Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf local division
UPC_CFI_307/2025

Decision

of the Court of First Instance of the Unified Patent Court,
issued on 1 September 2026
concerning EP 2 892 442 B1

Claimant:

Aesculap AG, represented by the Executive Board: Dr Jens von Lackum, Andreas Hahn, Prof. Dr Holger Reinecke, Am Aesculap-Platz, 78532 Tuttlingen, Germany

represented by: Miriam Kiefer, Attorney-at-law, Carsten Plaga, Attorney-at-law, Christoph Heringlake, Attorney-at-law, Kather Augenstein Law Firm, Bahnstraße 16, 40212 Düsseldorf, Germany

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supported by: European Patent Attorney and European Patent Litigator Michael Wegerer, Winter Brandl Partnerschaft mbB, Alois-Steinecker-Str. 22, 85354 Freising, Germany

DEFENDANT:

[**1.** **Shanghai Bojin Medical Instrument Co. Ltd.,** represented by its legal representatives, Floor 6, No. 1313, Jiangchang Road, Jingan District, Shanghai, China

represented by: Dr Ralph Nack, Attorney-at-law, Noerr Partnerschaftsgesellschaft mbH, Brienner Straße 28, 80333 Munich, Germany

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2. **Shanghai International Holding Corporation GmbH (Europe),** represented by its legal representative, Mr Liang Jin, Eiffestraße 80, 20537 Hamburg, Germany

represented by: Patent Attorney Philippa Eke, Patent Attorney Douglas Cole, law firm

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[**3.** **Shanghai Bojin Electric Instrument & Device Co., Ltd,** represented by its legal representatives, 6F, No. 1313, Jiangchang Road, Jingan District, Shanghai, China 200072

represented by: Dr Ralph Nack, Attorney-at-law, Noerr Partnerschaftsgesellschaft mbH, Brienner Straße 28, 80333 Munich, Germany

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PATENT AT ISSUE:

EUROPEAN PATENT NO. EP 2 892 442 B1

Panel/Chamber:

Panel 1 of the Düsseldorf local division

JUDGES SEATING ON THE CASE:

This decision was delivered with the participation of Presiding Judge Thomas as Rapporteur, Judge Dr Schumacher (legally qualified judge), Judge Mlakar (legally qualified judge) and Judge Tilmann (technically qualified judge).

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT-MATTER: Action for infringement

ORAL HEARING: 17 June 2026

KEYWORDS: R. 116(3) RoP; long-arm jurisdiction; liability as an intermediary

KEYWORDS: R. 116.3 RoP; long-arm jurisdiction; liability as an intermediary

BRIEF SUMMARY OF THE FACTS:

1. The claimant is bringing proceedings against the defendants for direct and indirect infringement of the European patent EP 2 892 442 B1 (submitted as Annex KAP 6, hereinafter: the patent in dispute).

2. The patent at issue was filed on 26 August 2013 in the language of the proceedings, claiming the priority of DE 10 2012 108 255 dated 5 September 2012. The patent application was published on 13 March 2014. The notice of grant of the patent at issue was published on 17 June 2018. The patent at issue is in force in the Federal Republic of Germany, in France and in the United Kingdom.

3. The claimant filed an opt-out in respect of the patent at issue on 4 August 2023. On 11 March 2025, the claimant declared a withdrawal from the claims, and this withdrawal was entered in the register the following day.

4. The patent at issue is entitled ‘Surgical torque-transmitting instrument including associated tool’. Its claims 1 and 6 are worded as follows:

Claim 1:

'A cutting tool of a surgical torque-transmitting instrument comprising a distal engagement segment (2), followed by a tool shank (4), the proximal end section (6) of which is adapted for torque-transmitting insertion into a tool holder (20) of the instrument, for which purpose the proximal end section (6) is divided into at least one 'torque transmission' functional section (6a) and a 'axial locking' functional section (6b) spaced axially therefrom, wherein the 'axial locking' functional section (6b) is arranged, relative to the engagement segment (2), proximally to the 'torque transmission' functional section (6a) with respect to the engagement segment (2), ordering a further 'insertion aid' functional section, preferably as part of the 'torque transmission' functional section (6a),

characterised in that the 'insertion aid' functional section is arranged axially between the 'torque transmission' (6a) and 'axial locking' (6b) functional sections, preferably in the region of a radial shoulder (6c) between the
'torque transmission' (6a) and 'axial locking' (6b); and that the "torque transmission" functional section (6a) is designed as a double-flange, the two engagement planes (8) of which—opposite one another diametrically—preferably converge wedge-shaped towards the "axial locking" functional section (6b), and the "insertion aid" has a number, preferably four, of wedge-shaped sliding surfaces (10), of which two sliding surfaces (10) on each of the two longitudinal sides of a respective engagement plane (8) are formed at an angle to the latter and thereby break the longitudinal edges of the respective engagement plane (8) at least in some axial sections."

Claim 6:

"A surgical, torque-transmitting instrument comprising a rotatably mounted surgical tool (1) and a tool holder (20) for selectively receiving the tool (1) to secure the tool (1) axially within the tool holder (20) and to transmit torque to the tool (1), **characterised in that** the tool (1) possesses the technical features according to one of claims 1 to 5."

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

6. Figure 4b, shown below, illustrates a preferred embodiment of the invention. It is an enlarged view of the proximal shank end section of a tool according to the invention for a surgical instrument.

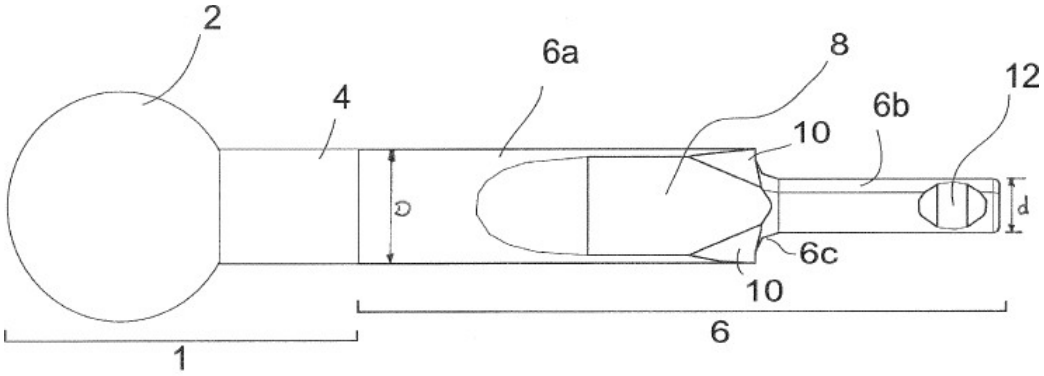
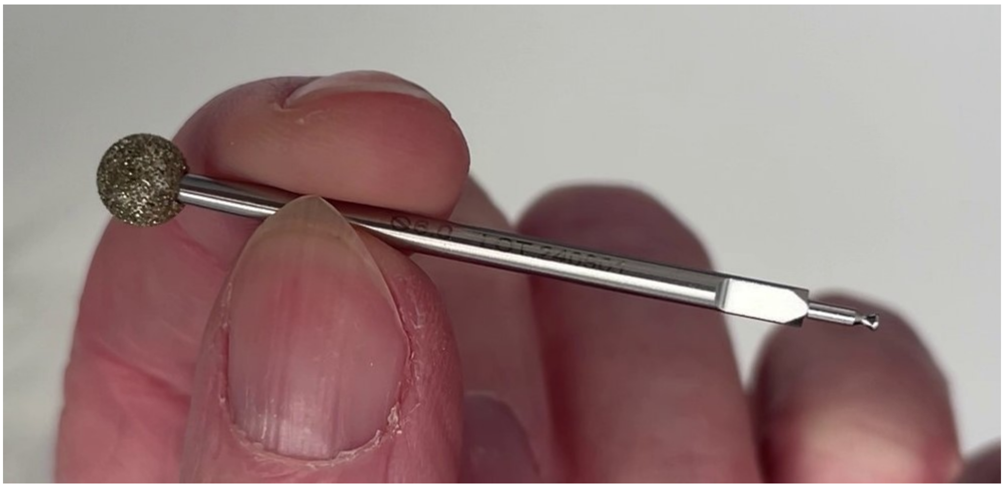


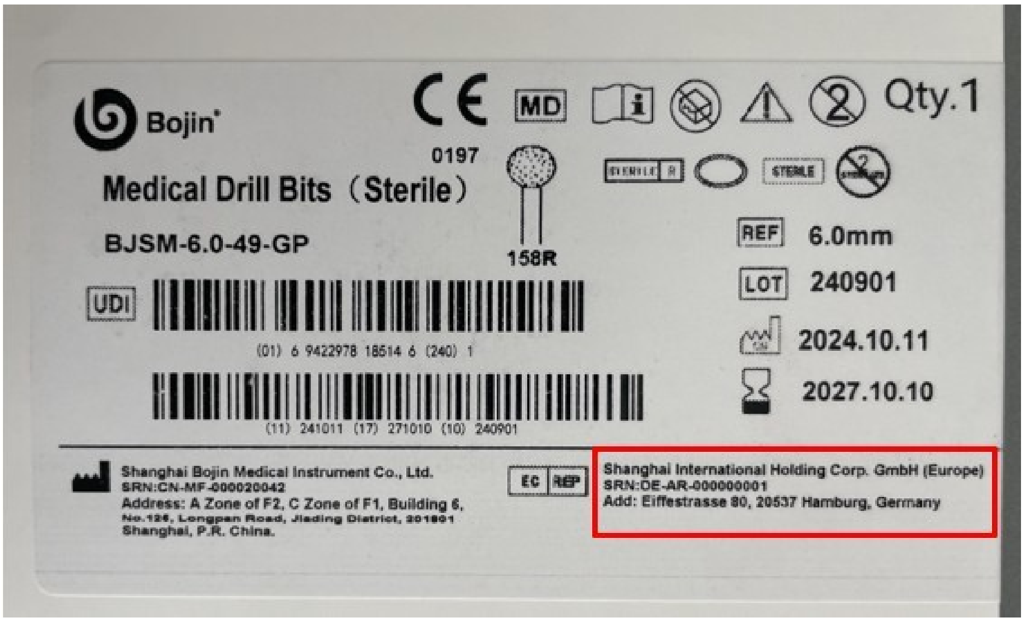
Fig.4b

7. As stated in the accompanying description (see paragraphs [0030] – [0035]), this embodiment of the tool (1) comprises a distal (body-facing) working segment or section, for example a drilling, milling, grinding or polishing head (2), to which a tool shank (4) is attached. This tool shank (4) has a proximal end section (6) for the rotationally secure insertion of the tool (1) into a tool holder (tool lock) of a surgical instrument handpiece or a handpiece shank connected thereto, as well as for the axial securing of the tool holder. To this end, the tool shank (4) is divided in its proximal end section (6) into three functional sections, which are spaced axially apart (in series). The entire tool shank (4) consists of a distal, essentially unprofiled shank section, which adjoins the engagement segment directly, and a proximal shank end section (6) adjoining this, which in turn is divided into a distal section (6a) with a large shaft diameter and an external profile, and a proximal section (6b) with a small shaft diameter. In the region of the radial shoulder (6c), the large-diameter shaft section (6a) is formed with two diametrically opposed engagement surfaces (8) or planes (so-called 'double-flat'), which converge wedge-shaped towards the radial shoulder (6c) and serve to transmit torque to the tool shank (4). On the axial side edges of each engagement surface (8) (in the region of the radial shoulder 6c), additional sliding surfaces or planes are formed, each of which is oriented at an angle to the associated engagement surface (8) and tapers wedge-shaped from an axial central region of each engagement plane side edge towards the radial shoulder (6c). This results in a shank profile in the region of the radial shoulder (6c) comprising six surfaces: the two diametrically opposed engagement planes (8) (two-flat) and, in the circumferential direction on either side of each engagement plane
(8), each of which breaks the corresponding side edge of the respective engagement surface (8) in the region of the radial shoulder and thereby progressively reduces the width of the respective engagement plane (8) in the direction towards the radial shoulder (6c).

