

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 28 September 2026
concerning an application for late-filing objection (R. 9.2, 36 and 336 RoP)

APPLICANT AND APPELLANT (AND CLAIMANT AND COUNTERCLAIM-DEFENDANT BEFORE THE COURT OF FIRST INSTANCE)

Emboline Inc., Santa Cruz, United States

(hereinafter ‘Emboline’)

represented by Dr. Thure Schubert, attorney at law, and other attorneys at law of the law firms Vossius & Partner Patentanwälte Rechtsanwälte mbB, Munich, Germany and KIPA AB, Helsingborg, Sweden

RESPONDENT (AND DEFENDANT AND COUNTERCLAIMANT BEFORE THE COURT OF FIRST INSTANCE)

AorticLab srl, Samone, Italy

(hereinafter ‘AorticLab’)

represented by Sabine Agé, attorney at law of Hoyng Rokh Monegier, Paris, France, and other attorneys at law of the law firm André Roland, Lausanne, Switzerland

PATENT AT ISSUE

EP 2 129 425

PANEL AND DECIDING JUDGES

Panel 2

Rian Kalden, presiding judge and judge-rapporteur

Patricia Rombach, legally qualified judge

Ingeborg Simonsson, legally qualified judge

Renaud Fulconis, technically qualified judge

Max Tilmann, technically qualified judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

Decision of the Local Division Munich issued on 13 January 2026 in the infringement proceedings
UPC_CFI_628/2024

POINT AT ISSUE

Clarification of a conditional counterclaim for revocation

LANGUAGE OF THE PROCEEDINGS

REASONS

1. On 16 September 2026, Emboline filed a generic procedural application in relation to a late-filing objection or, alternatively, a request to introduce new evidence and for exchange of further written pleadings pursuant to R. 9.2, 36 and 336 RoP.

2. Emboline requests that

Exhibit HRM 26, the written witness statement of Prof. Marco De Carlo, as well as paragraphs 101 – 120 in the Statement of response of the appeal proceedings dated 17 August 2026 (UPC_CoA_40/2026), which relate to the allegations of Prof. Marco De Carlo, are disregarded as late-filed evidence;

in the alternative, should the Court not disregard this new evidence as late-filed,

Emboline is granted leave to file a further written submission in the appeal proceedings (UPC_CoA_40/2026), limited to responding to this new evidence and related pleadings referred to above, within a time limit of two (2) months from service of the Court of Appeal's corresponding order.

3. Emboline shall have the opportunity to comment on Exhibit HRM 26 and the Statement of response at the oral hearing, including, should it wish to do so, to further clarify which part or parts of that exhibit and the Statement of response should be disregarded and why.
4. The Court does not allow further pleadings or submission of exhibits at this stage.
5. Accordingly, the written procedure shall be closed.
6. The judge-rapporteur considers that no interim conference shall be held (239.1 RoP).

ORDER

- I. The Court of Appeal dismisses Emboline's request and does not allow further pleadings or evidence at this stage of the proceedings.
- II. The judge-rapporteur intends to close the written procedure on 29 September 2026. An interim conference will not be held.

Issued on 28 September 2026

Date:
2026.09.28

Rian Kalden 16:27:05

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Rian Kalden, presiding judge and judge-rapporteur

Patricia Ursula
Rombach

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Unified Patent Court
Einheitliches Patentgericht
Jurisdiction unifiée du brevet

Max Tilman, technically qualified judge