



Düsseldorf local division
UPC_CFI_307/2025

Order
of the Court of First Instance of the Unified Patent Court
issued on 16 October 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

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PATENT AT ISSUE:

EUROPEAN PATENT NO. EP 2 892 442 B1

Panel/Division:

Panel 1 of the Düsseldorf local division JUDGES SEATING ON

THE CASE:

This order was made with the participation of Presiding Judge Thomas as judge-rapporteur, Dr Schumacher, a legally qualified judge, Ms Mlakar, a legally qualified judge, and Mr Tilmann, a technically qualified judge.

SUBJECT: Rule 353 of the RoP – Application for rectification of a decision

BRIEF SUMMARY OF THE FACTS AND APPLICATIONS:

1. In infringement proceedings, including a corresponding counterclaim for nullity between the parties, the Düsseldorf local division delivered a decision on 1 September 2026.
2. By a document dated 29 September 2026, the claimant requested that
 - I. the operative part under I. of the decision of the Düsseldorf local division dated 1 September 2026, file reference UPC_CFI_307/2025, be corrected as follows:

The second defendant is ordered to refrain from

provide 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 purposes of offering, placing on the market, using, or importing or possessing for those purposes, in respect of

1. [...]
2. [...]

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

- II. Paragraph 125(a) of the grounds of the decision is to be corrected as follows:

The Court may, where it appears appropriate and in order to avoid undue delay, assume that there is a well-founded and non-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 **suspensive** condition 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 on appeal having jurisdiction to rule on the action for revocation in respect of such a European patent.

III. Paragraph 126 of the grounds for the decision is to be corrected as follows:

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

3. In support of its applications for rectification, the claimant argued that it was clear from both the operative part and the grounds of the decision that the order under point I was to be issued subject to a condition subsequent. Accordingly, the injunction was to be declared invalid if the part of the patent at issue relating to the United Kingdom were to be declared invalid in whole or in part.
4. The rectification now sought is consistent 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 aforementioned decisions, in accordance with the wording of Rule 118.2(a) of the RoP, refer to the term ‘under the condition subsequent’, which is to be translated as ‘resolatory condition’.
5. The second defendant did not make use of the opportunity to submit comments granted to it by the court.

REASONS FOR THE ORDER:

6. Pursuant to Rule 353 of the RoP, the court may, by order issued of its own motion or upon application by a party—which must be made within one month of service of the decision or order to be corrected—correct clerical errors, calculation errors and manifest errors in the decision or order after hearing the parties.

Admissibility of the application for correction

7. The Claimant’s application for correction is admissible. It was lodged by the Claimant on 29 September 2026 and thus within one month of service of the decision against which the application is directed.

Lack of merits of the application

8. However, the application for rectification is unsuccessful on the merits. The decision of the Düsseldorf Local Division of 1 September 2026 contains neither clerical or calculation errors nor any other errors that would require rectification.

9. The passages referred to by the Claimant accurately reflect the Chamber's understanding and intention. In particular, the relevant statements are not based on a mere translation error.
10. Even if the term 'condition subsequent' – which, in the present case, may be assumed in the Claimant's favour – were to be translated as 'resolutive condition' in its own right, the overall context of the Court of Appeal's decisions must be borne in mind. It states (in part):

'Where it concerns either EU/LC EPs (in view of Article 24(4) of Br I bis and Article 22(4) of the LC) or non-EU/LC EPs (in view of comity):

*a. the Court may [...] issue a decision including its orders subject to the condition subsequent that the patent is **not held to be wholly or partially invalid** to the extent that the infringement is based thereon in first-instance or appeal proceedings before the national court competent to hear the revocation case in relation to such an EP (R. 118.2 RoP and Solvay v Honeywell (C-616/10) mutatis mutandis).*"

(Emphasis added; see UPC_CoA_312/2025, decision of 2 June 2026, Headnote 18 and para. 308a – Kodak v Fujifilm; UPC_CoA_473/2025, decision of 13 July 2026, para. 358 – Fujifilm v Kodak)

11. On this basis, it cannot be inferred from the decisions of the Court of Appeal that the decision is subject to the resolutive condition that the patent be declared wholly or partly invalid at a later date. Rather, the condition defined by the Court of Appeal is that the patent is not declared wholly or partly invalid ('not held to be ... invalid', emphasis added). The isolated amendment sought by the claimant, changing the term 'suspensive' to 'resolutive', would therefore have the effect that the orders made against the second defendant in respect of the United Kingdom would be subject to the resolutive condition that the patent is not declared invalid in whole or in part (emphasis added).
12. Whether this is correct and consistent with the cited decisions of the Court of Appeal does not, in any event, require a final decision in the present correction proceedings. These proceedings serve solely to correct clerical or calculation errors or other mistakes. None of these cases applies in the present instance.

ORDER:

The claimant's application for rectification dated 29 September 2026 is dismissed.

Düsseldorf, 16 October 2026
NAMES AND SIGNATURES

Presiding Judge Thomas	
Legally qualified judge Dr Schumacher	
Legally qualified judge Mlakar	
Technically qualified judge Tilmann	