8. In its claim, the claimant initially directed its action solely against the supply and distribution of tools manufactured by Shanghai Bojin Medical Instrument Co., Ltd. (hereinafter: Bojin) and, in particular, against the tool 'Bojin Medical Drill Bits (Sterile)' with LOT number 240901, REF 6.0mm (hereinafter: contested embodiment I). Its technical design can be seen from the illustration shown below, taken from the statement of claim (p. 33):

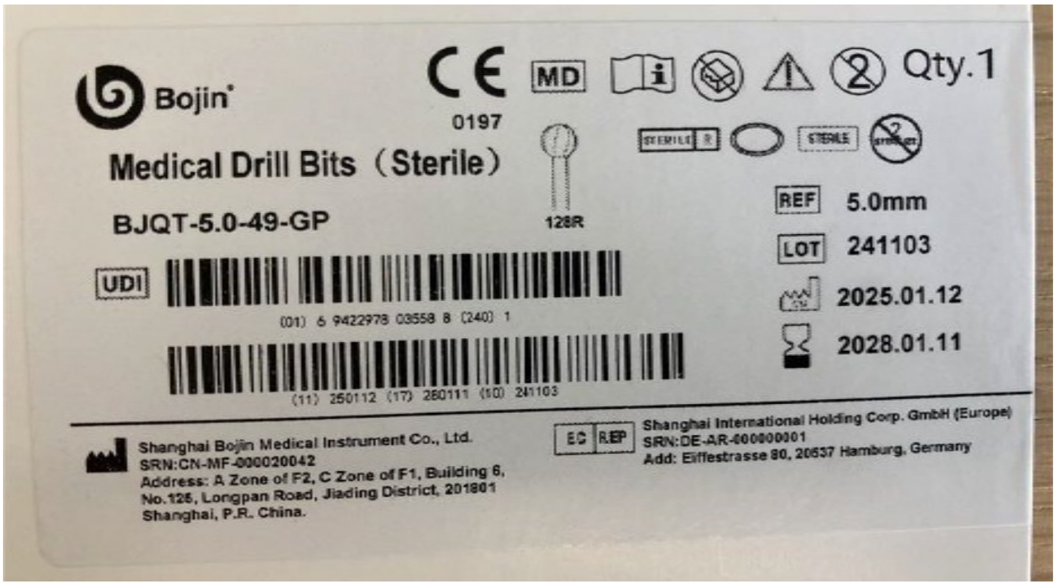


9. Shown below is the reverse side of the packaging for the contested embodiment I. The illustration is also taken from page 33 of the statement of claim, with the highlighting added by the Claimant:



10. In its reply, the Claimant has included in the proceedings a further tool available on the market featuring a so-called rose cutter, which is also a metal-cutting tool (hereinafter: ‘Bojin rose cutter’, contested embodiment II).

11. The ‘Bojin rose cutter’ is labelled on the packaging as ‘Bojin Medical Drill Bits (Sterile)’, BJQT-5.0-49-GP, LOT number 241103, REF 5.0mm:



12. The technical design of the ‘Bojin rose cutter’ can be seen from the illustration below, taken from the replica:

13. In addition, to avoid repetition, reference is made to the entire contents of the file.

KEY PROCEDURAL STEPS:

14. In her claim, the claimant initially brought proceedings against the first and second defendants, alleging that they had infringed the patent at issue with the ‘Bojin diamond cutter’.

15. This action was preceded by an application for provisional measures directed exclusively against the second defendant (UPC_CFI_213/2025). In response to this application, the Düsseldorf local division, by order of 10 July 2025, prohibited Defendant 2 from offering, placing on the market or using the ‘Bojin diamond milling cutter’ – which is also the subject of the present proceedings – in the Federal Republic of Germany and/or in France, and/or from offering or possessing it for these purposes. Furthermore, the Düsseldorf local division ordered the second defendant to hand over the products covered by the injunction to a bailiff for safekeeping until a final decision on the claim for destruction or an amicable settlement is reached, and to provide the Claimant with information. Finally, the Düsseldorf local division ordered the second defendant to reimburse the claimant for provisional costs amounting to EUR 33,335.70. The second defendant did not lodge an appeal against this order.

16. After the first and second defendants had filed their defence to the claim in the form of a document dated 17 July 2025, the claimant, in its reply dated 18 September 2025, extended the claim to include the third defendant and the ‘Boijn-Rosenfräser’.

17. By a document dated 18 November 2025, the representatives of the first and third defendants filed an application for reinstatement to the previous status with regard to the time limit for the Reply and responded to the Claimant's Reply on the merits of the case. At the same time, the first
1 and 3 objected both to the extension of the parties and to the inclusion of the 'Boijn rose cutter' in the present proceedings. The Claimant also opposed the application for reinstatement.

18. Following a proposal by the judge-rapporteur, the parties withdrew their respective objections regarding the extension of the claim and the joinder of parties, as well as the application for reinstatement. Consequently, by order of 19 December 2025, the judge-rapporteur ordered that 'Shanghai Bojin Electric Instrument & Device Co., Ltd, represented by its legal representatives, 6F, No. 1313, Jiangchang Road, Jingan District, Shanghai, China 200072' was joined as a party to the proceedings at the stage at which the proceedings stood at the time of joinder (court order of 4 December 2025). At the same time, the judge-rapporteur ordered that the statement of defence submitted by the third defendant in the present proceedings be taken into account in the same way as the rejoinder of the first and second defendants, whereby the judge-rapporteur regarded the applications for reinstatement as alternative applications for a retroactive extension of the time limit. Furthermore, the judge-rapporteur permitted the extension of the claim to include the 'Boijn rose cutter' in accordance with Rule 263 of the RoP and gave both parties the opportunity to submit final submissions before the conclusion of the written procedure. Both parties availed themselves of this opportunity.

19. No one appeared on behalf of the second defendant at the oral hearing. The representatives of the Claimant and of the first and third defendants unanimously stated at the oral hearing that the parties they represented had in the meantime agreed to settle the proceedings; only the detailed terms remained to be agreed. They therefore requested that a date for the pronouncement of a decision be set as late as possible.

20. By a document dated 18 August 2026, the Claimant informed the court that it and the first and third defendants had settled the proceedings. After the first and third defendants had confirmed this, the Düsseldorf local division, upon the joint application of the aforementioned parties, confirmed the settlement by a decision dated 27 August 2026 and found that the proceedings between the Claimant and the first and third defendants had been concluded, whilst those against the second defendant were to continue.

APPLICATIONS OF THE PARTIES:

21. The claimant's final claim is as follows:

    I. It be declared that the second defendant has infringed European Patent No. 2 892 442 B1.

    II. The second defendant is ordered to refrain from

        1. machining tools of a surgical, torque-transmitting instrument comprising a distal working segment, followed by a tool shank, the proximal end portion of which is adapted for torque-transmitting insertion into a tool holder of the instrument, for which purpose the proximal end portion is subdivided at least into a functional section "torque

transmission' and a 'axial locking' functional section (6b) spaced axially therefrom, the 'axial locking' functional section (6b) is ordered proximally to the 'torque transmission' functional section with respect to the engagement segment, with a further 'insertion aid' functional section, preferably as part of the 'torque transmission' functional section,

in the Federal Republic of Germany, France and the United Kingdom, or to place them on the market or use them, or to import or possess them for these purposes,

in which

the "insertion aid" functional section is arranged axially between the "torque transmission" and "axial locking" functional sections, preferably in the region of a radial shoulder between the "torque transmission" and "axial locking" functional sections; and in that the 'torque transmission' functional section is designed with a double-flange, the two diametrically opposed engagement planes of which converge towards the 'axial locking' functional section, preferably in a wedge-shaped manner, and the 'insertion aid' functional section has a number, preferably four, of wedge-shaped sliding surfaces, of which two sliding surfaces on each of the two longitudinal sides of a respective engagement plane are formed at an angle to that plane and thereby break the longitudinal edges of the respective engagement plane at least in some axial sections;

(direct infringement of device claim 1)

2. Machining tools,

which possess the technical features according to any one of claims 1 to 5

offering, placing on the market or using them in the Federal Republic of Germany, France and the United Kingdom, or importing or possessing them for these purposes,

which are suitable

be used in a surgical, torque-transmitting instrument which comprises a tool holder for selectively receiving the tool in order to secure the tool axially within the tool holder and to transmit torque to the tool.

(indirect infringement of device claim 6)

III. The second defendant is ordered, at its own expense,

1. to recall in writing, at its own expense, the products referred to under No. II.1. and placed on the market since 11 July 2018 from commercial customers, stating that the products have been found by the Unified Patent Court to infringe European Patent 2 892 442 B1, and giving a binding undertaking to do so through the distribution channels, to reimburse any costs and fees, to bear the necessary packaging and transport costs as well as any customs and storage costs associated with the return, and to take the products back into its possession, whereby the Claimant is to be provided with a sample of the recall letters and a list of addressees containing their names and postal addresses or, at the

at the discretion of the second defendant, a copy of all recall letters;

2. to permanently remove the products referred to in Section II.1 from the distribution channels, whereby the following measures in particular must be taken:

   a) Defendant 2 must take all possible and reasonable measures to identify the locations and owners of the products referred to in Section II.1;

   b) insofar as the second defendant itself has legal or actual control over the products referred to in No. II.1, the legally permissible and reasonable measures must be taken to ensure that these products come into the direct possession of the second defendant and remain there;

   c) insofar as the second defendant has neither legal nor actual control over the products referred to in No. II.1. , they must take all legally permissible and reasonable measures to induce the persons who have claims for surrender or destruction against the holders of the power of disposal over the products to assert those claims and/or to assist those persons in asserting those claims;

3. to destroy, at their own expense, the goods referred to in No. II.1. above which are in their direct or indirect possession and/or ownership in the Federal Republic of Germany and/or France and/or the United Kingdom, or, at their discretion, to surrender them to a bailiff to be appointed by the Claimant for the purpose of destruction.

IV. The second defendant is ordered to

1. to provide the Claimant, in electronic form suitable for computerised analysis, with information regarding the products referred to under No. II, set out in a table structured by calendar month and by patent-infringing products, commencing from 11 July 2018, concerning

   a) the origin and distribution channels of the products referred to under No. II, specifying

      − the names and addresses of the manufacturers, suppliers and other previous owners

      − the names and addresses of the commercial purchasers and the points of sale for which the products were intended;

      − the individual quotations, broken down by quantities, dates and prices, as well as model designations and the names and addresses of the commercial recipients of the quotations;

      − the individual deliveries, broken down by delivery quantities, times and prices, as well as model designations and the names and addresses of the customers;

      − the production costs, broken down by individual cost factors, and the profit realised;

- the advertising carried out, broken down by advertising medium, its circulation, print run, circulation period and circulation area;

b) the quantities of the products referred to in No. II., as well as the prices paid for the products in question;

c) the identity of all third parties involved in the manufacture and distribution of the products referred to under No. II;

2. to provide the Claimant with a statement detailing the extent to which it has carried out the acts referred to under No. II since 11 July 2018, by providing, for each month of a calendar year and for each patent-infringing product, the following documents in electronic form that can be analysed using a computer:

a) invoices – or, if these are not available, delivery notes – for the individual deliveries, breaking down the respective deliveries by quantities offered, times of offer, prices of the goods offered and model designations, as well as the names and addresses of the commercial recipients of the offers for all products sold or otherwise disposed of;

b) Evidence of the advertising carried out, including proof of these advertising activities, breaking down the advertising carried out by advertising medium, its reach, the distribution period and the distribution area;

c) Evidence of costs, breaking these down by individual cost factors and the profits realised;

d) Invoices – or, if these are not available, delivery notes – and corresponding statements of account for all costs incurred, on which the second defendant makes an appeal in calculating its profits;

whereby details requiring confidentiality may be redacted from the data subject to disclosure, and

and the accuracy of which shall be verified and confirmed by a chartered accountant appointed by the Claimant at the expense of the second defendant, the chartered accountant being bound to maintain confidentiality towards the Claimant in respect of information beyond that specified above.

V. It is hereby ordered that the second defendant is obliged to

compensate the Claimant for any loss, plus interest, which she has suffered and will suffer in future as a result of the acts referred to in Section II since 11 July 2018.

VI. Defendant 2 is ordered to pay the claimant the sum of EUR 100,000.00 as provisional damages.

VII. The second defendant is ordered to bear the costs and expenses of the proceedings, including those relating to the measures ordered above.

VIII. This order may be enforced as follows:

1. The injunctions set out under Nos. II. (cease and desist), III. (recall/removal/destruction), IV. (disclosure and accounting), VI. (provisional damages) and VII. (costs) shall only be enforceable once the Claimant

   a) has informed the court which part of the orders it intends to enforce,

   b) where necessary, has submitted a certified translation of the orders into the official language of the Member State in which enforcement is to take place, and

   c) once the second defendant has been served with the notice and the (relevant) certified translation;

2. in the event of any breach of the orders set out in II. (injunction) after they have become enforceable in accordance with No. VIII.1., the second defendant shall pay a penalty payment of up to EUR 10,000.00 per instance and/or, in the case of ongoing acts, such as offers on the internet, of up to EUR 30,000.00 per day to the court, with any part of a day counting as a full day.

3. In the event of any breach of and/or failure to comply with any of the orders set out under No. III. (Recall/Removal/Destruction), No. IV. (Provision of Information and Accounts), No. VI. (Provisional Damages) and/or No. VII. (Costs), the second defendant shall pay a penalty payment of up to EUR 30,000.00 per calendar day of delay and/or non-compliance to the court, with any part of a day counting as a full day, following the expiry of a period of 30 days after the order becomes enforceable in accordance with No. VIII.1.

22. In the alternative, in the event that the court considers only a finding against the second defendant as an intermediary under Article 63(1) of the UPC Agreement to be justified, the claimant requests:

I. Defendant 2 is ordered to refrain from

providing services in the Federal Republic of Germany, France and the United Kingdom, in accordance with Article 11 of Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017, for the purpose of offering, placing on the market, using, or importing or possessing for these purposes, in respect of

1. cutting tools of a surgical, torque-transmitting instrument comprising a distal operative segment, followed by a tool shank, the proximal end section of which is adapted for torque-transmitting insertion into a tool holder of the instrument, for which purpose the proximal end section is subdivided at least into a functional section ‘torque transmission’ and a ‘axial locking’ functional section (6b) spaced axially therefrom, the ‘axial locking’ functional section (6b) is ordered proximally to the ‘torque transmission’ functional section relative to the engagement segment, with a further ‘insertion aid’ functional section, preferably as part of the ‘torque transmission’ functional section,

   in which

   the ‘insertion aid’ functional section is positioned axially between the ‘torque transmission’ and ‘axial locking’ functional sections, preferably in the region of a radial shoulder between the ‘torque transmission’ and ‘axial locking’ functional sections; and that the ‘torque transmission’ functional section is designed with a double-flange, the two diametrically opposed engagement planes of which converge towards one another, preferably in a wedge-shaped manner, in the direction of the ‘axial locking’ functional section, and the ‘insertion aid’ functional section has a number, preferably four, of wedge-shaped sliding surfaces, of which two sliding surfaces on each of the two longitudinal sides of a respective engagement plane are formed at an angle to that plane and thereby break the longitudinal edges of the respective engagement plane at least in some axial sections;

(Device claim 1)

2. Machining tools which possess the technical features according to any one of claims 1 to 5

which are suitable

be used in a surgical, torque-transmitting instrument which comprises a tool holder for selectively receiving the tool, for axially securing the tool in the tool holder and for transmitting torque to the tool.

(Apparatus claim 6)

II. The second defendant is ordered to

1. to provide the Claimant, in electronic form suitable for computerised analysis, with information regarding the products referred to under No. I, set out in a table structured by calendar month and by patent-infringing products, commencing from 11 July 2018, concerning

a) the origin and distribution channels of the products referred to under No. I, specifying

- the names and addresses of the manufacturers, suppliers and other previous owners

- the names and addresses of the commercial purchasers and the points of sale for which the products were intended;

- the individual quotations, broken down by quantity,
  - times, prices, model designations and the names and addresses of the commercial recipients of the offers;

- the individual deliveries, broken down by delivery quantities, -times and -prices, as well as model designations and the names and addresses of the customers;

- the production costs, broken down by individual cost factors, and the profit realised;

- the advertising carried out, broken down by advertising medium, its circulation, print run, circulation period and circulation area;

b) the quantities of the products referred to in No. I that have been delivered, received and/or ordered, as well as the prices paid for the products in question;

c) the identity of all third parties involved in the manufacture and distribution of the products referred to under No. I.

III. The second defendant is ordered to bear the costs and expenses of the proceedings, including those arising from the measures ordered above.

IV. The decision may be enforced as follows:

1. The orders set out under No. I (injunction), II (disclosure) and III (costs) shall only be enforceable once the Claimant

a) has notified the court of which part of the orders it intends to enforce,

b) where necessary, has submitted a certified translation of the orders into the official language of the Member State in which enforcement is to take place; and

c) after the second defendant has been served with the notice and the (relevant) certified translation;

2. in the event of any breach of the orders set out in I. (cease and desist) once the orders have become enforceable in accordance with No. IV.1., the second defendant shall pay the court a penalty payment of up to EUR 10,000.00 per instance and/or, in the case of ongoing acts, such as offers on the internet, of up to EUR 30,000.00 per day, with any part of a day counting as a full day.

3. In the event of any breach of and/or failure to comply with any of the orders set out under No. II. (Information) and/or III. (Costs) following the expiry of a period of 30 days after the order became enforceable in accordance with No. IV.1. the second defendant shall pay a penalty payment of up to EUR 30,000.00 per calendar day of delay and/or non-compliance to the court, with any part of a day counting as a full day.

23. With regard to the 'in particular, if' applications formulated by the Claimant in both the principal and alternative applications, reference is made to the Claimant's document of 18 August 2026.

24. The second defendant requests that

that the claim be dismissed in its entirety.

Factual and legal issues in dispute:

25. The claimant considers the offering and sale of the contested embodiments in Germany, France and the United Kingdom to constitute a direct (patent claim

1) and an indirect (patent claim 6) infringement of the patent at issue.

26. In the Claimant's view, the contested embodiments literally utilise all the features of patent claim 1. In particular, they also incorporate a 'two-flange' element within the meaning of the patent at issue. According to the invention, the 'two-flange' element is an essential component of the 'torque transmission'. Within the solution claimed, the primary function of the double-flange is to absorb torque and transmit it into the tool shank. This transfers the torque to the distal engagement element. This function could also be achieved by a double-flange with two engagement surfaces lying parallel and opposite one another. If, as claimed in the invention, the 'two-flat' were to consist of two engagement planes diametrically opposed to one another, the engagement planes would, in other words, each lie on opposite sides of a diameter and face outwards. The terms found in Patent Claim 1 'two-flat' and 'wedge-shaped' are not synonymous. Unlike the two-flat, the wedge shape does not serve to improve torque transmission, but primarily to insert the tool into the tool holder without it jamming.

27. The claimant is of the view that it has sufficiently proved infringement of the patent at issue.

28. In particular, the acts of infringement referred to by the claimant would also constitute an infringement of the patent at issue within the territory of the United Kingdom, if the substantive law applicable there were applied. In this respect, essentially the same criteria would apply as for patent infringement within the territory of the Member States. Consequently, the claimant has demonstrated not only that all the conditions for infringement of the patent at issue in Germany and France are met, but also, in relation to the second defendant, that they are met in the United Kingdom.

29. The second defendant is liable as an EU authorised representative pursuant to Article 11 of Regulation (EU) 2017/745 (Regulation of the European Parliament and of the Council of 5 April 2018 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009, and repealing Council Directives 90/385/EEC and 93/42/EEC (EU) 2017/745, hereinafter: the Medical Devices Regulation) as an infringer within the meaning of Article 25 of the UPC Agreement. Its liability in the context of CE certification, which establishes the right to place the product on the market in Germany and the European market, including the United Kingdom, constituted an infringement within the meaning of Article 25 of the UPC Agreement. In any event, the second defendant was liable as an intermediary within the meaning of Article 63(1), second sentence, of the UPC Agreement.

30. In their statement of defence, the defendants denied that the patent at issue had been infringed.

31. Firstly, Bojin neither manufactures the product referred to by the Claimant as the 'Boijn tool' nor does Bojin sell or export it. The evidence submitted by the Claimant is insufficient, as important details such as the identity of the seller, sales invoices or proof of purchase are missing. The defendants' investigations confirm that no such sales have taken place, which strongly suggests that the product is a counterfeit or that it is unauthorised and therefore not attributable to Bojin.

32. Secondly, the role of the second defendant is limited to that of an EU-authorised representative within the meaning of the Medical Devices Regulation, who is solely responsible for tasks relating to regulatory compliance, such as maintaining the CE marking and carrying out post-market surveillance. The second defendant does not carry out any commercial activities such as the manufacture, import or sale of the contested product and cannot therefore be held liable for infringements.

33. Finally, the claims put forward by the Claimant, ranging from injunctive relief to claims for damages, are disproportionate and are not supported by evidence of harm to the market or ongoing activities within the EU.

34. The claimant contested this.

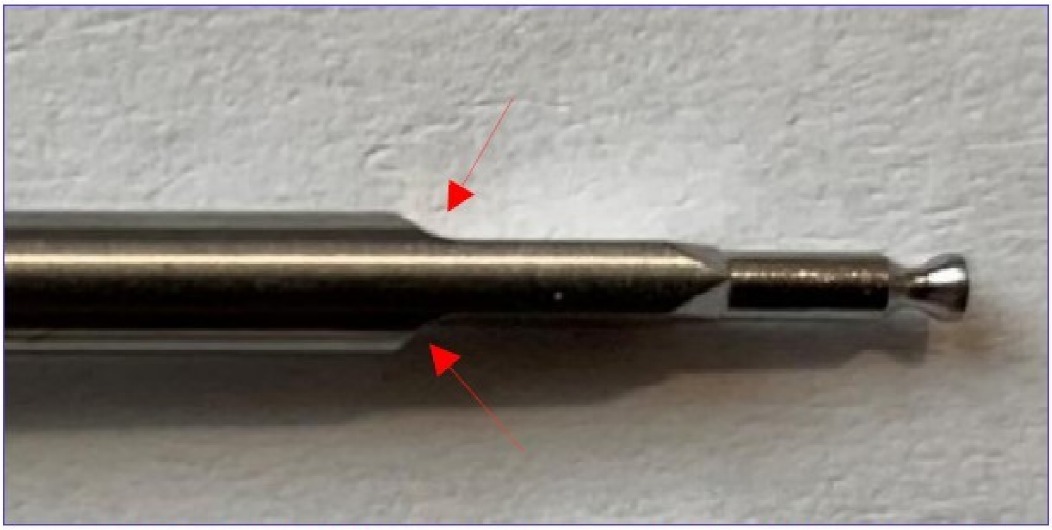
35. With regard to the first defendant, the claimant argued that the latter manufactures the ‘Bojin diamond’ and ‘Bojin rose cutters’ at issue and offers them for sale in the Federal Republic of Germany, imports them and distributes them, whilst knowingly and wilfully conducting the distribution, in whole or in part, through the third defendant It is undisputed that the ‘Bojin diamond cutters’ originate from the German market. It is equally undisputed that the second defendant is correctly identified on the label of the ‘Bojin diamond cutter’ as the authorised EU representative for these products. As evidence of the facts put forward by the claimant, a sample of the packaged ‘Boijn diamond bur’ is submitted, the opening and examination of which are documented in Annexes KAP 10 to KAP 12. The fact that the product originated from a clinic in Germany and from the German market is substantiated by a written witness statement from [redacted] (Exhibit KAP 13).

36. The ‘Bojin rose cutter’ found during further market research also proves that the contested embodiments originated from the first defendant. Furthermore, the ‘Bojin rose cutter label’ identifies Defendant 1 as the manufacturer and Defendant 2 as the EU authorised representative. A further clear indication that the contested embodiments originated from Defendant 1 is the delivery note issued by Defendant 3 (Annex KAP 15). Defendant 3 is subordinate to Defendant 1 within the Bojin Group and is involved in the distribution of the contested products. It therefore stands to reason that the ‘Bojin diamond cutters’ and the ‘Bojin rose cutters’ actually originated from Defendant 1’s production.

37. The defendants did not substantially contest this submission in their statement of defence.

38. It was only in their rejoinder that Defendants 1 and 3 disputed the implementation of the technical teaching protected by patent claim 1, on the grounds that the ‘Bojin diamond milling cutter’ did not contain a double-flat within the meaning of the patent at issue. The convergence of the cutting planes of the double-flute is not an optional feature. Rather, only the described wedge-shaped configuration of the convergence is to be regarded as ‘preferably’ and thus optional. In the ‘Boijn rose cutter’, however, the opposing surfaces run parallel over their entire length and maintain the same distance from one another throughout. There is no convergence or meeting of the surfaces. According to the wording of the claim, the convergence refers only to the course of the actual cutting planes and surfaces. The

surfaces—which, from the user's perspective, are situated distally along the axial axis and are visible as milling grooves in the illustration shown below—are therefore not part of the cutting planes:



Proximaler Abschnitt des Werkzeugschafts des „Bojin Diamantfräsers" (vgl. S. 34 der Klage) mit Kenntlichmachung der Fräskuhlen

Rather, it is these recesses on the tool shank that enable the two opposing surfaces to be formed from the round shank in the first place. A convergence on two planes cannot therefore take place in this section of the tool shank.

39. Since, in the defendant's view, the 'Bojin diamond milling cutter' (embodiment I under consideration) does not infringe any of claims 1 to 5, indirect infringement of patent claim 6 is also ruled out.

40. The same applies to the 'Bojin rose cutter' (contested embodiment II). This, too, does not contain a 'double-flange' whose two diametrically opposed surfaces converge towards the thin shank bearing the circumferential groove. Rather, the opposing surfaces in the proximal section of the tool shank run parallel over their entire length and maintain the same distance from one another throughout.

41. Reference is also made to the parties' pleadings in their entirety.

REASONS FOR THE DECISION:

42. The admissible claim is partially successful on the merits.

I. Absence of the second defendant at the oral hearing

43. The fact that no one appeared on behalf of the second defendant, who had been duly summoned to the hearing, does not preclude a decision on the merits of the case.

44. Pursuant to Rule 116(3) of the RoP, a party not represented at the oral hearing is treated as if it were appealing on the basis of its written submissions (see CoA_907/2025,

Order of 18 June 2026, para. 14 et seq. – Occlutech v Lepu).

45. During the oral hearing, the Chamber drew the claimant's attention to the existing possibility of pronouncing not only a default judgement (see Rule 116(5) of the RoP in conjunction with Rule 355 of the RoP), but also a final judgement, and also indicated its intention to make use of this possibility. Since the claimant did not subsequently indicate that she nevertheless insisted on a default judgment, there is no apparent reason to refrain from delivering a final judgment.

II. Admissibility of the infringement action

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

47. It must be assumed that the UPC has international jurisdiction simply because the second defendant neither lodged a preliminary objection under Rule 19 of the RoP nor raised the issue of jurisdiction in its statement of defence (see UPC_CoA_409/2025, decision of 27 March 2026, Headnote 3 – NUC v Hurom).

48. Apart from that, the UPC's international jurisdiction is in any event established in the present case.

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

50. With regard to the second defendant, international jurisdiction already arises from Article 4(1) of the Brussels Ia Regulation in conjunction with Article 71b(1) of the Brussels Ia Regulation, as the second defendant has its registered office in Hamburg and thus in Germany. Jurisdiction under these provisions is not limited to acts of the second defendant within the UPC territory. The connection to the territory of the UPC is established by the defendant's registered office and not by the place where the defendant's acts took place. It is therefore not necessary to examine the plausibility of any acts of the second defendant in the United Kingdom in order to establish jurisdiction in relation to the United Kingdom as well (UPC_CoA_789/2025 and UPC_CoA_813/2025 of 6 March 2026, para. 12 – Dyson v Dreame; UPC_CoA_312/2025 and UPC_CoA_880/2025, decision of 2 June 2026, para. 294 – Kodak v Fujifilm; UPC_CoA_473/2025, order of 13 July 2026, paras. 337–342 – Fujifilm v. Kodak).

51. Furthermore, the jurisdiction of the Düsseldorf local division is deemed to have been accepted in accordance with Rule 19(7) of the RoP, as none of the defendants has lodged a preliminary objection.

III. Standing to sue

52. As the registered proprietor of the patent at issue, the claimant is entitled, pursuant to Article 47(1) of the UPC Agreement in conjunction with Rule 8(5)(a) and (c) of the RoP, to bring proceedings before the court.

IV. Infringement of the patent at issue

53. The contested embodiments make use of the technical teaching of the patent at issue in accordance with its literal meaning.

54. However, it cannot be established that the second defendant committed the infringing act herself within the meaning of Articles 25(a) and 26 of the UPC Agreement. Nor are the conditions met for the second defendant to be held liable as a co-perpetrator, instigator or accomplice. However, the second defendant is liable as an intermediary.

1. Fulfilment of the claims

55. The ‘Bojin diamond cutter’ and the ‘Bojin rose cutter’ make direct use, in the literal sense, of the technical teaching of the patent at issue as protected by patent claim 1.

a) Relevant person skilled in the art

56. The relevant person skilled in the art is a medical technician with a university degree and several years’ professional experience, particularly in the field of surgical technology. This includes the design of surgical instruments, in particular rotating cutting and drilling tools. The person skilled in the art has experience with biocompatible materials and knowledge of manufacturing technology. Whilst defendant 1 and
3. assumed that, as an alternative to a university degree in medical technology, the person skilled in the art might also have one in mechanical engineering. However, it is not apparent (nor has it been demonstrated by the defendants) how this slightly different definition would lead to a different result; therefore, the above definition is retained.

b) Determination of the scope of protection

57. The invention relates to a surgical instrument for providing torque, as well as a driven tool mounted rotatably in the instrument handpiece or in a handpiece connected thereto, to which the highest possible torque can be transmitted.

58. As the person skilled in the art will gather from the specification of the contested patent, a surgical instrument of this type, and in particular a handpiece of such a surgical instrument, is known, for example, from EP 1 605 837 A1. The known handpiece comprises a sleeve-shaped grip section, to the proximal (body-facing) end of which a cable assembly for power supply can be connected, and to the distal (body-facing) end of which a handpiece shaft is screwed on by means of a union nut (which may be replaceable). The handpiece shaft has an outer and an inner shaft sleeve, which also serves to guide the sliding and rotational movement of a torsion shaft inserted therein. The inner shaft sleeve is divided axially into several sections, between each of which a ball bearing is inserted into the outer shaft sleeve, which supports the torsion shaft against the outer shaft sleeve. A tool, preferably a milling head, is fixed to or formed at the distal end of the torsion shaft (para. [0005]).

59. As the coupling between the tool and the gearbox/torque transmission assembly within the handle section takes place exclusively in the area of the union nut, the tool is a bespoke item specially adapted to the length of this particular handpiece shaft and cannot be used with other handpiece shafts of different lengths. As a suitable tool must therefore be available or kept in stock for each handpiece shaft, such a design principle is costly both to manufacture and to supply (para. [0006]).

60. Figures 1 and 2 of the patent at issue, shown below, depict a longitudinal section of a surgical instrument of this type known from the prior art (including the handpiece, handpiece shaft and tool), whereby Figure 2

shows an enlarged view of the proximal end section of a tool for the surgical instrument shown in Figure 1:

Figure 1:

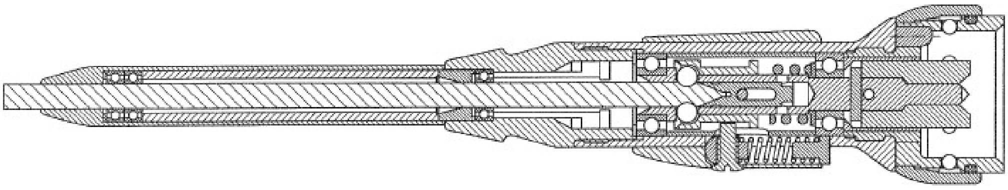
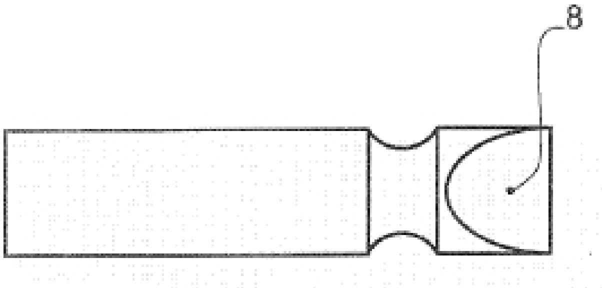


Figure 2:



61. The prior art tool thus comprises a tool shank which protrudes rotatably from the distal end of the instrument/handpiece shank and at the distal end of which a cutting head (not further shown) is formed. At the proximal end of the tool shank, shown in magnification in Figure 2, the known tool shank is tapered in a wedge shape, thereby forming two opposing inclined surfaces for the transmission of torque (corresponding to a so-called ‘double-flat’). At the distal end region of this wedge shape, the tool shank is formed with a circumferential groove which serves as an axial lock (para. [0008]).

62. In accordance with the above-described tool design, the known handpiece is fitted at its distal end with an axially slidable coupling sleeve, via which the instrument/handpiece shank can be coupled to the handpiece in a rotationally fixed manner. Inside the handpiece, in the region of the coupling sleeve, a rotatably mounted receiving tube is provided, which in turn is inserted at its proximal end into a rotary shaft and is secured against rotation there by means of a transverse pin (para. [0009]).

63. At the distal end of the mounting tube, at least two diametrically opposed bores are formed, into which clamping balls are movably inserted. A locking or clamping sleeve is mounted so as to be axially slidable around the outer surface of the mounting tube; in a first axial position, this sleeve releases the clamping balls to allow them to move radially outwards, and in a second axial position, it presses the clamping balls radially inwards. A further slide is provided for manual operation of the clamping sleeve; this is mounted on the outside of the handpiece and connected to the clamping sleeve via a drive pin. It should also be noted that the slide is spring-biased towards the second axial position of the clamping sleeve (para. [0010]).

64. As can also be seen from Figure 1, located inside the mounting tube is a torque-transmitting pin capable of relative axial movement, featuring a distally positioned, axially extending, wedge-shaped notch which can be brought into

. The pin is preloaded distally by a spring and secured against rotation in the receiving tube by a cross-pin (para. [0011]).

65. In accordance with this design, the known tool must be inserted into the distal tip of the handpiece shaft with its tool shank leading, and then moved axially within it towards the receiving tube until the proximal tool shank wedge (Zweiflach) abuts against the clamping balls. The clamping sleeve is now moved axially via the slide to its release position, so that the tool shank wedge displaces the clamping balls radially outwards and can thus move further into the mounting tube until it comes to rest in the notch of the torque transmission pin. If the slide is now released again, the clamping sleeve moves back of its own accord (driven by the preload spring) into its clamping position, in which the clamping balls are pressed radially inwards into the circumferential groove on the tool shank, thereby locking the tool shank axially. In this way, a torque can now be transmitted from the drive shaft via the cross-pin, the mounting tube, the further cross-pin and the torque transmission pin (torque transmission link) to the tool shank (para. [0012]).

66. However, as evidenced by the description of the contested patent, the well-known design described above has certain features that are in need of improvement:

- The described cross-pin connections cause local material weakening at the torque transmission bolt and at the mounting tube, as well as at the drive shaft within the handpiece. Furthermore, the cross-pins are relatively thin and therefore break easily. Overall, the transmissible torque is therefore limited.
- The wedge shape of the tool shank is also not well suited to transmitting high torques, as the axially acting component of the force causes the wedge-shaped section on the tool side to disengage from the notch in the torque-transmitting pin. Furthermore, the receiving tube is likely to spread apart in the area of the notch.
- Finally, the entire coupling mechanism for connecting the tool shank to the gearbox/torque transmission shaft within the instrument handpiece is relocated to the area of the union sleeve, where there may still be sufficient radial space to accommodate the coupling elements. However, this means that the tool shanks must span the entire length of the instrument/handpiece shanks. This means that special tools are required for each handpiece shank.

(see paragraphs [0013] – [0015])

67. In addition, the specification of the contested patent cites US 2011/098688 A1 as a further prior art reference, which discloses a cutting tool of a surgical instrument, namely a saw without torque transmission. According to the description of the contested patent, several passages in the aforementioned publication describe that the tool is secured or locked against radial movement (paragraph [0016]).

68. Furthermore, the description of the contested patent discusses US 2003/0023256 and regards it as the closest prior art, without assessing it in greater detail. Similarly, the description of the contested patent refers to DE 103 11 455 B3 as the technological background to the invention

. It states that the functional sections 'axial locking' and 'torque transmission' are not arranged as described in the invention, but rather in the reverse order (para. [0017]).

69. On this basis, the patent at issue describes the objective of the invention as providing a tool for a surgical, torque-transmitting instrument, as well as a system (surgical instrument) comprising, preferably, an instrument handpiece and at least one (or more) tool(s) in accordance with the invention, with which a higher level of functionality can be achieved in each case. Preferably, the instrument as a whole should be capable of transmitting high torques and, furthermore, should be simple and safe to operate. In addition, the use of universal tools for different (interchangeable) handpiece shafts should make it possible to reduce the manufacturing and supply costs for the system/instrument. Furthermore, one of the objectives of the invention is to improve the jam-free insertion of the tool into the tool holder. The essence of the invention therefore lies in providing a tool which allows the transmission of a higher torque without increasing the radial installation space, thereby creating the basis for the order of a tool holder within the (interchangeable) handpiece of the surgical instrument (paragraph [0018]).

70. To solve this problem, the patent at issue, in accordance with claim 1, claims protection for a cutting tool with the following features:

1. A cutting tool of a surgical, torque-transmitting instrument, comprising

    1.1. a distal engagement segment (2) and

    1.2. a tool shank (4) which adjoins the distal engagement segment (2).

2. The tool shank (4) has a proximal end section (6) which is adapted for torque-transmitting insertion into a tool holder (20) of the instrument,

    2.1. for which the proximal end section (6) is subdivided, at least, into a functional section
    'torque transmission' (6a) and a 'axial locking' functional section (6b).

    2.2. The 'axial locking' functional section (6b) is axially spaced from the 'torque transmission' functional section (6a) and is ordered proximally to the 'torque transmission' functional section (6a) with respect to the engagement segment (2).

    2.3. The 'torque transmission' functional section (6a) is designed with a double-flange.

        2.3.1. The double-flange has two engagement planes (8) diametrically opposed to one another.

            2.3.1.1. The engagement planes (8) each have longitudinal sides and longitudinal edges.

            [2.3.1.2. Preferably, the engagement planes (8) converge wedge-shaped towards the 'axial locking' functional section (6b).]

2.4. (The proximal end section) has a further functional section, the 'insertion aid', which

2.4.1. is provided axially between the 'torque transmission' (6a) and 'axial locking' (6b) functional sections,

[2.4.2. is <u>preferably</u> an integral part of the 'torque transmission' functional section (6a),]

[2.4.3. is preferably provided in the region of a radial shoulder (6c) between the functional sections 'torque transmission' (6a) and 'axial locking' (6b)]

2.4.4. and has a number *[preferably four]* of wedge-shaped sliding surfaces (10),

2.4.4.1. of which two sliding surfaces (10) on each of the two longitudinal sides of a respective engagement plane (8) are formed at an angle to the latter and thereby break the longitudinal edges of the respective engagement plane (8) at least in some axial sections.

71. Furthermore, to solve this problem, the patent at issue, in accordance with the adjacent patent claim 6, also claims protection for a surgical, torque-transmitting instrument having the following features:

I. Surgical torque-transmitting instrument

I. 1. The instrument comprises a rotatably mounted surgical tool and a tool holder.

I.1.1. The tool holder is adapted to selectively receive the tool, to secure the tool axially within the tool holder, and to transmit torque to the tool.

I.2. The tool has the technical features set out in one of claims 1 to 5.

72. Some features of this claim require explanation.

73. 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 must 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 (UPC_CoA_335/2023, Order of 26 February 2024, Headnote 2 and p. 26
f. – 10x Genomics v Nanostring; UPC_CoA_1/2024, Order of 13 May 2024, para. 26 –

VusionGroup v Hanshow; UPC_CoA_182/2024, Order of 25 September 2024, para. 82 – Mammut v Ortovox; UPC_CoA_312/2025 and UPC_CoA_880/2025, decision of 2 June 2026, para. 46 – Kodak v Fujifilm).

74. That being said, according to the invention, the cutting tool comprises a distal engagement segment and a tool shank adjoining the distal engagement segment (feature group 1). In this regard, the invention specifies the engagement segment solely by its distal order and otherwise leaves it to the discretion of a person skilled in the art as to how the engagement segment itself is specifically designed.

75. The tool shank comprises a proximal end section which is adapted for torque-transmitting insertion into a tool holder of the instrument (Feature 2). The invention provides that the proximal end section comprises at least three functional sections, namely a ‘torque transmission’ functional section, an ‘axial locking’ functional section and an ‘insertion aid’ functional section (features 2.1, 2.4). According to the invention, these functional sections are arranged on the proximal end section in a defined order. The ‘axial locking’ functional section is axially spaced from the ‘torque transmission’ functional section and is positioned proximally to the ‘torque transmission’ functional section
‘torque transmission’ (feature 2.2.). The ‘insertion aid’ functional section is provided axially between the ‘torque transmission’ and ‘axial locking’ functional sections (feature 2.4.1.).

76. Starting with the distal engagement segment, the invention therefore specifies the following sequence for the cutting tool:

    1. distal engagement segment;
    2. ‘torque transmission’ functional section;
    3. ‘Insertion aid’ functional section;
    4. ‘Axial locking’ functional section.

77. In terms of conceptual classification, the invention assigns the three functional sections to the tool shank, namely its proximal end section.

78. The specification of the contested patent attributes particular advantages to this order: The provision of a tool, described in paragraph [0021] as the core of the invention, which allows the transmission of a higher torque without increasing the radial installation space and thus creates the basis for the order of a tool holder within the (interchangeable) handpiece shaft of the surgical instrument, is in principle achieved by the fact- the proximal end section of the tool shank, which is prepared for torque-transmitting insertion into the tool holder of the instrument, is subdivided at least into a ‘torque transmission’ functional section and an ‘axial locking’ functional section situated axially downstream of it (independently), with the ‘axial locking’ functional section being ordered proximally to the ‘torque transmission’ functional section. In other words, the ‘torque transmission’ functional section is situated axially between the ‘axial locking’ functional section and the instrument head (which, as a person skilled in the art will understand, refers to the engagement segment mentioned in the claim). Consequently, the ‘axial locking’ functional section is excluded from

the torque flow and can therefore be dimensioned solely for the purpose of axial locking.

79. The proximal end section comprises a ‘axial locking’ functional section. This functional section is defined in the claim solely in terms of its position. It is axially spaced from the ‘torque transmission’ functional section and, in relation to the engagement segment, is ordered proximally to the ‘torque transmission’ functional section (feature 2.2). Furthermore, it follows from a combined reading of features 2 and 2.1 that the division of the proximal end section into at least a ‘torque transmission’ functional section and an ‘axial locking’ functional section serves to prepare the proximal end section for torque-transmitting insertion into a tool holder of the instrument. The claim does not specify a particular physical configuration of the ‘axial locking’ functional section. The claim therefore leaves it to the discretion of a person skilled in the art to determine the means by which axial locking is achieved.

80. Furthermore, the axial locking is only achieved through the interaction of the tool holder with the ‘axial locking’ functional section. However, as the tool holder of the instrument is not the subject matter of claim 1, the significance of the functional section ‘axial locking’ for the person skilled in the art is initially limited to the statement of suitability that this section of the proximal end section is suitable for interacting with a correspondingly adapted tool holder of the instrument to form an axial lock of the tool within the tool holder.

81. However, the person skilled in the art must not lose sight of the fact that patent claim 1 does not relate to a connection of any kind, but to an ‘axial locking’, that is to say, a connection formed by means of a latch, in which a latch provided on one component is typically brought into engagement with a receptacle provided on another component, and this engagement connects the one component to the other component.

82. However, the person skilled in the art does not stop at such an analysis, which is based solely on the wording of the patent claim. Pursuant to Article 69(1), second sentence, of the EPC, the description and the drawings must be taken into account when interpreting the patent claim (see, regarding the applicable principles: UPC_CoA_335/2023, Order of 26 February 2024, paras. 73–79 – 10x Genomics v Nanostring). If, on this basis, the person skilled in the art examines the description of the contested patent, paragraph [0034] describes the formation of notches or pockets (12) (preferably milled) or, alternatively, a circumferential groove as suitable means for contributing to the axial locking of the tool shank (4) within a tool holder. The patent specification, and in particular paragraph [0073], describes locking balls (36) to the person skilled in the art as a locking element that is brought into engagement with the pockets/circumferential groove (12/12a). The balls (36) are pressed inwards by the locking sleeve (46) as a result of the axially acting spring preload and a corresponding conical shape on the inner circumferential surface of the locking sleeve (46), and thus come to rest in the circumferential groove (12a) or the pockets (12) of the tool shank (4). The tool (1) is thus secured axially.

83. The claim leaves open which of the two elements required for locking (latch; receptacle for the latch) is provided in the ‘axial locking’ functional section.

84. To form the ‘axial locking’ functional section at the proximal end section of the

tool shank, it is therefore sufficient, in the view of a person skilled in the art, but at the same time necessary that, in the section so designated, either a latch suitable in principle for engaging with a receptacle of the instrument's tool holder is provided, or a receptacle which is fundamentally suitable for receiving a latch of the instrument's tool holder, whereby locking balls, for example, may be considered as latches.

85. By contrast, a purely axial stop does not provide a 'axial locking' functional section. Such a stop provides neither a latch that is in principle suitable for engaging with a tool holder of the instrument nor a receptacle that would be in principle suitable for accommodating such a latch.

86. The 'torque transmission' functional section is formed by a double-flange having two engagement planes diametrically opposed to one another, each of which has longitudinal sides and longitudinal edges (features 2.3., 2.3.1. and 2.3.1.1.). According to the 'preferably' definition in feature 2.3.1.2, the possible embodiments of a double-flange covered by the claim include those in which the engagement planes converge wedge-shaped towards one another in the direction of the 'axial locking' functional section. However, the claim is not limited to such embodiments of a double-flange and also encompasses, for example, those in which the engagement planes run parallel to one another.

87. For the purpose of providing a double-flange, the claim considers it sufficient for it to have two engagement planes diametrically opposed to one another. The claim does not further specify the relative position of the two engagement planes.

88. When the wording of the claim is assessed by a person skilled in the art, the relative clause 'whose two engagement planes (8), diametrically opposed to one another, preferably converge in a wedge-shaped manner towards "axial locking" (6b)', on the one hand, the specification that the two-surface to which the relative clause refers has two engagement planes (8) diametrically opposed to one another (from 'whose two engagement planes (8) diametrically opposed to one another'), whilst, on the other hand, it merely describes a preferred embodiment in which the engagement planes (8) converge in a wedge-shaped manner towards the 'axial locking' (6b). In this context, it is already apparent to a person skilled in the art from the sentence structure – which places the term 'wedge-shaped' after the term 'preferably' and thus associates the term 'wedge-shaped' with the parts of the sentence to which 'preferably' refers – that the wedge shape is one of the design features of the preferred embodiment, but is not mandatory for the teaching of the invention.

89. By contrast, the view put forward by the first defendant, that the word 'preferably' relates only to the subsequent word 'wedge-shaped' (reply, para. 45) and the conclusion drawn from this—that the optional part covers only the manner in which the two attack surfaces of the double-surface converge towards one another, but not whether they converge at all—is not convincing.

90. Grammatically, a parenthetical insertion is indicated by a comma before and after it. The claimant has correctly pointed out (triplic, para. 45) that the claim in feature 2.4.4 (feature 1.6.3) demonstrates the identification of an optional part of the feature by the placement of commas before and after the optional part, where it states: '… a number, preferably four, of wedge-shaped sliding planes". This constitutes an insertion, and the claim demonstrates here that it applies the use of commas in the case of insertions

as expected. In feature group 2.3.1, however, this type of comma placement does not occur, which already makes it clear that the person skilled in the art does not perceive the phrase 'preferably wedge-shaped' – at least not on the basis of grammatical peculiarities – as a separate phrase inserted into the rest of the text and to be regarded as distinct from it.

91. As the claimant has correctly pointed out (reply, para. 53), the German wording of the claim pursuant to Article 70(1) EPC is decisive. Recourse to the English and French translations of the claims in the patent at issue cannot lead to a different conclusion, at least where – as in this case – the wording of the claims in the relevant language of the proceedings is consistent and clear in itself and – as will be shown below – is consistent with the patent specification.

92. If, on this basis, the person skilled in the art examines the description of the contested patent, they will first note the criticism expressed in paragraph [0014] regarding the wedge-shaped tool shank provided in the prior art. The contested patent specification considers such a design to be unsuitable for transmitting high torques. The patent specification justifies this criticism by referring to the axially acting component of the force, which causes the wedge-shaped portion on the tool side to disengage from the notch in the torque-transmitting pin. The patent specification also criticises the spreading of the receiving tube in the area of the notch, which is caused by the wedge shape. Furthermore, the person skilled in the art recognises the advantage attributed to the preferred embodiment of the invention in paragraph [0035], namely the ability to flatten the wedge-shaped profile of the two engagement surfaces of the embodiment described there, which leads to greater axial expansion on the one hand, but reduces the axial forces during torque transmission. The specification of the contested patent thus links this to the advantageous possibility of being able to reduce the required (radial) installation space for the axial locking mechanism (6b). Finally, in the general part of the description in paragraph [0023], the formulation—also used in claim 1—that the 'torque transmission' functional section is to be formed as a double-flat, whose two engagement planes, diametrically opposed to one another, preferably converge wedge-shaped towards one another in the direction of the 'axial locking' functional section. This presents the person skilled in the art with a coherent picture: the axially acting force component (paragraph [0014]), which is regarded as disadvantageous in the prior art, can be reduced by flattening the wedge shape whilst accepting a greater axial extension; indeed – if, in accordance with paragraph [0023], the wedge shape is regarded merely as a preferred but not mandatory embodiment of the double-flange – to a particular extent in the case of a maximally flattened wedge shape, namely when the two engagement planes (8) run parallel to one another.

93. From the perspective of a person skilled in the art, it does not constitute a contradiction that the patent at issue criticises the wedge shape on account of the axially acting force component, whilst at the same time designating it as a preferred embodiment. This is because paragraph [0023] conveys to the person skilled in the art a disadvantage associated with flattening the wedge shape, as seen from the perspective of the patent at issue: According to the specification of the contested patent, the flattening of the wedge shape leads to a greater axial extension of the contact surfaces. On assessment by the person skilled in the art, the specification of the contested patent therefore aims, with the preferred wedge shape of the double-flat, to avoid an excessive axial extension of the contact surface. At the same time, however, the person skilled in the art also recognises that the invention also envisages embodiments with a maximally flattened shape, namely parallel contact surfaces, for example in installation situations where a large axial extension of the contact surfaces can be achieved.

94. Nor does the expert derive a different understanding from the

(Defendants 1 and 3) (Duplik, para. 57), cited at the end of paragraph [0023], according to which the measures preceding this statement of advantage (‘thereby’) enable essentially jam-free axial insertion into a correspondingly shaped tool holder. This statement of advantage offers no support for the assumption derived from it by Defendants 1 and 3, namely that the convergence of the engagement planes is recognised in this passage as an absolutely essential functional feature. Firstly, the Claimant rightly points out (rejoinder, paragraphs 57 to 61) that paragraph [0023] first describes how the tool shank diameter D in the ‘torque transmission’ functional section is greater than or equal to twice the tool shank diameter d in the ‘axial locking’ functional section, and only subsequently describes that the ‘torque transmission’ functional section is formed by a double-flange, whose two engagement planes, diametrically opposed to one another, preferably converge in a wedge-shaped manner towards the ‘Axial Locking’ functional section, so that the statement of advantage introduced by ‘Thereby’ also relates to the measures described at the beginning of paragraph [0023]. On the other hand, the mere mention of an advantage – particularly when formulated in the ‘may’ form – does not automatically imply, by reverse inference, that a measure bringing about this advantage thereby becomes an absolutely essential functional feature. It is common practice in patent specifications to mention advantages even in relation to optional features; these advantages are realised (in addition) when the optional feature is applied, but are not realised when the optional feature is not applied. The statement of advantage cited at the end of paragraph [0023] is therefore not sufficient to dissuade the person skilled in the art from their understanding of the claimed configuration of the double-flange, which has already been formed on the basis of the wording of the claims and reinforced in other parts of the description.

95. Nor does the statement in paragraph [0008] – according to which the proximal end of the tool shank shown in Figure 2 (enlarged) is tapered in a wedge-shaped manner, thereby forming two opposing inclined surfaces for the transmission of torque, and that this corresponds to a so-called ‘two-flat’ – suggest anything to the contrary. In the mind of a person skilled in the art, this merely confirms that one embodiment of a ‘double-flat’ may be a wedge-shaped, sharpened tool shank end. However, paragraph [0008] is not suitable for conveying to a person skilled in the art that the patent at issue seeks to redefine the term ‘double-flat’ and to have it cover only such specific embodiments. To this end, paragraph [0008] lacks any corresponding wording, which, particularly in view of the other passages in the description that support the more general understanding of the term (where a wedge shape is not strictly necessary), should have been made clear.

96. Should the comment made by Defendants 1 and 2 in their concise statement of defence under
If “VI. Response to Provisional Measure Findings” is to be understood as a reference to the previous interim proceedings UPC_CFI_213/2025 and the arguments put forward therein, this approach would have to be rejected on procedural grounds alone. Pursuant to Rule 24(g) of the RoP, the statement of defence must set out the grounds on which the claim should be dismissed, as well as legal arguments and, where applicable, challenges to the claimant’s interpretation of the patent claim. The general remarks made in the passage referred to above do not satisfy these requirements.

97. Even if the arguments from the interim proceedings were to be taken into account, the first and second defendants have not demonstrated why the court’s findings on this matter are incorrect. It therefore remains the case that nothing else would follow if the term ‘Zweiflach’ were a well-established term for a person skilled in the art and were, for example, understood as

the equivalent of the English term 'dihedron'. The starting point for the person skilled in the art's understanding is the wording of the claim, as it is to be understood in the light of the description ('the patent specification is its own lexicon'), whereby, in the present case, given that the patent at issue was granted in German, the German version of the claim is decisive in cases of doubt. Even if the person skilled in the art were to approach the claim with the understanding of the term 'Zweiflach' asserted by the second defendant, they would recognise, from the wording chosen in the claim itself ('preferably wedge-shaped in the direction of the 'axial locking' functional section (6b)'), that the specification of the contested patent is based on a different interpretation of the term. This is all the more true given that the description – as explained – supports the specific interpretation of the term used in the claim and underpins it with technical effects (axially acting force component; magnitude of the axial extension of the engagement surfaces). Nor is this contradicted by the fact that the specification of the contested patent refers to wedge-shaped objects as 'double-flat' in paragraphs [0008], [0012], [0033] and [0035]. This is because, within the scope of the claims of the patent at issue, a 'Zweiflach' may (and, according to a preferred embodiment, is intended to) be wedge-shaped.

c) Implementation of the features

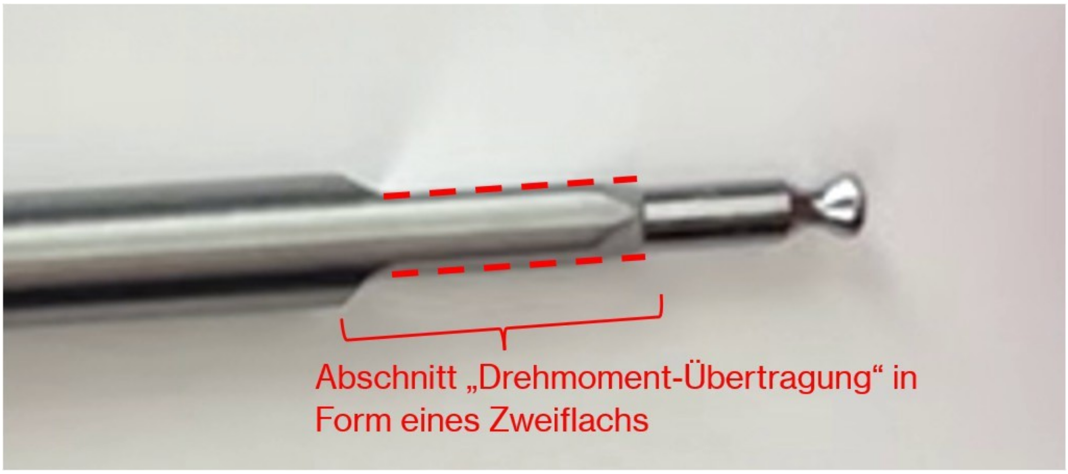
aa) Patent claim 1

98. On the basis of such an understanding, both the 'Bojin diamond cutter' and the 'Bojin rose cutter' make use, in the literal sense, of the technical teaching of patent claim 1.

99. There is rightly no dispute between the parties as to the realisation of feature group 1 and features 2, 2.1, 2.2 and 2.4, so that no further elaboration is required in this respect.

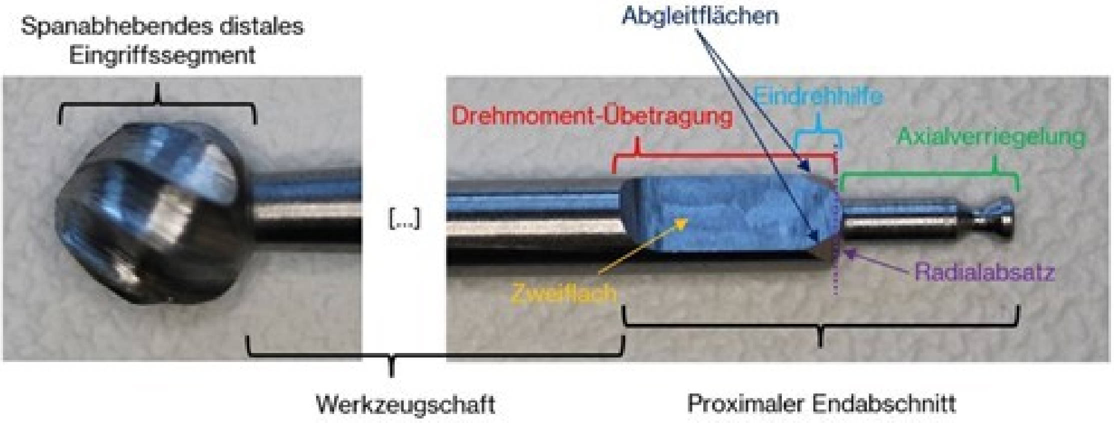
100. Furthermore, in the contested embodiments, the 'torque transmission' functional section is designed as a double-flange, which has two engagement planes (8) diametrically opposed to one another, each of which has longitudinal sides and edges (feature group 2.3.).

101. As the Claimant has argued, uncontested, the 'Bojin diamond grinder' has two contact planes diametrically opposed to one another, namely at the point highlighted by the Claimant in the illustration of the 'Bojin diamond grinder' from page 44 of the statement of claim, reproduced below:



102. In the view of Defendants 1 and 3, these are surfaces arranged parallel to one another (see Duplic, para. 81).

103. As argued by the Claimant (Reply, para. 61), the 'torque transmission' functional section of the Bojin rose cutter is equipped with a double-flute having two contact surfaces diametrically opposed to one another, whereby the contact surfaces each have longitudinal sides and longitudinal edges, namely at the point highlighted by the Claimant in the illustration of the Bojin rose cutter reproduced below from page 22 of the Reply:



104. In the view of Defendants 1 and 3, the opposing surfaces (presumably referring to the surfaces designated by the Claimant as 'engagement planes') in the proximal section of the tool shank are parallel over their entire length and maintain the same distance from one another throughout (Duplicat, para. 120).

105. Since, if the claim is correctly understood, it also encompasses embodiments in which the 'torque transmission' functional section is formed with a double-flute comprising two diametrically opposed, parallel engagement planes (8), this feature is also realised by the 'Bojin diamond grinder' and the 'Bojin rosecutter'.

<u>bb)</u> <u>Patent claim 6</u>

106. Since both the 'Bojin diamond milling cutter' and the 'Bojin rose milling cutter' embody all the features of patent claim 1, the defendants' defence against an indirect infringement of patent claim 6—which is based solely on the failure to embody feature group 2.3 (feature 1.6.2.) cannot succeed in their defence against an indirect infringement of patent claim 6.

<u>2. Liability of the second defendant.</u>

No liability as an infringer

107. Defendant 2 is not liable as an infringer within the meaning of Article 25 of the UPC Agreement for the offering for sale and distribution of the contested embodiments in the relevant contracting member states. However, she may be held liable as an intermediary within the meaning of Article 63(1), second sentence, of the UPC Agreement.

108. The defendant 2 has contested the Claimant's allegation, set out in the statement of defence

of 17 July 2025 (see translation, p. 2, third paragraph, and p. 4, third paragraph). It states therein that its role is limited to that of an authorised representative within the meaning of Article 11 of the Medical Devices Regulation, who is solely responsible for tasks relating to regulatory compliance, such as maintaining the CE marking and carrying out post-market surveillance. The second defendant does not carry out any commercial activities such as the manufacture, import or sale of the alleged product and cannot therefore be held liable for any infringements.

109. Following the submission of the delivery note issued by the third defendant (Annex KAP 15), the claimant did not elaborate further on its arguments regarding import and distribution by the second defendant. In particular, contrary to what would have been required in light of the second defendant's denial, the claimant did not provide any further evidence to support its allegation that the second defendant had imported and distributed the contested embodiment(s) in the relevant Member States. On the contrary, the claimant has now itself submitted documents (Annex KAP 15) which identify the third defendant, but not the second defendant, as the distributor. It cannot therefore be assumed that the second defendant actually, as still alleged by the Claimant in the statement of claim (albeit without an offer of evidence therein), imports products, in particular medical devices, including those of the Shanghai-based Bojin Group and, in particular, of the first defendant, and distributes these internationally, in particular in the Federal Republic of Germany, France and the United Kingdom.

No liability as an accomplice, instigator or accessory

110. It is true that an 'infringer' within the meaning of Article 63 of the UPC Agreement in conjunction with Article 25 of the UPC Agreement may also be a person who does not carry out the acts referred to in Article 25 of the UPC Agreement themselves, but to whom the acts of the principal perpetrator are attributable because they are an instigator, co-perpetrator or accomplice. Such complicity presupposes that the perpetrators of the infringing act cooperate on the basis of a division of labour pursuant to a common plan of action. An accomplice is anyone who supports the acts of use by a third party, even though they were aware of the patent infringement. Awareness of the patent infringement does not, however, require that the accomplice be aware of the circumstances giving rise to the patent infringement. Rather, awareness of the unlawfulness of the act is also required (UPC_CoA_534/2024, decision of 3 October 2025, paras. 180–188 – Philips v Belkin).

111. The CE declaration of conformity issued in favour of the second defendant in respect of the contested embodiments is, undisputedly, a prerequisite for the contested embodiments to be marketed in the European Union and thus also in the relevant Member States. Nevertheless, the existence of such a CE declaration of conformity alone and in and of itself is not sufficient to classify the second defendant, on the basis of the requirements set out above, as at least an accomplice, an accessory or an instigator (UPC_CFI_191/2025 and UPC_CFI_192/2025 (LD Den Haag), Order of 23 May 2025, para. 17.1 – Moderna v Genevant; UPC_CFI_553/2025 (LD Hamburg), Order of 21 October 2025, para. 42 et seq. – Occlutech v Lepu). This constitutes a mere preparatory act for a subsequent patent infringement.

Liability as an intermediary

112. Even if the affixing of the CE marking is to be classified solely as a preparatory act

which, in itself, does not yet fulfil any of the elements of infringement set out in Article 25 of the UPC Agreement, the contested embodiments were already placed on the market in breach of Article 25(a) of the UPC Agreement. The second defendant makes a decisive contribution to this through her appointment as an authorised representative within the meaning of Article 11 of the Medical Devices Regulation. It is therefore liable as an intermediary within the meaning of Article 63(1), second sentence, of the UPC Agreement (comparable to the EU Declaration of Conformity: UPC_CFI_390/2023 (LD Munich), judgment of 13 September 2024, p. 51 – Koninklijke Philips v Edrich et al.).

113. Under Article 63(1), first sentence, of the UPC Agreement, the court may issue an order against intermediaries whose services are used by a third party for the purpose of infringing a patent.

114. Such liability presupposes that the intermediary is in a position to influence the infringement in any way. Article 63(1), second sentence, of the UPC Agreement does not lay down any further conditions for holding an intermediary liable, such as a breach of duties of care.

115. The term ‘intermediary’ (in the English version of the UPC Agreement) is therefore not limited to ‘providers of intermediary services’ within the meaning of Regulation (EU) 2022/2065 (Regulation of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC). What is decisive in the context of Article 63 of the UPC Agreement is that the intermediary does not use the subject-matter of the patent themselves, but merely offers a service which is used to infringe the patent and thereby creates the conditions enabling the infringer to carry out their patent-infringing act (UPC_CFI_390/2023 (LD Munich), judgment of 13 September 2024, p. 47 – Koninklijke Philips v. Edrich et al.; see also Sonntag in Bopp/Kircher/Sonntag, Handbook of European Patent Proceedings, 3rd edition 2025, § 13, para. 114 et seq., on the concept of an intermediary).

116. As the Claimant has correctly argued (see Reply, para. 146 et seq.), an EU authorised representative within the meaning of Article 11 of the Medical Devices Regulation plays an indispensable role in the marketing of medical devices, without which lawful marketing in the EU is not possible, and it is these legal requirements alone that are decisive. The extent to which, or whether, the EU authorised representative fulfils its obligations is irrelevant in this respect (UPC_CFI_387/2025 (LD Hamburg), Order of 14 August 2025, para. 54 – Dyson v Dreame). The EU authorised representative is in a position to render the continued distribution of the products in question unlawful by terminating their services (UPC_CFI_387/2025 (LD Hamburg), order of 14 August 2025, para. 60 – Dyson v. DREAME). Consequently, EU authorised representatives may be ordered to cease and desist as intermediaries pursuant to Article 63(1), second sentence, of the UPC Agreement (see UPC_CFI_387/2025 (LD Hamburg), Order of 14 August 2025, para. 5, para. 131 – Dyson v. Dreame).

117. It is undisputed that the second defendant acts on behalf of the first defendant, which has its registered office outside the European Union, as an EU authorised representative within the meaning of Article 11 of the Medical Devices Regulation. It is only through the CE marking obtained on behalf of the first defendant that the contested embodiments become marketable in the first place. By
2) makes itself available as an authorised representative, it therefore makes a decisive contribution to ensuring that the contested embodiments can be placed on the market in the European Union – and thus also in the relevant Member States – in breach of the law. Nor does the second defendant claim that its appointment as an authorised representative took place against its will. It is therefore liable as an intermediary.

V. Legal consequences

118. With regard to the legal consequences sought, the following applies:

1. Germany and France

a. Injunction

119. With regard to the second defendant as an intermediary, and taking into account the circumstances of the case, the claimant is entitled to an injunction prohibiting the continuation of the infringement pursuant to Article 25(a) and Article 26 of the UPC Agreement in conjunction with Article 63(1), sentences 1 and 2, of the UPC Agreement.

b. Provision of information

120. Furthermore, the claimant is entitled to information from the second defendant pursuant to Article 67(2)(b) of the UPC Agreement in conjunction with Article 67(1) of the UPC Agreement.

c. Threat of coercive measures

121. The threatened penalty payments do not give rise to any concerns.

122. With regard to the injunction, such a threat is based on Article 63(2) of the UPC Agreement. With regard to the obligation to provide information and to transmit data, the threat of a penalty payment is based on Article 82(4), second sentence, of the UPC Agreement in conjunction with
Rule 354(4) of the RoP.

123. The penalty payments sought by the Claimant do not give rise to any concerns from the perspective of proportionality. The threatened penalty payment of up to EUR 100,000 per item or EUR 30,000 per day for the injunction, and of up to EUR 30,000 per day for the provision of information, recall, removal from distribution channels and destruction, gives the Local Chamber the necessary flexibility to take into account, in the event of an infringement, the specific circumstances of the individual case—including the conduct of the infringer—and, on that basis, to set an appropriate penalty payment.

124. Insofar as the claimant, by contrast, has extended its application to include a preliminary ruling on costs, this merely regulates the allocation of costs as the basis for a subsequent cost assessment procedure. By contrast, the preliminary ruling on costs does not oblige the second defendant to take any action or to refrain from any action. On this basis, there is also no reason to threaten the second defendant with a penalty payment in this context.

2. United Kingdom

125. Where the subject matter of the dispute is a European patent in a non-EU state and the Court of First Instance finds that the patent has been infringed and is valid, the procedure to be followed, in accordance with the case-law of the Court of Appeal (UPC_CoA_312/2025, Order of 2 June 2026, para. 308 – Kodak v Fujifilm; UPC_CoA_473/2025, Order of 13 July 2026, para. 358 – Fujifilm v Kodak), the following procedure may be followed:

a. The Court may, where it appears appropriate and in order to avoid undue delay, assume that there is a well-founded, not negligible possibility that the patent will be declared valid by the competent national court, and may issue a decision, including its orders, subject to the condition precedent that the patent is not declared invalid, in whole or in part, in so far as the infringement is based thereon, whether in the proceedings at first instance or in the appeal proceedings having jurisdiction to rule on the action for revocation in respect of such a European patent.

b. If such a competent national court declares the patent to be valid, the decision shall stand. Once the decision has become final, the order shall become definitive.

c. If such a competent national court, at Court of First Instance or on appeal, declares the patent to be invalid, in whole or in part, to the extent that the infringement is based on it, the condition under which the decision, including its orders, was made is not fulfilled and the decision is void.

d. In case (c), the patent proprietor may, within two months of the decision of such a competent national court, file applications with the Court arising from that decision (Rule 118(4) of the RoP), including an application for a stay of proceedings pending a final decision by the competent court.

126. On the basis of these principles, orders extending to the territory of the United Kingdom may therefore be issued in the present case, provided the relevant conditions are met. However, these are subject to the suspensive condition that the patent at issue is not declared invalid, in whole or in part, by the competent national authorities.

127. Pursuant to Article 8 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations, in conjunction with Article 24(2)(a) of the UPCA, the question of whether the part of the patent at issue relating to the United Kingdom is infringed is a question of substantive law to be decided in accordance with the law of the United Kingdom (UPC_CoA_312/2025, Order of 2 June 2026, para. 308 – Kodak v Fujifilm; UPC_CoA_473/2025, Order of 13 July 2026, para. 360 – Fujifilm v Kodak).

128. In this context, the claimant has undisputedly argued that liability of accomplices and participants within the framework of 'joint tortfeasorship' is also recognised there, in accordance with the case-law in Sea Shepherd UK v Fish & Fish Limited (Annex KAP 26, para. 138 et seq.). Accordingly, a person is liable as a contributory tortfeasor if they have assisted another person in committing a tortious act, in accordance with a common intention with that person to commit an act that is unlawful or proves to be unlawful (see the Claimant's document of 18 September 2025, para. 151).

129. The claimant has set out, with reference to UK case-law (see Reply of 18 September 2025, para. 156 et seq. and Annex KAP 28), that under UK law an 'intermediary' may also be ordered to cease and desist, and this submission has remained uncontested. The same

applies to the further submission that, as an EU authorised representative, the second defendant created a necessary prerequisite for the patent-infringing placing on the market of the infringing products within the territory of the United Kingdom (see Reply of 18 September 2025, para. 152).

130. On this basis, the injunction against the second defendant may also extend to the United Kingdom.

131. By contrast, the claimant has failed to demonstrate sufficiently that, under UK law, a position comparable to that of an EU authorised representative within the meaning of Article 11 of the Medical Devices Regulation is also sufficient for classification as a co-perpetrator or, at any rate, as an accomplice and thus as a patent infringer.

132. As the Claimant has set out in detail in its statement of claim (para. 175 et seq.), the concept of patent infringement under UK law is codified in Section 60 of the Patents Act 1977. With regard to product claims, Section 60(1)(a) of that Patents Act provides as follows:

> "60 Meaning of Infringement
>
> (1) Subject to the provisions of this section, a person infringes a patent for an invention if, and only if, whilst the patent is in force, he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say—
>
> (a) where the invention is a product, he manufactures, disposes of, offers to dispose of, uses or imports the product, or keeps it, whether for disposal or otherwise;"

133. And in German translation:

> "60 Definition of infringement
>
> (1) Under the provisions of this section, a person infringes a patent for an invention if, whilst the patent is in force, they carry out in the United Kingdom, in relation to the invention and without the consent of the patent proprietor, any of the following acts, namely –
>
> (a) where the invention relates to a product, manufactures, sells, offers for sale, uses, imports or stocks that product for sale or for any other purpose;"

134. As the Claimant has further submitted, and this is undisputed, the UK courts interpret the prohibition on 'disposing of' to include 'putting on the market' (UK Intellectual Property Office, Manual of Patent Practice, Section 60.14, updated 2 January 2025).

135. The concept of patent infringement is thus comparable to that defined in Article 25 of the UPC Agreement. The claimant has not demonstrated, however, that the concept of an infringer is nevertheless to be interpreted more broadly under UK law and that, in particular, a position comparable to that of an EU authorised representative within the meaning of Article 11 of the Medical Devices Regulation is sufficient in itself for classification as a patent infringer (and not merely as an intermediary). In particular, this cannot be inferred solely from the extract cited by the claimant from a decision of the Court of Appeal of England and Wales in the case of Claxo Wellcome UK

Ltd. & Another v Sandoz Ltd & Another [2017] EWCA Civ 227, where it is stated:

> ‘It is clear from the authorities that if the common design is shared between several parties to a combination, it matters not that some relevant acts are performed only by one or some parties and other relevant acts are performed by others: see Lord Neuberger in Vestergaard Frandsen A/S v Bestnet Europe Ltd [2013] 1 WLR 1556, at paragraph 34, cited by Lord Sumption in Fish & Fish v Sea Shepherd at paragraph 38. Therefore, the fact that Sandoz UK was not involved at the design stage is not in itself a sufficient defence to the allegation of joint liability as regards the other companies. And it seems to me that it is unlikely to be a convincing response to that allegation to say that Sandoz UK was not only not involved at that stage, but that it knew nothing about the matter at the time (as it may well not have done) and only became involved once the decision had been taken to proceed with marketing the product in the UK and to obtain the necessary authorisation for that purpose.”

136. And in German translation:

> “It is clear from the case-law that, where a joint undertaking is carried out by several parties in the context of a collaboration, it is irrelevant that some relevant acts are carried out only by one or some of the parties and other relevant acts by other parties: see Lord Neuberger in Vestergaard Frandsen A/S v Bestnet Europe Ltd [2013] 1 WLR 1556, paragraph 34, cited by Lord Sumption in Fish & Fish v Sea Shepherd, paragraph 38. Therefore, the fact that Sandoz UK was not involved in the development phase is not, in itself, a sufficient response to the allegation of joint liability in relation to the other companies. In my view, it is also not a convincing response to this allegation to say that Sandoz UK was not only not involved at that stage, but also knew nothing of the activities at the time (which is entirely possible) and only became involved once the decision had been taken to market the product in the UK and to obtain the necessary authorisations.”

137. The judgment recognises joint and several liability amongst several parties involved, for which it is not necessary for a party to have participated in all acts of infringement. By contrast, no mention is made of whether a person who does not themselves commit an act of infringement and merely acts as an intermediary can also be regarded as an infringer.

138. If the second defendant is liable solely as an intermediary, then – based on the Claimant’s submissions regarding UK law – no further orders beyond the injunction (which, according to the Claimant’s uncontested submissions, is possible) can be considered. Even the Claimant does not allege that, under UK law, an intermediary is also liable to provide information. On the basis of the claimant’s submissions, which have remained uncontested, the order requiring the provision of information is linked to a patent infringement (see Section 61(1), (2) of the Patents Act 1977). With regard to the liability of intermediaries, however, the claimant has confined its submission to the argument that, under UK law, injunctions are possible against intermediaries (see document of 18 September 2025, para. 156). The Chamber was therefore able to issue such an order against the second defendant. However, based on the claimant’s submissions, there is no scope for ordering further measures in relation to the United Kingdom.

VI. Decision on costs

139. Pursuant to Article 69(1) of the UPC Agreement in conjunction with Rule 118(5) of the RoP, a decision on costs must be

be made.

140. As the claimant has only partially prevailed against the second defendant, it appears justified, having regard to the extent of the success and failure, to order both parties to bear half of the costs of the proceedings.

VII. Security

141. Pursuant to Article 82(2) of the UPC Agreement, Rule 118(8), second sentence, and Rule 352.1 of the RoP, the court may make any order or measure it is required to make subject to the provision of security. However, the second defendant has not put forward any circumstances that might give rise to such a requirement.

VIII. Reimbursement ceiling

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

IX. No stay of proceedings

143. The reference to the Court of Justice of the European Union made by order of the Court of Appeal dated 6 March 2026 (UPC_CFI_789/2025 and UPC_CFI_813/2025, Dyson v Dreame) does not give rise to any grounds for a stay of the present proceedings.

144. Apart from the fact that neither party has applied for such a stay, the Chamber, in exercising the discretion granted to it under Rule 295(m) of the RoP, considers it neither appropriate nor necessary to stay the present proceedings and to await the decision of the Court of Justice of the European Union. Nor is a stay justified under Rule 295(i) of the RoP in conjunction with Rule 266(5) of the RoP.

145. It is true that it is to be expected that, on the basis of Question 4 of the order for reference, the Court of Justice of the European Union will also examine in greater detail the requirements for liability as an intermediary, including the issue raised by the Court of Appeal as to whether the mere creation of the legal conditions for a service is sufficient for this, or whether further, actual conduct is required.

146. However, the relevant question referred by the Court of Appeal is formulated exclusively to determine whether Article 9(1)(a) of Directive 2004/48/EC (Directive of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, hereinafter: the Enforcement Directive) or any other provision of EU law precludes a ruling by a national or Union court to the effect that an interim injunction aimed at preventing or prohibiting the infringement of a patent by a third party through the placing on the market of products covered by Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety (hereinafter: 'Product Safety Regulation') and Regulation (EU) 2019/1020 of the European Parliament and of the Council

of 20 June 2019 on market surveillance and the conformity of products (hereinafter: the Market Surveillance Regulation) apply, may be issued against an authorised representative who performs the tasks laid down in those Regulations on behalf of the third party (emphasis added).

147. The referral by the Court of Appeal was thus made in the context of summary proceedings and not, as in the present case, in proceedings on the merits, in which Article 9(1)(a) of the Enforcement Directive is in any event of no direct relevance. Rather, the question referred is also explicitly limited to the aforementioned Regulations.

148. In light of the above considerations, the second defendant is liable by virtue of its status as an EU authorised representative within the meaning of Article 11 of the Medical Devices Regulation.

149. Given the wording of the Court of Appeal's reference, which is limited to the Product Safety and Market Surveillance Regulations, it is not to be expected – or at any rate not likely – that the Court of Justice of the European Union will also address issues of liability under the Medical Devices Regulation. It remains to be seen whether concrete conclusions regarding the interpretation and understanding of the Medical Devices Regulation can be drawn from the answer to the question concerning the Product Safety and Market Surveillance Regulation; at the very least, it is not so likely that it would be justified to stay the present proceedings and thereby prevent the Claimant from enforcing her rights for an extended period.

Decision:

I. The second defendant is ordered to refrain from

providing services in accordance with Article 11 of Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 in the Federal Republic of Germany, in France and in the United Kingdom for the purpose of offering, placing on the market, using, or importing or possessing for these purposes, in respect of

1. Cutting tools of a surgical, torque-transmitting instrument comprising a distal working segment, followed by a tool shank, the proximal end section of which is adapted for torque-transmitting insertion into a tool holder of the instrument, for which purpose the proximal end section is divided into at least one ‘torque transmission’ functional section and a ‘axial locking’ functional section (6b) spaced axially therefrom, wherein the ‘axial locking’ functional section (6b) is ordered proximally to the ‘torque transmission’ functional section with respect to the engagement segment, with a further ‘insertion aid’ functional section, preferably as part of the ‘torque transmission’ functional section,

   in which

   the ‘insertion aid’ functional section is positioned axially between the ‘torque transmission’ and ‘axial locking’ functional sections, preferably in the region of a radial shoulder between the functional sections,
   ‘torque transmission’ and ‘axial locking’; and that the ‘torque transmission’ functional section is designed with a double-flat, the two engagement planes of which—opposite one another diametrically—preferably converge wedge-shaped towards the ‘axial locking’ functional section, and the ‘insertion aid’ functional section has a number, preferably four, of wedge-shaped sliding planes, of which two sliding surfaces on each of the two longitudinal sides of a respective engagement plane are formed at an angle to that plane and thereby break the longitudinal edges of the respective engagement plane at least in some axial sections;

   (Device claim 1)

2. Machining tools which possess the technical features according to any one of claims 1 to 5

   which are suitable

be used in a surgical, torque-transmitting instrument which comprises a tool holder for the selective the tool for axially securing the tool in the tool holder and for transmitting torque to the tool,

(Apparatus claim 6)

whereby the decision and the orders relating to the United Kingdom are issued subject to the condition precedent that the part of the patent at issue relating to the United Kingdom is not declared invalid, either in whole or in part.

II. The second defendant is ordered to provide the Claimant, in electronic form suitable for computer analysis, with a statement structured by calendar month and by patent-infringing products, from
11 July 2018, in a format that can be analysed by computer, in a table structured by calendar month and by patent-infringing products,

1. the origin and distribution channels of the products referred to under No. I, specifying

   - the names and addresses of the manufacturers, suppliers and other previous owners

   - the names and addresses of the commercial customers and the points of sale for which the products were intended;

   - the individual offers, broken down by quantity offered, - times, prices, model designations and the names and addresses of the commercial recipients of the offers;

   - the individual deliveries, broken down by delivery quantities, -times and -prices, as well as model designations and the names and addresses of the customers;

   - the production costs, broken down by individual cost factors, and the profit realised;

   - the advertising carried out, broken down by advertising medium, its circulation, print run, circulation period and circulation area;

2. the quantities of the products referred to in No. I., as well as the prices paid for the products in question;

3. the identity of all third parties involved in the manufacture and distribution of the products referred to under No. I,

whilst the obligation to provide information does not extend to the United Kingdom.

III. The second defendant is ordered to

1. in the event of any breach of the order set out in paragraph I. (omission) after the order has become enforceable in accordance with Section VII, to pay the court a penalty payment of up to EUR 10,000 per item and/or, in the case of ongoing acts, such as offers on the internet, of up to EUR 30,000 per day, with any part of a day counting as a full day;

2. in the event of any breach of the order set out in Section II. (Provision of information) after the expiry of a period of 30 days following the order becoming enforceable in accordance with No. IV.1., a penalty payment of up to EUR 30,000 per calendar day of delay and/or non-compliance shall be paid to the court, with any part of a day counting as a full day.

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

V. The costs of the proceedings shall be borne equally by the Claimant and the second defendant.

VI. The upper limit for recoverable costs is set at EUR 112,000.

VII. The orders set out under sections I. (Injunction) and II. (Disclosure) shall only be enforceable once the Claimant

1. has notified the court of which part of the orders it intends to enforce,

2. where necessary, has submitted a certified translation of the orders into the official language of the Member State in which enforcement is to take place, and

3. after the second defendant has been served with the notice and the (relevant) certified translation.

Düsseldorf, 1 September 2026 NAMES
AND SIGNATURES

Presiding Judge Thomas	Digitally signed Thomas Ronny 28 August 2026 07:52:45 +0200 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
Legally qualified judge Dr Schumacher	Digitally signed Schumacher Jule Kathrin 28 August 2026 08:05:32 +0200 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
Legally qualified judge Mlakar	MOJCA MLAKAR Digitally signed MOJCA MLAKAR Date: 28 August 2026 09:50:06 +02'00'
Technically qualified judge Tilmann	Digitally signed Tilmann Max Wilhelm 28 August 2026 08:14:06 +0200 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
On behalf of the Deputy-Registrar	LAURA CHANTAL DANIEL Digitally signed by LAURA CHANTAL DANIEL Date: 28 August 2026 10:13:44 +02'00'

INFORMATION ON APPEALS:

Any party whose applications have been rejected in whole or in part may lodge an appeal against this decision with the Court of Appeal within two months of the decision being served (Article 73(1) of the UPC Agreement, Rule 220(1)(a) and Rule 224(1)(a) of the RoP).

Information on enforcement (Article 82 UPC Agreement, Article 37(2) EPGS, Rule 118(8), 158(2), 354,
355(4) RoP):

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

This decision was pronounced in open court on 1 September 2026. Presiding Judge
Thomas

Digitally signed
Thomas Ronny
1 September 2026 09:01:07 +0200
Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet