod serves exclusively for mechanical alignment and does not come into contact with any electrically conductive or circuit-relevant element. The switch 414 in ZEMLOK is ordered on the handle of the instrument and has no spatial or functional relationship to the positioning rod in WALKER. Neither document provides the person skilled in the art with any basis for establishing an interaction between these two elements.

140. This is confirmed by the fundamentally different design of the battery compartment in both documents. In ZEMLOK, individual battery cells 401 are inserted vertically into a battery compartment 800, held in place by a spring 802 and secured by a cover 804 (para. [0173]). These are conventional battery compartments into which individual cells are inserted. During this insertion process, there is no protruding element that engages with the battery unit, nor is there any translational or other displacement movement during which a component of the battery unit could be mechanically contacted and moved.

141. In WALKER, by contrast, a battery pack as a whole is slid onto the rear end of the

handpiece, with the positioning pin 40 engaging the central opening 52 of the battery pack (col. 4, lines 55–67). Only during this sliding movement (which does not exist in ZEMLOK) could any mechanical interaction whatsoever take place between a protruding element and a component within the battery unit.

142. A person skilled in the art seeking to improve the discharge mechanism on the basis of ZEMLOK therefore has no reason to refer to the positioning rod described in WALKER. Nor do they envisage any sliding operation in which such a rod could come into contact with and displace a slidable discharge outlet. The fundamentally different design of the battery housing thus reinforces the lack of connection between the two documents. Indeed, there is no indication whatsoever that a protruding element could, upon attachment, mechanically contact a movable discharge outlet located within the battery unit and displace it relative to the battery unit's housing in order to electrically couple the anode and cathode (feature 5).

143. Furthermore, the person skilled in the art would have to completely redesign the construction disclosed in ZEMLOK. In ZEMLOK, the entire discharge mechanism (switch 414 and resistive load 417) is located within the instrument (see ZEMLOK, paras. [0095], [0096]). The switch and the resistive load are ordered on the handle of the surgical instrument, not in the battery unit. The patent at issue requires the discharge outlet to form part of the battery unit. Feature 4.4 defines the translatable discharge outlet as a component of the battery unit (*'wherein the battery unit comprises: [...] a translatable* discharge outlet'), and feature 5 requires that the discharge outlet moves *'relative to the* housing' of the battery unit. As a result, the battery unit incorporates its own discharge mechanism and discharges autonomously, regardless of whether it is attached to the instrument or not.

144. Even if the person skilled in the art were therefore to combine ZEMLOK and WALKER, the discharge mechanism would still be located in the instrument and not in the battery unit. Neither document provides the person skilled in the art with any indication to relocate the discharge mechanism into the battery unit and to design it as a movable mechanical component. Combining the two documents does not bridge this fundamental structural difference.

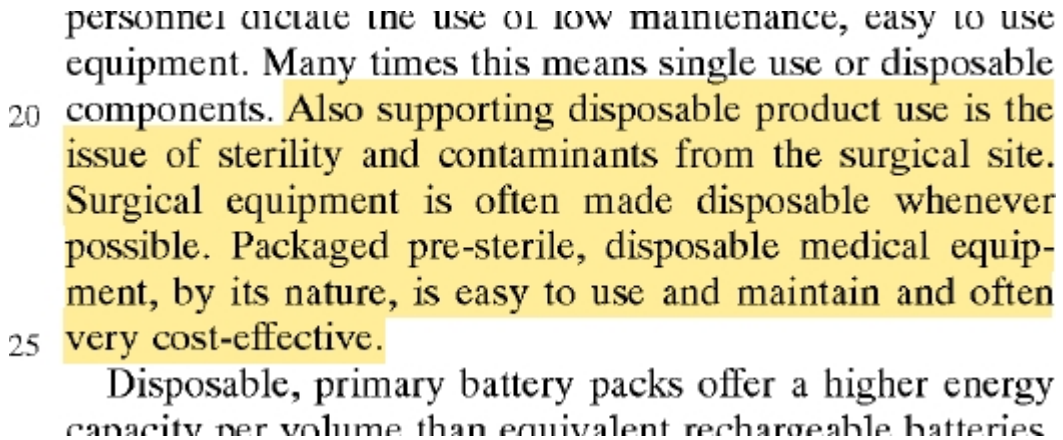
145. Even if it were the case that – as the respondents claim – the person skilled in the art were to derive from ZEMLOK the teaching that the discharge of the battery unit is triggered by the user's interaction with the device, which includes attaching the battery unit to the instrument and pressing the trigger button to initiate a clamping operation, and that the person skilled in the art would regard these user interactions with the device as equivalent alternatives for triggering the discharge circuit,

this is not convincing: nor does this provide any indication as to why a person skilled in the art should combine ZEMLOK with a publication that discloses an instrument designed to facilitate the attachment of a battery pack and which has no connection with discharge.

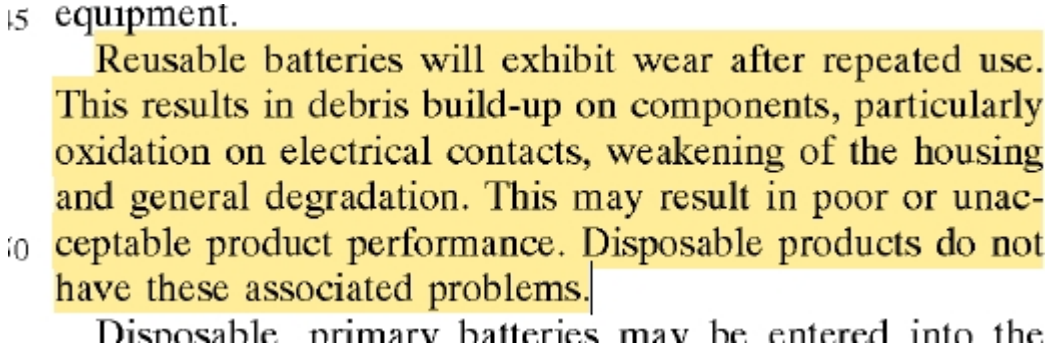
146. The combination of ZEMLOK (US 2009/0090763 A1) and WALKER (US 6 887 244 B1) therefore does not result in a lack of inventive step in claim 1 of the patent application.

b) Combination of WALKER (US 6 887 244 B1), WAKIKAIDO (US 6 428 535 B1) and MANN (US 4 808 167)

147. In addition to the other disclosures in WALKER, which have been set out above, WALKER also discloses that surgical equipment is designed as single-use items for reasons of sterility (column 8, lines 20 to 25) and that the reuse of batteries is associated with deterioration due to wear and tear (col. 8, lines 46–51).


personnel dictate the use of low maintenance, easy to use equipment. Many times this means single use or disposable components. Also supporting disposable product use is the issue of sterility and contaminants from the surgical site. Surgical equipment is often made disposable whenever possible. Packaged pre-sterile, disposable medical equipment, by its nature, is easy to use and maintain and often very cost-effective.

Disposable, primary battery packs offer a higher energy capacity per volume than equivalent rechargeable batteries

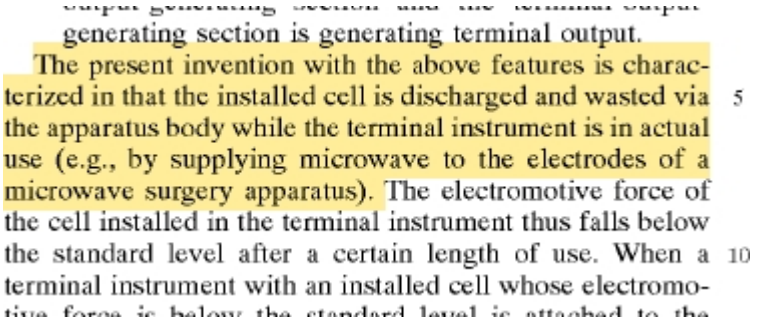

equipment.

Reusable batteries will exhibit wear after repeated use. This results in debris build-up on components, particularly oxidation on electrical contacts, weakening of the housing and general degradation. This may result in poor or unacceptable product performance. Disposable products do not have these associated problems.

Disposable primary batteries may be entered into the

148. WAKIKAIDO relates to a medical device comprising a *terminal* instrument and an *apparatus* body—that is, a handle that controls the terminal instrument (column 1, lines 5 to 8)—and further states that medical instruments are designed as single-use items because their reuse entails a risk of infection

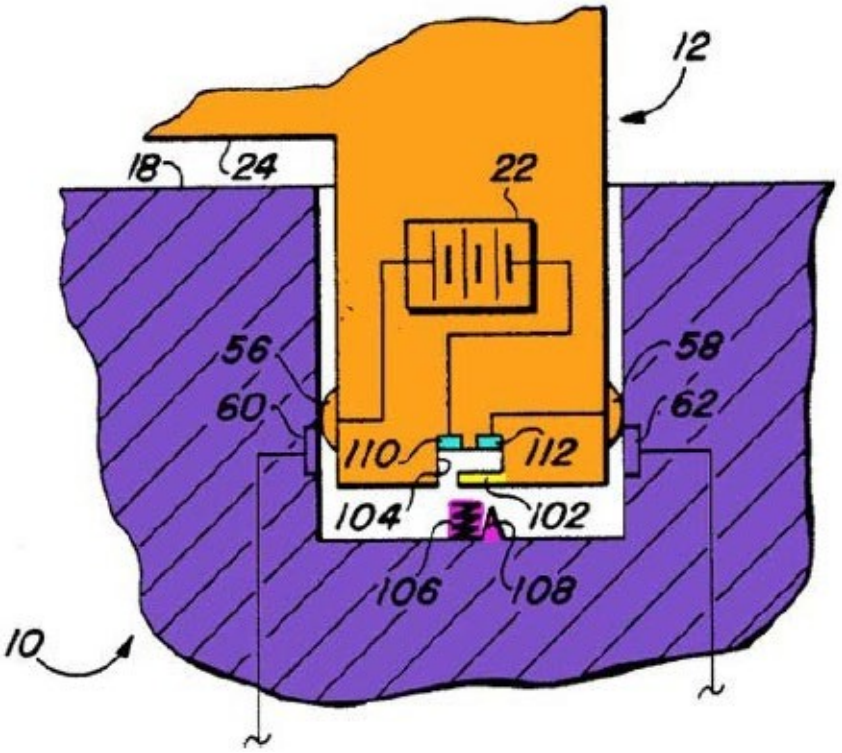
and wear and tear (column 1, lines 16 to 29). Against this background, WAKIKAIDO proposes a medical instrument which, by limiting its service life, forces its disposal after use (column 1, lines 55 to 67). WAKIKAIDO teaches that the reuse of the medical instrument can be prevented by discharging and depleting a battery cell within the instrument during use (column 3, lines 4 to 8). To this end, WAKIKAIDO provides for a battery cell and a resistor within the medical instrument. A 'Permissible Service Life Setting/Discharge' section short-circuits the battery cell via a resistor, thereby discharging it (column 9, lines 51 to 58).



generating section is generating terminal output.

The present invention with the above features is characterized in that the installed cell is discharged and wasted via the apparatus body while the terminal instrument is in actual use (e.g., by supplying microwave to the electrodes of a microwave surgery apparatus). The electromotive force of the cell installed in the terminal instrument thus falls below the standard level after a certain length of use. When a terminal instrument with an installed cell whose electromo-

149. MANN relates to a battery-powered electromechanical drug infusion system comprising a disposable cassette with a pump and a battery (column 1, lines 8 to 15). MANN aims to enforce the regular replacement of the cassette and to prevent its reuse (column 2, lines 27 to 41). As a solution, MANN proposes an electrical locking mechanism as shown in Fig. 4 reproduced below.



150. Shown is a part of the cassette 12 (highlighted in orange) containing the battery 22, which is inserted into a battery dock (highlighted in purple) of the main pump unit 10. In the process, a wedge 108 (highlighted in magenta) protruding from the battery dock snaps off an electrically conductive connector 102 (highlighted in yellow) from the cartridge. A spring 106 (also highlighted in magenta) protruding from the battery dock presses the connector against two contacts 110 and 112 (highlighted in turquoise) on the battery. As a result, the connector closes the circuit for driving the pump system via contacts 56, 58, 60 and 62, thereby discharging the battery (column 9, lines 9 to 28). The two contacts 110 and 112 are located at opposite ends of the battery in the current path and thus correspond to an anode and a cathode. The connector is electrically conductive and can close a circuit through which the battery is discharged. The connector is therefore a discharge outlet. Furthermore, the connector is arranged in such a way that it can break off and be displaced (i.e. translated, or 'transferred') by the spring.

151. The court cannot agree with the respondents' view that a person skilled in the art, on the basis of WALKER, would recognise that the reuse of the battery unit should be prevented in order to avoid problems with contamination or wear and tear of the batteries, and that, in seeking a solution, they would then come across WAKIKAIDO, which teaches that the reuse of the medical instrument can be prevented by discharging and depleting a battery cell of the instrument during use, and that the person skilled in the art would subsequently take the teaching of MANN into account when searching for suitable discharge mechanisms.

152. The very fact that three documents must be consulted to construct the claimed object is a strong indication that the state of the art does not, in fact, suggest the claimed solution.

153. Furthermore, it is already questionable whether WALKER constitutes a realistic starting point. The publication does not primarily deal with the safe and cost-effective disposal of primary cells that have not been fully discharged, but rather with the safe (guided 'alignment post') attachment of a battery pack to a surgical instrument.

154. WAKIKAIDO states that the installed cell is discharged exclusively whilst the instrument is actually in use (WAKIKAIDO, col. 3, lines 4–8):

> *"The present invention, having the above features, is characterised in that the installed cell is discharged and expended via the apparatus body whilst the terminal instrument is in actual use (e.g., by supplying microwaves to the electrodes of a microwave surgical apparatus)."*

155. The discharge mechanism is located within the apparatus body – not in the battery unit. Furthermore, in WAKIKAIDO, the cell is permanently integrated into the handle of the instrument; there is no separate, removable and attachable battery unit and, consequently, no attachment process during which a protruding element could engage with a battery unit.

156. MANN relates to a drug infusion system (not a surgical instrument with an end-effector) and discloses a disposable cassette comprising a pump and a battery, which is inserted into a main pump unit.

157. With regard to the electrical locking mechanism shown in Fig. 4 of MANN, it should be noted that, in this locking mechanism, a pin 108 breaks off an electrically conductive connector 102, and a spring 106 presses the broken-off connector against two contacts 110, 112. The mechanism serves as a re-use interlock: when the cassette is removed, the broken-off fragment falls out, so that the circuit can no longer be closed if the cassette is reattached (MANN, col. 9, lines 31–33). Furthermore, the electrical circuit closed by the connector 102 is not a discharge circuit, but an operating circuit for the operation of the pump system (MANN, col. 9, lines 26–27).

158. Even if one were to combine the structural elements of MANN with those of WALKER, a person skilled in the art would not arrive at the subject-matter of claim 1. This is because the teaching of MANN contradicts the claimed solution. MANN does not teach any element

which is displaced by a protruding element. Rather, a protruding element breaks off the connector 102 and another element presses it against the contacts. Furthermore, MANN discloses that the broken-off connector 102 falls out of the recess 104 when the cassette is removed, which is precisely the function of the mechanism as a re-use prevention device. The missing connector signals that the cassette has already been used and prevents it from being operated again.

159. The immediate consequence of this teaching is that, upon removal of the cassette, the electrical circuit is inevitably interrupted, so that further discharge of the battery cannot take place after removal. This contrasts with the teaching of the patent in question, in which the translatable discharge outlet is displaced when the battery unit is fitted and remains in this position – even after the battery has been removed from the instrument. A person skilled in the art who follows MANN's teaching thus arrives at a mechanism in which discharge ceases upon removal of the battery. The claimed solution – a translatable discharge outlet arranged within the battery unit which, upon attachment, is displaced by a protruding element in order to electrically couple the anode and cathode – is, however, not suggested by MANN's teaching. MANN does not provide the person skilled in the art with any suggestion to integrate a permanently effective discharge mechanism into the battery unit.

160. Nor, therefore, does the combination of WALKER (US 6 887 244 B1), WAKIKAIDO (US 6 428 535 B1) and MANN (US 4 808 167) lead to a lack of inventive step in claim 1 of the patent application.

VI. NECESSITY OF AN INJUNCTION

161. Pursuant to Article 62(2) of the UPC Agreement and Rule 211.3 of the RoP, it is within the court's discretion to weigh up the interests of the parties against one another and, in particular, to take into account the potential harm that might arise for one of the parties as a result of the issuance or rejection of the application. In doing so, the court must take into account not only the harm to one of the parties, but also the time factor. In particular, the court must assess whether proceedings on the merits can be awaited or whether provisional measures are necessary (Court of Appeal, UPC_CoA_540/2024, Order of 24 February 2024, Biolitec v Light Guide, para. 19). In this regard, Rule 206.2(c) of the RoP requires the applicant to set out in their application the reasons why provisional measures are necessary to prevent an imminent infringement, to prohibit the continuation of an alleged infringement, or to make such continuation conditional upon the provision of security. This concerns the merits of the application for provisional measures and must be taken into account by the court when issuing an order under Rule 211 of the RoP

be taken into account be taken into account (Court of Appeal, UPC_CoA_540/2024, Order of 24 February 2024, Biolitec v Light Guide, para. 20, with reference to UPC_CoA_335/2023).

162. In the present case, the applicant's interest in a provisional measure to safeguard its rights under the patent in question outweighs the interests of the respondents (Article 62(2) of the UPC Agreement, Rule 211(3) of the RoP).

163. There are no apparent economic disadvantages to the respondents that go beyond those inevitably associated with an injunction and arising from the nature of patent law as a monopoly on invention.

164. By contrast, the applicant would face irreparable harm if it were required to await the decision on the merits: the respondents' conduct does not suggest that they will, of their own accord, refrain from further acts of infringement in the future. In this respect, there is a serious risk that the applicant's sister company ('J&J Medical') would suffer significant losses in terms of order intake, turnover and overall market share as a result of the respondents' acts of infringement. Furthermore, the infringing products constitute clear copies of the J&J products.

VII. (TEMPORAL) URGENCY

165. Consequently, there is also no doubt as to the (temporal) urgency.

166. Pursuant to Rule 211.4 of the RoP, the Court must take into account any undue delay on the part of the applicant in applying for provisional measures. Whether an unreasonably long delay within the meaning of Rule 211.4 of the RoP has occurred depends on the circumstances of the individual case (Court of Appeal, UPC_CoA_182/2024, Order of 25 September 2024, Mammut Sports v Ortovox).

167. Under the 'more likely than not' standard applicable in interim proceedings before the UPC (Court of Appeal, Order of 3 March 2025, UPC_CoA_523/2024, paras. 56, 77 – Sumi Agro v Syngenta), the defendant must, in particular, demonstrate a prima facie case that (i) the product now being challenged is substantially equivalent to a product previously available in relation to the patent in suit, and (ii) the product previously available gave reasonable grounds for an investigation into the infringement of the intellectual property right now being asserted.

168. Furthermore, on 2 July 2026, in UPC_CoA_19/2026, the Court of Appeal ruled on the question of the extent to which

various potentially infringed patents must be asserted in a single application, ruling as follows:

“A patent holder is not obliged to assert all patents in a single application for provisional measures. If a patent holder has the necessary information to file an application for provisional measures in respect of some, but not all, patents, delaying the filing of the application for provisional measures until the necessary information regarding all allegedly infringed patents is available may be regarded as an unreasonable delay.” (Headnote 1)

“If a patent holder is aware, on the basis of a document, that one or more of its patents has been infringed, it must not turn a blind eye to the fact that the document also indicates the infringement of one or more of its other patents.” (Headnote 2)

“As a general rule, the patent holder is not obliged to monitor the market. However, if the patent holder becomes aware of specific circumstances suggesting patent infringement, the patent holder is expected to investigate the matter with due diligence so that the patent holder can take action against all infringers as quickly as possible.” (Headnote 3)

In English:

“A patent holder is not obliged to assert all patents in a single application for provisional measures. If the patent holder has the information required to file an application for provisional measures in respect of some, but not all, of the patents, it may be regarded as an unreasonable delay to postpone filing the application until the necessary information regarding all the allegedly infringed patents is available.” (Headnote 1)

‘If a patent proprietor is aware, on the basis of a document, that one or more of his patents have been infringed, he must not overlook the fact that the same document also reveals the infringement of one or more of his other patents.’
(Headnote 2)

“In principle, a patent proprietor is not obliged to monitor the market. However, if the patent proprietor becomes aware of specific circumstances indicating patent infringement, they are required to investigate the matter with due diligence so that they can take action against all infringers as promptly as possible.” (Headnote 3)

169. On the question of the point in time from which the patent proprietor can establish the existence of an infringement, the Court of Appeal stated in UPC_CoA_901/2025 of 17 April 2026, in paragraph 168:

> *"When the launch of the GlucoMen iCan* [Note: the infringing product in question] *was announced in December 2024, no technical details were provided. It was therefore unknown to the Appellant at that time that the GlucoMen iCan was technically the same as the Sinocare iCan i3* [Note: the patent proprietor's product in question]*, as the Respondents now indicate. Around that time, the Respondents referred to the GlucoMen iCan in various materials as a 'new' and even as a 'brand new' product. It was impossible for the Appellant to determine with sufficient certainty that this 'new' product actually infringed its patent before it was able to obtain physical samples of the product in April 2025*."

170. Applying the aforementioned principles to the facts of the present case, it cannot be established that the applicant waited for an unreasonable period of time.

a) Predecessor product – no core similarity and no obligation to examine whether the patent in suit has been infringed:

171. As regards the question of hesitant conduct against the background of the design of the original 'EnDrive Beluga' embodiment, no such conduct can be established. The respondents have not demonstrated credibly that the contested embodiments are substantially identical to the predecessor product. The written witness statement submitted by the respondents in this regard, as set out in Annex AG 1a/1b, merely contains a blanket assertion of general 'structural similarity' between the battery unit and the battery dock. However, there is no concrete evidence to show that the discharge mechanism in the 'EnDrive Beluga' model was present in an identical form. A blanket assertion of 'structural equivalence' of the battery unit, without reference to the specific claim features of the patent in suit, does not meet the standard established by UPC case law.

172. Nor was there any reason for the applicant to have investigated the predecessor product in the first place with regard to an infringement of the patent in question. The earlier proceedings between the parties concerned technical aspects of the predecessor products which have nothing to do with the subject-matter of the patent in suit: EP 2 515 768 relates to the delayed activation and deactivation of a switch, and EP 2 837 262 relates to a staple magazine. The fact that the applicant's letter of 26 March 2025 (Exhibit AG 8), in which the first respondent was informed that the predecessor product *'EnDrive* Beluga' potentially infringed further patents, does not specifically mention the patent in question, shows that the applicant was

was not aware that a potential infringement of the patent in suit was at issue. According to the case law of the Court of Appeal, the applicant cannot therefore be criticised for not having already asserted the patent in suit against the predecessor product.

173. Nor does the respondents' reference to the insulin pump decision of the Higher Regional Court of Düsseldorf (2 U 2/21), in which it was held that where a patent proprietor initially challenges an infringing product by way of an interim injunction on the basis of only one patent, and only several months later, in further interim injunction proceedings, asserts the infringement of a second patent by the same challenged embodiment, the subsequent application for an injunction generally lacks urgency if the infringement of the second patent was apparent from the outset; this is not relevant in the present case for various reasons. Firstly, this is case law from a national court, which does not necessarily have to be taken into account by the UPC. Secondly, in the present case, the applicant is not taking action against the same contested embodiment, but against the successor models. Furthermore, and this is ultimately decisive, the UPC Court of Appeal, in its decision of 2 July 2026 (UPC_CoA_19/2026), takes the opposite view, namely that the patent proprietor is not obliged to enforce all potentially relevant patents directly against a specific embodiment.

b) No breach of a duty to monitor the market:

174. Nor can the applicant be accused of hesitant conduct with regard to any duty to monitor the market. Since, as set out above, there is no general duty on the part of the patent proprietor to monitor the market under UPC_CoA_19/2026, the applicant cannot be criticised for failing to carry out a comprehensive preliminary examination of potential infringements of its patents. This is all the more true given that the applicant holds a portfolio of more than 1,000 patents potentially relevant to surgical stapling instruments, which makes such a comprehensive preliminary examination difficult, if not impossible – even for a large company with a well-staffed patent department such as the applicant.

c) Acquisition and examination of the contested embodiments:

175. Nor can it be established that the applicant acted hesitantly with regard to the acquisition and examination of the contested embodiments.

176. The applicant took all possible steps to obtain the respondents' new product as quickly as possible. The plausible and verifiable timeline set out in the affidavit, Annex BP 2 – knowledge of

a source of supply on 13 February 2026, ordering of the potentially patent-infringing products on 20 February 2026, receipt of the products on 6 March 2026, commencement of analysis in the USA on 18 March 2026, receipt of the analysis results on 2 April 2026, final determination of infringement (from the applicant's perspective) on 9 April 2026 and filing of the applications for provisional measures on 4 May 2026 – leads to the conclusion that the requirements regarding urgency are met for the period from 13 February 2026. The application was filed within two months of receipt of the products potentially infringing the patent – despite the extensive investigations carried out – and is therefore not out of time in this respect.

177. In the court's view, the ordering of the potentially patent-infringing products on 20 February 2026 was not late. There is no evidence to suggest that the applicant could have obtained the contested embodiments and subsequently examined them at an earlier date.

178. It is also understandable that it proved difficult for the applicant to obtain the contested embodiments. The difficulties cited in obtaining a specimen of the new instrument – namely 'due to the tightly controlled distribution structure of the first respondent and the Chinese manufacturers' and the failed attempts to obtain the infringing product from hospitals – as described by the applicant's legal representatives during the oral hearing to elaborate on the arguments set out in the pleadings – appear credible and sufficient to regard the order successfully placed on 20 February 2026 as not having been made too late. In this context, it should be noted that, whilst the respondents' representative claimed at the oral hearing that the 'EnDrive Orca' product had been available since 21 November 2025, the respondents also argue in their rejoinder that the product was to be 'marketed promptly'. However, during the oral hearing, the respondents' representative mentioned that, at that time, there were difficulties in obtaining the product from the Chinese manufacturers. In this respect, it cannot therefore be readily established that the claimant would have been able to procure the product at an earlier date.

179. The local division therefore considers it proven that the claimant took all steps within her power to obtain the respondents' new product as quickly as possible. In light of this, the fact that the applicant did not succeed in identifying a source of supply until 13 February 2026 – through which the order was subsequently placed on 20 February 2026 – does not constitute a delay that would preclude the claim of urgency.

d) Settlement and correspondence between the parties; drawings provided

180. The statement made by the respondents' representatives on 6 August 2025 in parallel proceedings before the Munich local division (UPC_CFI_381/2025) that they were working on a
'design-around', taken together with the further correspondence between the parties and the settlement negotiations with the first respondent, which were subsequently concluded on 28 October 2025, does not suggest that the claimant can be accused of any delay up to that point. It is undisputed that the first respondent refused to make the new product available, but merely provided drawings. It seems plausible that the drawings provided did not, in the applicant's view, allow the conclusion to be drawn that the patent in suit had been infringed; rather, this required obtaining the physical object alleged to be infringing and subsequently carrying out further examinations of that object, such as CT scans. For it seems illogical and implausible that the claimant would have had such scans carried out if the drawings provided had already allowed sufficient conclusions to be drawn regarding an infringement of the patent in suit.

181. The court therefore considers it proven that, without a physical product in her possession and the opportunity to examine it, the claimant was unable to determine with sufficient certainty whether the new product infringed the patent in question.

182. The local division considers the fact that the patent in question was not included in the settlement between the claimant and the first respondent to be irrelevant. Nor is there any obligation whatsoever to include all conceivable intellectual property rights in a settlement. The parties are free to reach a settlement covering only part of their portfolio; there may be a variety of commercial considerations for doing so.

VIII. LEGAL CONSEQUENCES

183. The application for an injunction is well founded.

184. The order for provisional measures pursuant to Article 62(1) of the UPC Agreement in conjunction with Rule 211.2 of the RoP requires that the court be satisfied with sufficient certainty that the applicant is entitled to bring proceedings, that their right is being infringed or is at risk of being infringed, and that the patent in question is valid. 'Sufficient certainty' means a preponderance of probability (Court of Appeal, UPC_CoA_889/2025, order of 27 March 2026, Onward v Niche, para. 71, referring to Court of Appeal, UPC_CoA_335/2023, order of 26 February 2024, NanoString v 10x Genomics; Court of Appeal, UPC_CoA_182/2024, order of 25 September 2024, Mammut Sports v Ortovox; Court of Appeal, UPC_CoA_297/2024, order of 3 December 2024, SharkNinja v

Dyson; Court of Appeal, UPC_CoA_768/2024, order of 30 April 2025, Insulet v EOFlow; Court of Appeal, UPC_CoA_446/2025, order of 13 August 2025, Boehringer v Zentiva).

185. In the present case, there is a preponderance of probability with regard to all the points mentioned.

186. The Court concludes that it is more likely than not that the patent in suit is infringed by the offering and sale of the contested embodiments 'EnDrive Orca' and 'EnDrive Zero', and that it is more likely than not that the asserted claim 1 of the patent in suit is valid.

187. Since the order for provisional measures is necessary both in terms of timing and substance, and since the balancing of interests also favours the applicant, the court exercises its discretion (para. 209.2 of the RoP) and orders the requested provisional measures in accordance with Article 62(1) and Article 25(a) of the UPC Agreement. Only an interim order takes account of the applicant's interest in the effective enforcement of the patent in question.

188. As a rule, interim orders extend to the territory of those CMS to which the patent applies, unless specific circumstances justify an exception (Article 34 UPCA; Court of Appeal, order of 30 April 2025, UPC_CoA_768/2024, Insulet v EOFlow). In the present case, the Court considers it established that the patent is valid in the territory of the Contracting Member States of Germany, France and Italy. The provisional measures therefore extend – as requested – to the territory of these three States in respect of the second respondent and to the territory of the Federal Republic of Germany in respect of the first respondent.

189. As the conditions for ordering a provisional measure are met, the applicant's application for an injunction is to be granted.

IX. SUSPENSION, REFERRAL TO THE ECJ

190. A reference for a preliminary ruling or a stay of proceedings is not an option in the present case.

It is true that the question referred in *Dyson v Dreame* (UPC_CoA_789/2025 and UPC_CoA_813/2025) – namely, whether an authorised representative under Article 11 of the EU Medical Devices Regulation can be regarded as an intermediary within the meaning of the UPC Agreement solely on the basis of fulfilling the duty incumbent upon them under the Medical Devices Regulation – is relevant to the question of the liability of the second respondent. However, from the perspective of the local division, procedural economy dictates that the

proceedings against the second respondent should not be separated from those against the first respondent, nor should questions be referred to the CJEU itself. Rather, the local division refrains from staying the proceedings pending the CJEU's decision in the preliminary ruling proceedings in *Dyson v Dreame* and also from making a separate reference to the CJEU. As the court of first instance, the local division has discretion in this regard. The risk that the first-instance decision concerning the second respondent might have to be amended or set aside, depending on the CJEU's assessment, is taken into account by requiring the provision of security in favour of the second respondent (see the following point in this regard).

X. SECURITY

191. In the present case, no security is to be ordered in favour of the first respondent. In favour of the second respondent, however, a security order is to be issued, the amount of which is to be determined on the basis of the value in dispute in the proceedings.

192. The court may order the applicant to provide adequate security to ensure that, should the court set aside the order for an interim injunction, compensation may be paid to the defendant for the damage that the latter is likely to suffer (Rule 211(5) of the RoP; Article 60(7), Article 62
(5) UPC Agreement).

193. However, the respondents have not provided a specific account of any damages, nor have they explained why it would not be possible to obtain compensation from the applicant for any damages arising from enforcement. There is therefore no justification for ordering the provision of security in favour of the first respondent.

194. As regards the second respondent, it must be borne in mind that the question referred for a preliminary ruling in *Dyson v Dreame* (UPC_CoA_789/2025 and UPC_CoA_813/2025) – namely, whether an authorised representative under Article 11 of the EU Medical Devices Regulation can be regarded as an intermediary within the meaning of the UPC Agreement solely on the basis of fulfilling the duty incumbent upon them under the Medical Devices Regulation – is relevant to the question of the liability of the second respondent
2). The risk that the first-instance decision concerning the second respondent might have to be amended or set aside, depending on the CJEU's assessment, must be taken into account when assessing whether a security deposit should be imposed. The local division considers it justified, when assessing this risk in favour of the second respondent, to impose a security deposit equal to the value in dispute. The amount also appears appropriate because the applicant's representative stated at the oral hearing that, should a security deposit be imposed, they would agree to it provided it was set at the value in dispute.

XI. PROVISIONAL REIMBURSEMENT OF COSTS

195. The applications for provisional reimbursement of costs are, in themselves, well-founded.

196. In the case *of Barco v Yealink* (UPC_CoA_317/2025 and UPC_CoA_376/2025), the Court of Appeal held in its decision of 28 November 2025:

> *"An interim award of costs may also be ordered in favour of the defendant in proceedings for provisional measures. The fact that Rule 211.1(d) of the Rules of Procedure (RoP), unlike Rule 150.2 RoP, does not expressly provide for an interim award of costs to the successful party does not preclude this. The same rules apply in proceedings for interim measures as in the main proceedings. An interim award of costs up to the applicable ceiling for cost compensation renders the procedure for a cost decision pursuant to Rule 150 RoP redundant."*

197. Accordingly, provisional reimbursement of costs may be sought not only by the applicant but also by the respondents – though, of course, only in the event of a full or at least partial success. However, as the applicant has been wholly successful, provisional reimbursement of costs in favour of the respondents is out of the question.

198. As regards the amount, according to the case law of the Court of Appeal, provisional reimbursement of costs is to be awarded in an amount equal to half the upper limit of the recoverable costs based on the value of the claim. With a value in dispute of EUR 1 million, the upper limit is EUR 112,000; half of this is therefore EUR 56,000, so an award of this amount is made (UPC_CoA_898/2025, Order of 27 March 2026, Onward v Niche Biomedical).

XII. VALUE OF THE CLAIM

199. The applicant has 'provisionally estimated' the value in dispute at EUR 1 million. This figure was not contested by the respondents and appears reasonable in view of the economic value of the case. The court therefore sets the value in dispute at EUR 1 million.

XIII. THREAT OF A PENALTY PAYMENT

200. The requested order for a penalty payment is justified.

201. Pursuant to Article 63(2) of the UPC Agreement and Rule 354.3 of the RoP, the court's order may provide for repeated penalty payments payable to the court

repeated penalty payments payable to the court. The amount is to be determined by the court in light of the significance of the order in question.

202. The requested penalty payment of up to EUR 250,000 per breach, thereby setting an upper limit within a range, gives the court the flexibility to determine the penalty payment appropriately for the individual case.

XIV. DECISION ON COSTS

203. A decision on costs is also justified in interim proceedings (Hamburg local division, Order of 21 February 2025, UPC_CFI_701/2024; Order of 26 June 2024, UPC_CFI_124/2024). This is also in line with the view of the Court of Appeal (Order of 3 March 2025, UPC_CoA_523/2024 – Sumi Agro v Syngenta; Order of 6 August 2024, UPC_CoA_335/2024, 10x Genomics et al. v NanoString) that a decision on costs should be made in inter partes proceedings concerning provisional measures, as these proceedings bring the case to a close.

204. As the respondents have been wholly unsuccessful, no costs are to be awarded against the applicant.

XV. REGARDING THE RESPONDENTS' SUBSEQUENT DOCUMENT OF 10 JULY 2026

205. The document dated 10 July 2026 and the applications set out therein are inadmissible on the grounds of late filing.

206. The submission of the document on 10 July 2026 took place after the end of the written proceedings, indeed three days after the oral hearing, and is therefore, as are all the applications contained therein, out of time.

207. None of the reasons cited in the document is sufficient to rule out the late submission of the document.

208. It is true that, up to and including the oral hearing, the respondents had access to Annexes BP 11/11a, BP 13/13a and BP 14/14a, as well as the response to the opposition, were only available to the respondents in redacted form up to and including the oral hearing (the other documents mentioned in the document of 10 July 2026 had already been set to 'M' in the CMS and were thus made available to the respondents' representative and also to a natural person acting on behalf of the respondents themselves), which would, in principle, justify a reduction in the scope of the written submission. However, the redacted parts of the response to the objection, as well as Annexes BP 11/11a, BP 13/13a and BP 14/14a, are not taken into account in the order for provisional measures, meaning that the respondents are not disadvantaged and, consequently,

no arguments can be derived to support the admissibility of the document dated 10 July 2026.

209. With regard to the decision UPC_CoA_19/2026 of 2 July 2026, which was referred to by the court during the oral hearing, it should be noted that, although this decision was only made public a few days before the oral hearing, However, it is reasonable to expect the legal representatives to keep abreast of the UPC's appellate case law in a timely manner, such that they can incorporate a decision handed down only a few days before the oral hearing into their preparations. Furthermore, as mentioned in the respondents' documents of 10 July 2026, the Chamber referred to the aforementioned decision in its introduction to the facts and issues at the very start of the oral hearing and then, following the introduction, granted the legal representatives a 30-minute break to prepare further submissions. Nor did the respondents' legal representatives request an extension of the preparation break during the hearing.

ORDER

I.

A. The first respondent is ordered to refrain from and desist from

surgical instruments comprising an end effector; a handle operatively coupled to the end effector, wherein the handle comprises a trigger for actuating the end effector and the handle comprises a battery dock, wherein the battery dock comprises a protruding element; a battery unit attachable to the battery dock, wherein, when attached to the battery dock, the battery unit is in electrical contact with at least one of the handle and the end effector, and wherein the battery unit comprises: a housing; and a first anode and a first cathode positioned inside the housing; and a transferable drain,

whereby, when the battery unit is attached to the battery dock, the protruding element contacts the discharge outlet and the discharge outlet conducts with respect to the housing in order to electrically couple the first anode of the battery unit to the first cathode of the battery,

offering, placing on the market, using, importing or possessing it in the Federal Republic of Germany for the aforementioned purposes (direct infringement of claim 1 of EP 2 615 984).

B. The second respondent is ordered to refrain from exercising its functions as 'authorised representative' in such a way that the acts referred to in Section A are carried out by the

first defendant and/or Ningbo David Medical Device Co., Ltd. and/or Ningbo Verykind Medical Device Co., Ltd. in the Federal Republic of Germany, in France and in Italy;

in particular, the second respondent is ordered to declare to the competent authorities that, with regard to the products covered by Section A, it will no longer act as an 'authorised representative' for Ningbo David Medical Device Co., Ltd. or Ningbo Verykind Medical Device Co., Ltd. in the Federal Republic of Germany, in France and in Italy.

II. In the event of any breach of the order under Section I. A. or Section I. B., the respective respondent shall pay a (where applicable, repeated) penalty payment to the court of up to EUR 250,000 per breach (Rule 354.3 of the RoP).

III. The order against the first respondent is immediately enforceable. The order against the second respondent shall only become effective and enforceable once the applicant has provided security in favour of the second respondent in the form of a deposit or a bank guarantee from a bank authorised in the EU in the amount of EUR 1,000,000.

IV. The respondents are provisionally ordered to reimburse costs amounting to EUR 56,000.

V. The respondents shall bear the costs of the proceedings.

VI. The respondents' document of 10 July 2026, together with the applications made therein, is dismissed as inadmissible on the grounds of late filing.

INFORMATION ON THE APPEAL

Both parties may appeal against this order within 15 days of its service (Art. 73(2)(a), 62 UPC Agreement, R. 220.1(c), 224.2(b) RoP).

INFORMATION ON ENFORCEMENT (ART. 82 UPC Agreement, ART. 37(2) EPGS, R. 118.8, 158.2, 354, 355.4 RoP):

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

Sabine Klepsch Vorsitzende Richterin	SABINE MARIA KLEPSCH Digitally signed by SABINE MARIA KLEPSCH Date: 24 August 2026 14:09:38 +02'00'
Dr. Stefan Schilling rechtlich qualifizierter Richter	STEFAN SCHILLING Digitally signed by STEFAN SCHILLING DN: cn=STEFAN SCHILLING, c=DE,
Thomas Adocker rechtlich qualifizierter Richter und Berichterstatter	Thomas Adocker Digitally signed by Thomas Adocker Date: 24 August 2026 13:27:19 +02'00'
Für den Hilfskanzler	r Digitally signed Ewers Carolin 24 August 2026 14:39:50 +0200 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet