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Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf local division
UPC_CFI_47/2025
UPC_CFI_68/2025

Decision
of the Court of First Instance of the Unified Patent Court, delivered on 22 October 2026 concerning EP 3 281 569 B1

HEADNOTES:

1. The applications introduced for the first time during the interim proceedings in the infringement action, based on the scope of the patent at issue within the framework of the alternative applications and the associated submissions, are not admissible.

2. Where dependent claims or amended claim formulations form the subject-matter of alternative claims, it must be possible to adapt the infringement action accordingly. However, the Claimant must make use of this option at the same time as asserting the amendments to the patent at issue.

3. Unless the claimant substantiates that, in the case of multiple cross-references, it intends to defend all cross-referenced claims in combination, the validity assessment in respect of such cross-references is based solely on the main claim. Unless it is substantiated which specific combinations of claims are considered to be valid, the validity assessment in the case of multiple cross-references shall cover all combinations covered by the wording of the dependent claim. If any of the combinations covered proves to be invalid, the dependent claim as a whole is invalid.

KEYWORDS:

Filing of the application; auxiliary claims; sub-claims; combinations; validity; granted patent

HEADNOTES:

1. The claims introduced for the first time during the interim proceedings in the infringement action, based on the scope of the patent in dispute within the framework of the auxiliary requests and the related submission of facts, are not admissible.

2. Where dependent claims or amended claim formulations form the subject-matter of auxiliary requests, it must be possible to amend the infringement action accordingly. However, the Claimant must make use of this option at the same time as introducing

amendments to the patent in dispute.

3. Unless the Claimant submits a substantiated argument that, in the case of multiple cross-references, it wishes to defend all cross-referenced claims in combination, the examination of the validity of the patent in dispute is based solely on the main claim. Unless it is substantiated which specific combinations of claims are considered to be valid, the validity assessment in the case of multiple cross-references shall cover all combinations covered by the wording of the dependent claim. If a single one of the combinations covered proves to be invalid, the dependent claim as a whole is invalid.

KEYWORDS:

Request; Auxiliary requests; sub-claims; combinations; validity; granted patent

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Claimant:

CUP&CINO Kaffeesystem-Vertrieb GmbH & Co. KG, legally represented by its general partner, Paderborner Straße 33, 33161 Hövelhof, Germany

represented by: Dr Martin Wirtz, Attorney-at-law; Dr Michael Rüberg, Attorney-at-law; Boehmert & Boehmert Anwaltspartnerschaft mBB, Jägerhofstraße 21, 40479 Düsseldorf, Germany

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DEFENDANT:

ALPINA Coffee Systems GmbH, Tiroler Straße 32, 6322 Kirchbichl, Austria

represented by: Markus Gangl, Patent Attorney and European Patent Litigator, Wilhelm-Greil-Straße 16, 6020 Innsbruck, Austria,

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PATENT AT ISSUE:

European Patent No. EP 3 281 569

Panel/CHAMBER:

Panel 2 of the Düsseldorf local division

JUDGES SEATING ON THE CASE:

The decision was delivered with the participation of the presiding judge, Dr Thom, as judge-rapporteur, the legally qualified judge Dr Rinken, the legally qualified judge Kupecz and the technically qualified judge Dr Parrini.

LANGUAGE OF THE PROCEEDINGS: German

SUBJECT MATTER: Action for infringement and counterclaim for annulment

ORAL HEARING: 18 July 2026

BRIEF SUMMARY OF THE FACTS:

1. The claimant is the proprietor of European patent 3 281 569 (Annex A 14, hereinafter the

publication of the grant of the patent by the European Patent Office took place on 4 July 2018. The patent at issue is in force. Preliminary objections before the EPO, initiated on 4 April 2019, were discontinued by the EPO on 3 March 2022 following the withdrawal of the preliminary objection in the meantime.

2. The patent at issue relates to a modular foam unit.

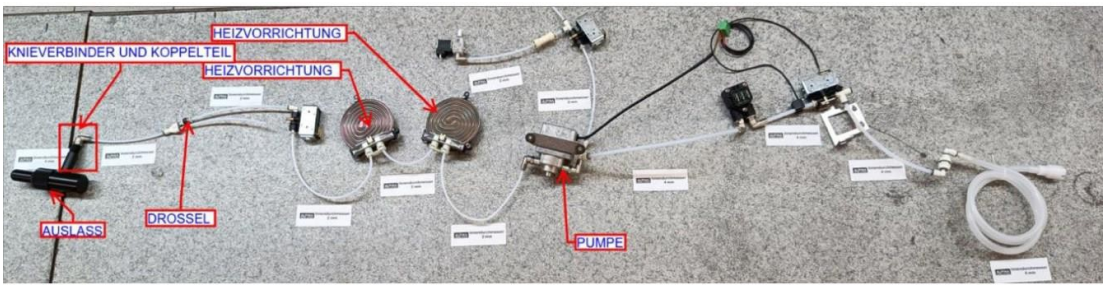
3. Claim 1 reads as follows:

> 1.
>
> Apparatus (10) for foaming a liquid, comprising:
>
> - at least one storage tank (12, 14) in which the liquid to be foamed is stored,
> - a pump (18),
> - a piping system comprising at least a first pipe (16), via which the at least one storage tank (12, 14) is connected to the pump (18), and a second pipe (22), via which the pump (18) can be connected to at least one outlet nozzle (24),
> - an air-enrichment element (26), by means of which the liquid can be aerated, and
> - a heating element (32) designed as a flow-through
>
> heater, characterised in that
>
> a single second pipe (22) is provided, and that the heating element (32) is designed as a thick-film heater, wherein an electrical heating resistor is applied to a carrier on the heating element (32), on which a flow path for the liquid is provided.

Reference is made to the patent at issue for the wording of claims 2 to 13.

4. The defendant is a manufacturer of coffee and espresso machines based in Austria and markets these in numerous countries. Among other products, it markets a milk frother with the model designation ALPINA Latte Perfetto Duo (hereinafter: the contested embodiment) in Germany. The claimant acquired a specimen via a test purchase in Germany.

5. The components of the contested embodiment, taken from the statement of defence and labelled by the defendant, are shown below. The contested embodiment has two heating devices.



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

APPLICATIONS OF THE PARTIES:

7. Action for infringement

The claimant requests that

1. a declaration that the defendant has infringed claims 1 [*in the alternative, as set out in auxiliary claims 1, 3, 5, 7, 9, 11, 13 and/or 15],* 2, 3, 4, 5, 8, 9, 12 and/or 13, in particular by manufacturing, offering for sale, placing on the market, importing and possessing products for these purposes;

2. to prohibit the defendant from, in the territories of Austria, Germany, Denmark, France, Italy and the Netherlands

   i. devices in accordance with claim 1 of EP 3 281 569 B1, namely devices (10) for foaming liquid, comprising at least one storage tank (12, 14) in which the liquid to be foamed is stored, a pump (18), a pipe system with at least one first pipe (16) via which the at least one storage tank (12, 14) is connected to the pump (18), and a second pipe (22) via which the pump (18) can be connected to at least one outlet nozzle (24), an air-enrichment element (26) by means of which the liquid can be mixed with air, and a heating element designed as a flow-through heater (32) [*alternatively (in the case of an equivalent infringement): comprising two heating components*], characterised in that a single second pipe (22) is provided, and in that the heating element (32) is designed as a thick-film heater, wherein on the heating element (32) [alternatively (in the event of an equivalent infringement: on at least one heating component of the heating element (32)] an electrical heating resistor is applied to a carrier on which a flow path for the liquid is provided,

   and/or

   ii. devices according to claim 2 of EP 3 281 569 B1, and thus devices (10) according to claim 1 [*alternatively (in the case of equivalent infringement): whereby the term 'a heating element' is to be modified in accordance with the provisions of point 2. i.]* of EP 3 281 569 B1, comprising a housing (36) for accommodating the device
   (10) with terminals which provide electrical contact and a connection to a control unit (34), and with feed-throughs for the cables (16, 22) of the cabling system*,*

   and/or

   iii. devices according to claim 3 of EP 3 281 569 B1, namely devices (10) according to one of claims 1 to 2 [alternatively (*in the case of equivalent infringement): whereby the term 'a heating element' is to be modified in accordance with the provisions of point 2. i.*] of EP 3 281 569 B1, characterised in that the

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foaming liquid is milk or a milk substitute*;* and/or

iv. devices according to claim 4 of EP 3 281 569 B1, namely devices according to any one of claims 1 to 3 of EP 3 281 569 B1 [alternatively (*in the event of equivalent infringement): whereby the term 'a heating element' is to be modified in accordance with the provisions of point 2. i.*], wherein the device (10) is receivable in a cooling device (40);

and/or

v. devices according to claim 5 of EP 3 281 569 B1, namely devices (10) according to claim 4 of EP 3 281 569 B1, [*in the alternative (in the event of equivalent infringement): wherein the term 'a heating element' is to be modified in accordance with the provisions of point 2. i.*] wherein the device (10) is receivable in a module unit (38), which is insertable into the cooling device (40) and in which the at least one storage vessel (12, 14) is housed;

and/or

vi. Devices according to claim 8 of EP 3 281 569 B1, namely devices (10) according to any one of claims 1 to 7 [alternatively (*in the case of equivalent infringement): whereby the term 'a heating element' is to be modified in accordance with the provisions of point 2. i.*] of EP 3 281 569 B1, characterised in that cold foam is produced when the heating element (32) is switched off;

and/or

vii. devices according to claim 9 of EP 3 281 569 B1, namely devices (10) according to any one of claims 1 to 7 [alternatively (*in the event of equivalent infringement): wherein the term 'a heating element' is to be modified in accordance with the provisions set out in point 2. i.*], of EP 3 281 569 B1, characterised in that warm foam is produced when the heating element (32) is switched on;

and/or

viii. devices according to claim 12 of EP 3 281 569 B1, namely devices (10) as per claim 11 [alternatively (*in the event of equivalent infringement): whereby the term 'a heating element' is to be modified in accordance with the provisions under point 2. i.*] of EP 3 281 569 B1, characterised in that the pipe system, the pump (18), the air-enrichment element (26) and the heating element (32) are flushed by means of the flushing solution pumped through the circuit;

and/or

ix. devices according to claim 13 of EP 3 281 569 B1, namely devices (10) according to any one of claims 1 to 12 [alternatively (*in the case of equivalent infringement): wherein the term 'a heating element' is to be interpreted in accordance with the guidelines under point 2. i.* of EP 3 281 569 B1], characterised in that a conductivity sensor (48) is

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[alternatively (in the event of a limitation of the patent at issue in accordance with the auxiliary claims set out below):

x. Devices according to claim 1 of EP 3 281 569 B1 as amended by auxiliary claim 1, namely devices (10) for foaming liquid, comprising at least one storage tank (12, 14) in which the liquid to be foamed is stored, a pump (18), a pipework system comprising at least one first pipe (16), via which the at least one storage tank (12, 14) is connected to the pump (18), and a second pipe (22) via which the pump (18) can be connected to at least one outlet nozzle (24), an air-enrichment element (26) by means of which the liquid can be mixed with air, and a heating element designed as a flow-through heater (32) [*alternatively (in the event of an equivalent infringement): comprising two heating components*], wherein a single second pipe (22) is provided, and wherein the heating element (32) is designed as a thick-film heater, wherein on the heating element (32) [*alternatively (in the event of an equivalent infringement): on at least one heating component of the heating element (32)]* an electrical heating resistor is applied to a carrier on which a flow path for the liquid is provided, characterised in ***that the air enrichment element (26) is a proportional valve with a nozzle, whereby air is preferably drawn in intermittently or in pulses,***

and/or […]

With regard to the further alternative claims, reference is made to the plaintiff's Annexes AG 22 clean and AG 23.

3. The defendant is to pay a penalty payment of up to €3,000 for each individual instance and each day of infringement of point 2;

4. the defendant is ordered, within a period of 3 months following service of the notice within the meaning of Rule 118(8), first sentence, of the RoP and, where applicable, the certified translation, to destroy at its own expense all infringing products in its direct or indirect possession and/or ownership, as referred to in paragraph 2 above, in its direct or indirect possession and/or ownership, at its own expense, and to provide the Claimant with evidence of such destruction or, at its discretion, to hand them over to a bailiff to be appointed by the Claimant for the purpose of destruction; this also applies to such infringing products which, as a result of a recall, have been returned to the defendant's control;

5. to declare that the defendant is, in substance, obliged to compensate the Claimant for any loss or damage it has suffered or will suffer in the future as a result of the acts referred to in paragraph 2 since 4 July 2018;

6. The defendant is to pay the claimant provisional damages in the amount of EUR 50,000, or, alternatively, at least an amount corresponding to the anticipated costs of the proceedings to determine the amount of damages.

7. The defendant shall, within 30 days of service of the notice
within the meaning of Rule 118(8), first sentence, of the RoP and, where applicable,
the certified translation, provide information on the extent to which it has since 4 July

, in the form of a breakdown, structured by month of the calendar year and by infringing product, of the following information:

a) the origin and distribution channels of the infringing products,

b) the quantities delivered, received or ordered, and the prices paid for the infringing goods,

c) the identity of all third parties involved in the manufacture or distribution of the infringing products,

d) the number and dates of the products offered,

e) the advertising carried out, broken down by advertising medium, its reach, the period of distribution and the distribution area; including evidence of these advertising activities,

f) the costs, broken down by cost components, and the profits made,

whereby, as evidence of the information provided, copies of the relevant purchase documents (namely invoices, or alternatively delivery notes) must be submitted, with details requiring confidentiality being redacted from the data subject to the obligation to provide information and disclosure.

8. The defendant must, within 30 days of service of the notice within the meaning of Rule 118 (8), first sentence, of the RoP and, where applicable, the certified translation at its own expense, to recall in writing the products referred to in paragraph 2, which have been placed on the market since 4 July 2018, from commercial customers, referring to the patent-infringing status of the products as judicially established by the Unified Patent Court and giving a binding undertaking to to reimburse any fees paid, 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, whereby the Claimant is to be provided with a specimen of the recall letters and a list of addressees containing their names and postal addresses or – at the defendant's discretion – a copy of all recall letters.

9. The defendant shall bear the costs of the infringement proceedings.

The defendant requests that

1. that the claim be dismissed in its entirety,

2. that the claimant shall reimburse the defendant for the costs of legal representation and the proceedings,

3. in the alternative: that the enforcement of the judgment, in the event of even a partial success on the part of the Claimant, be made conditional upon the Claimant providing security in favour of the defendant in the form of a deposit in an amount

the amount of which is left to the court's discretion, or to provide a written, irrevocable, unconditional and open-ended guarantee from a credit institution authorised to conduct business within the territory of a Member State of the European Union for the amount determined by the court.

8. Counterclaim

The defendant requests that

that European Patent EP 3 281 569 B1 be declared invalid in its entirety for Austria, Germany, Denmark, France, Italy and the Netherlands.

The claimant requests that

1. that the action for revocation be dismissed,

2. that the defendant bear the costs of the counterclaim.

9. Amendments

The claimant requests

that the patent at issue be upheld to the extent of auxiliary claims 1 to 16 only if none of the granted sub-claims is legally valid,

whereby the set of claims of auxiliary claim 1 is worded as follows:

1. Apparatus (10) for foaming a liquid, comprising:

- at least one storage tank (12, 14) in which the liquid to be foamed is stored,

- a pump (18),

- a piping system comprising at least a first pipe (16), via which the at least one storage tank (12, 14) is connected to the pump (18), and a second pipe (22), via which the pump (18) can be connected to at least one outlet nozzle (24),

- an air-enrichment element (26), by means of which the liquid can be aerated, and

- a heating element (32) designed as a flow-through heater, wherein a single second pipe (22) is provided, and wherein the heating element (32) is designed as a thick-film heater, wherein an electrical heating resistor is mounted on a carrier on the heating element (32), on which a flow path for the liquid is provided,

characterised in that

the air-enrichment element (26) is a proportional valve with a nozzle, whereby

air is preferably drawn in intermittently or in pulses.

2. Apparatus (10) according to claim 1, comprising a housing (36) for accommodating the apparatus (10), with connections which provide electrical contact and a link to a control unit (34), and with feed-throughs for the lines (16, 22) of the line system.

3. A device (10) according to any one of claims 1 to 2, characterised in that the liquid to be frothed is milk or a milk substitute.

4. A device according to any one of claims 1 to 3, wherein the device (10) is adapted to be housed in a cooling unit (40).

5. Apparatus (10) according to claim 4, wherein the apparatus (10) is accommodated in a modular unit
(38) which can be inserted into the cooling unit (40) and in which the at least one storage container (12, 14) is housed.

6. Device (10) according to claim 4, characterised in that a coupling module is provided on the cooling unit (40) for connecting a control unit
(34) to the device (10) and for establishing electrical contact with the device (10).

7. Apparatus (10) according to any one of claims 4 to 6, characterised in that the cooling device (40) is an accessory to a beverage dispenser, preferably a coffee machine, and most preferably a fully automatic coffee machine.

8. Device (10) according to any one of claims 1 to 7, characterised in that cold foam is produced when the heating element (32) is switched off.

9. Apparatus (10) according to any one of claims 1 to 7, characterised in that hot foam is produced when the heating element (32) is switched on.

10. A device (10) according to any one of claims 5 to 9, characterised in that a container (42) filled with a rinsing solution can be accommodated within the module unit (38).

11. Apparatus (10) according to claim 10, characterised in that the apparatus
(10) can be connected to the container (42) for the flushing solution via the at least one first line (16).

12. Apparatus (10) according to claim 11, characterised in that the pipe system, the pump (18), the air enrichment element (26) and the heating element (32) are flushed by means of the flushing solution pumped through the circuit.

13. Apparatus (10) according to any one of claims 1 to 12, characterised in that a conductivity sensor (48) is provided for determining the conductivity of a liquid present in the pipe system.

With regard to the remaining subsidiary claims, reference is made to the Claimant's Annexes A 25-1 to 25-16.

The defendant opposes the amendments.

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10. On 28 April 2026, the judge-rapporteur issued an order in the interim proceedings requiring a supplementary statement on the interpretation and specific challenges to the legal basis, as well as a clear organisation and limitation of the alternative claims and a supplement to the claim for an injunction based on equivalence. In a document dated 15 May 2026, the Claimant, in addition to amending the application for an injunction on the basis of equivalence and providing a clearer presentation of the alternative claims, also made various amendments to the remaining applications; in particular, it based applications for an injunction on the infringement of the alternative claims for the first time. The claimant has focused its further submissions regarding the alternative claims on alternative claims 1, 3, 5, 7, 9, 11, 13 and 15. The defendant seeks an order for costs
against the Claimant in respect of the alternative claims 2, 4, 6, 8, 10, 12, 14 and 16.

FACTUAL AND LEGAL ISSUES IN DISPUTE:

Interpretation

A heating element

11. The claimant argues that, as the patent at issue refers in various places to 'warm' and 'hot' foam and to 'warming' and 'heating', the person skilled in the art would know that this can only be achieved in two ways: firstly, by using a single heating element and controlling it to warm or heat the liquid to at least two different levels (warm, hot), or, secondly, the use of more than one heating element and the warming/heating of the liquid by switching the respective heating elements on and off, whereby, for example, a first heating element is switched on to produce warm foam and a first and a second heating element are switched on to produce hot foam. Since the patent at issue mentions in its description both the control of a heating element and the heating of a liquid by simply switching a heating element on and off, the person skilled in the art would therefore necessarily infer both of the above-mentioned options from the patent at issue.

12. Since the patent at issue heats various liquids, the person skilled in the art would know that these different liquids have different properties with regard to foaming and would therefore, insofar as the patent at issue does not explicitly advise against it – as in the case of the 'single second line' – naturally design the components involved in the foaming process, or select their number, in such a way that precisely this variety of liquids can be foamed.

13. The preferred thick-film heater is space-saving in design and does not give off much residual heat. This functionality therefore does not necessarily point to a specific component. In contrast to the 'single second line', the claim in connection with the heating element refers only to a single heating element. Where numerical exclusivity was intended, the Claimant would have written 'only'.

14. A thick-film heater need not necessarily consist of a single monolithic component. A series connection of two thick-film heaters within the same second line could be understood as a

Hucke-Pack order mounted axially one above the other remains considerably more compact in its overall design than the alternative solutions to be used for comparison, such as die-cast aluminium heating blocks or a boiler.

15. The claimant is of the view that the defendant's argument regarding thermal inertia is physically incorrect: the decisive factor for the unintended heating of the downstream fluid is the thermal energy stored in the heating element, which results from the thermal mass of the heating element, whereby the number of heating components is irrelevant in this context. Under the same conditions, doubling the heating surface area would result in a doubled heat flux and an accelerated dissipation of residual heat. If a heating output is distributed across two thick-film strips or sections, the thermal mass is divided between the two components and the total does not increase. Due to the design of a thick-film heating system, the amount of heat required to raise the temperature of the heating element is small.

16. The defendant contends that claim 1 provides for only one heating element, whereby the article 'a' is to be understood as
'a single one' (a numeral). Otherwise, in line with the claim features, it would have stated 'at least one heating element'. The drawings and description show only one heating element.

17. From a functional perspective, the heating element should retain virtually no residual heat. If the residual heat were dissipated by the flowing liquid, that liquid would be unintentionally heated. This effect would be less pronounced with a single heating element.

18. Furthermore, the requirement for a single heating element is inextricably linked to the requirement for a single second conduit. The function of this conduit (the conveyance of either cold or hot milk foam) would not be fulfilled if more than one heating element were ordered within it.

19. A device with several heating elements is, by its very design, less compact than a device with a single heating element. The task defined by the patent in dispute is based on the number and thermal mass of the components, not on the nominal heating power per component. The interpretation that two thick-film heaters connected in series nevertheless constitute a single heating element is ruled out, because designating two thermal masses as a single unit would result in double the thermal inertia and therefore fail to fulfil the objective.

<u>Pipe system, first and second pipes</u>

20. The claimant argues that a pipework system comprising a first and second pipe may include further pipes, whereas a single pipe, by definition, cannot include any further pipes.

21. The defendant contends that it is of no technical significance whether an order comprising various components connected by a cable is described as a single cable or as a cable system comprising a first and a second cable. What is decisive, it argues, is the routing of the cables.

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Thick-film heating

22. The claimant submits that paragraph [0017] of the patent at issue explains how the heating element must be constructed on the basis of thick-film technology.

23. The defendant takes the view that a thick-film heater is a heating element in which an electrical heating resistor is applied to a carrier substrate as a ‘thick film’ (as opposed to a thin film, for example following vapour deposition).

Carrier/flow path on the carrier

24. According to the defendant, the claim of the contested patent does not require that the carrier itself form the flow path; rather, it is sufficient that a flow path be provided on the carrier, e.g. by means of a labyrinth disc, a machined groove or a flow guide surrounding the carrier substrate.

Instantaneous water heater

25. The defendant argues that the person skilled in the art would not infer any specific design from the term. Instantaneous water heaters could be implemented as thermoblock, thick-film or heat-exchanger types.

No specified order of components

26. According to the claimant, the consequence of the lack of a specific claim is that the person skilled in the art would order the components as shown in the description. Therefore, the pump must be positioned behind the air enrichment element.

Action for infringement

27. The claimant is of the view that the contested embodiment makes use of the teaching of claim 1.

28. Even if a narrower interpretation were adopted, the contested embodiment would in any event infringe the patent at issue by way of equivalence.

29. The defendant contends that the contested embodiment does not infringe the patent at issue because it provides for two heating devices which are physically independent, each forming a self-contained and separate structure, and do not constitute a structural or thermal unit. Both are functionally connected in series and exhibit an elevated residual thermal mass after being switched off. Equivalent infringement is also ruled out.

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Legal consequences of the infringement claim:

Amended applications

30. The claimant takes the view that its amendments to the claims set out in the statement of claim of 15 May 2026 should be allowed under Rule 263(3) of the RoP, or in any event under Rules 263(1) and 2 of the RoP.

31. The defendant contends that the alternative claims submitted should be considered only in relation to the counterclaim for nullity, but not in relation to the infringement action. Furthermore, the defendant requests that alternative claims 9 to 12 not be admitted. The alternative claim of infringement in relation to alternative claims 1, 3, 5, 7, 9, 11, 13 and 15 should likewise not be admitted, as it was raised for the first time after the conclusion of the written procedure and outside the scope of Rule 30.1 of the RoP.

Provisional damages

32. The claimant submits that, in view of the information provided by the defendant in one of the parallel proceedings already decided, the infringer's profit in respect of the contested embodiment amounts to more than EUR 500,000.00. Provided that this amount in dispute is taken as the basis for the proceedings to determine the amount of damages and the expected costs on the claimant's side amount to EUR 59,000.00, the claimant has applied for an amount that covers the minimum amount almost in full. The EUR 50,000.00 corresponds to approximately 10 per cent of the defendant's minimum infringer's profit.

33. The defendant argues that provisional damages have already been awarded in respect of the contested embodiment, so there is no justification for claiming a further EUR 50,000.00. The quantification is said to be belated. The claimant is seeking the same amount in the parallel proceedings CFI_52/2025, which are still pending, so that, in any event, a set-off must be applied, as the case again concerns the same contested embodiment. The same applies to the proceedings already decided, in which EUR 4,000.00 had already been awarded as provisional damages. In any event, the defendant did not act negligently. It had no knowledge of the matter prior to 2024 and, on the basis of a negative provisional opinion from the EPO, had rightly assumed that the contested patent would not stand.

Issues in dispute regarding the counterclaim and the application for amendment

34. The claimant takes the view that all the granted claims of the patent at issue are legally valid.

35. The defendant contends that the patent at issue is wholly invalid. It argues that the patent has been impermissibly extended, as the application disclosed only a single heating element.

36. Furthermore, the patent at issue is not novel in relation to the prior art documents WO 2017/155400 (Exhibit E; hereinafter 'WO 400'), product information FTH mkII (Exhibit F; hereinafter 'Product Info FTH mkII'), WO 2017/155403 A1 (Exhibit C; hereinafter: WO 403), WO 2017/155401 A1 (Exhibit D; hereinafter: WO 401), EP 1 593 330 B1 (Exhibit A; hereinafter: EP 330), EP 3 069 640 A1 (Annex B; hereinafter: EP 640) and EP 2 881 020 A1 (Annex V).

37. Furthermore, the subject-matter of claim 1 would be obvious to a person skilled in the art from a combination of the documents EP 2 042 063 A1 (Annex G) and EP 2 583 036

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B1 (Annex H), or from EP 2 042 063 A1 and one of the other documents (EP 299 146 A2, WO 2008 150 172 A1, WO 2009 012 904 A2), which disclose instantaneous water heaters using thick-film technology, or EP 2 042 063 A1 and general technical knowledge. The subject-matter of patent claim 1 is also apparent in an obvious manner from a combination of WO 2011 105 942 A1 and EP 2 583 036 B1, or WO 2011 105 942 A1 and one of the other documents which disclose instantaneous water heaters using thick-film technology and which were discussed with reference to 'EP 2 042 063 A1 as a starting point', or WO 2011 105 942 A1 and common technical knowledge. The same applies to the combination of WO 2009 150 602 A1 and EP 2 583 036 B1, or WO 2009 150 602 A1 and one of the other documents which disclose instantaneous water heaters using thick-film technology and which were discussed with reference to 'EP 2 042 063 A1 as a starting point', or WO 2009 150 602 A1 and common technical knowledge.

38. DE 20 2011 110 158 U1 (Annex O) and EP 330 could also be considered as further starting points. None of the dependent claims are novel in relation to WO 400, WO 403 and EP 330.

39. The claimant takes the view that the patent at issue is valid, at least to the extent of auxiliary claims 1, 3, 5, 7, 9, 11, 13 and 15, whilst also maintaining its other auxiliary claims.

REASONS FOR THE DECISION:

40. The admissible action for infringement is unfounded, whilst the admissible counterclaim for revocation is successful in so far as it relates to the patent at issue in its granted form, with the exception of sub-claims 12 and 13.

A. Amendments to the application/clarification of applications

I. Subsequent submission of infringement arguments relating to the alternative claims

41. It can be left open whether the statement of infringement relating to the alternative claims and the first-time assertion of alternative claims 1, 3, 5, 7, 9, 11, 13 and 15 in the infringement proceedings constitutes an amendment to the claim under Rule 263.1, 2 of the RoP, or a late submission under Rule 30.2 or Rule 9.2 of the RoP. The applications introduced for the first time in the interim proceedings in the infringement action, based on the scope of the patent at issue within the framework of the subsidiary applications, and the associated submissions, are inadmissible under all applicable provisions.

42. Under Rule 263.1 of the RoP, an application to amend the claim must state the reasons why the amendment or addition was not already included in the original document. An amendment or addition must be rejected if, with due care, it could have been made earlier and if it hinders the other party in the conduct of the proceedings. In the document of 15 May 2026, the Claimant did not explain why it is only now basing its infringement claim on the alternative claims. Had due care been exercised, she could and should have submitted both the applications and the relevant statement of facts at the time of the application to amend (Rule 263.2a of the RoP). The defendant is also hindered in the conduct of its case (Rule 263.2b of the RoP), as the inclusion of eight new allegations of infringement in the defendant's interim proceedings requires eight

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new lines of defence, for which it does not have the same time limits as in the context of the written procedure. In so far as the Claimant argues that it continues to rely on the same contested embodiment and the same technical structures, and that only the classification has changed, it disregards the principle of the so-called 'front-loaded' procedure. Each alternative claim sets out amended claim features, and the claim must always be interpreted in its entirety. With the requests for amendment, which in this case would require eight new scope-of-protection provisions, the claimant was obliged, upon filing these requests, to amend its allegation of infringement accordingly, so that the defendant could have responded appropriately to these eight new allegations of infringement within the existing time-limit regime. This was not done without sufficient justification.

43. The same conclusion is reached on the basis of Rule 30.2 of the RoP, which explicitly requires that, in the case of amendments, explanations must be provided as to why the patent claims have been infringed. The claimant correctly recognises that it must be possible, where dependent claims or amended claim formulations form the subject-matter of auxiliary claims, to amend the infringement action accordingly. However, the claimant must make use of this option at the same time as asserting the amendments to the patent at issue.

44. Finally, the submission would also have to be rejected under the general provision of Rule 9.2 of the RoP. As evidenced by the judge-rapporteur's order of 28 April 2026, the claimant had merely been given the opportunity to explain in more detail or substantiate the arguments put forward in the written procedure. The claimant had not raised any arguments regarding the infringement of the alternative claims during the written procedure. In this respect, the arguments put forward by the claimant for the first time in the interim proceedings are out of time.

II. Other amendments/clarifications

45. The remaining restrictions and clarifications made by the Claimant in the interim proceedings in the document of 15 May 2026 do not give rise to any concerns. In particular, these were made in response to the judge-rapporteur's request and are therefore not open to criticism.

B. Jurisdiction of the Düsseldorf local division

46. The Düsseldorf local division has jurisdiction over the infringement action pursuant to Article 33(1)(a) of the UPC Agreement. Furthermore, pursuant to Article 32(1) of the UPC Agreement, the Unified Patent Court has exclusive jurisdiction over actions relating to actual or threatened infringements of European patents, provided that no opt-out has been declared (Article 83(3) of the UPC Agreement). Apart from that, in the absence of any preliminary objection by the defendant, the jurisdiction of the local division chosen by the claimant is deemed to have been accepted; see Rule 19.7 of the RoP.

47. There are likewise no concerns regarding the admissibility of the counterclaim. The Unified Patent Court (UPC) also has international jurisdiction over the counterclaim for revocation. Pursuant to Article 32(1)(e) of the UPC Agreement, the UPC has exclusive jurisdiction over counterclaims for the revocation of (European) patents. As there is currently no opt-out (Article 83(3) of the UPC Agreement) from the Court's exclusive jurisdiction in respect of the patent at issue, the UPC – as the common court of the Member States of the UPC Agreement – has international jurisdiction over the present counterclaim pursuant to Article 24(4), 71a(2)(a), 71b(1) of Regulation (EU) No 1215/2012 – has international jurisdiction over the present counterclaim

C. Relevant person skilled in the art

48. The relevant person skilled in the art is a graduate of a mechanical engineering degree programme at a university or university of applied sciences with several years' experience in the design of beverage machines.

D. Interpretation of the patent at issue

49. In view of the dispute between the parties, the patent at issue requires interpretation.

I. State of the art and problem

50. As the patent at issue states in its introduction, there are a wide variety of coffee machines available for the preparation of speciality coffees, which, amongst other things, allow for the production of speciality coffees that require milk and milk foam for their preparation, such as cappuccino, latte macchiato or café latte (paragraph [0002] of the patent at issue; hereinafter, paragraphs without a source reference are those of the patent at issue).

51. In order to maintain the freshness and hygiene of unpackaged milk over a longer period, milk is ideally stored at 4 °C. Devices in which the milk is heated within the storage container itself are therefore disadvantageous (see paragraphs [0003], [0004]). However, devices are also known in which the milk is stored in cooled storage containers and heated to a desired temperature by a heating element immediately before use (see paragraph [0005]). WO 2008/083941 discloses a system in which cold or hot milk foam is produced in parallel sections that can be switched on selectively. The patent at issue criticises this for involving the construction of an extensive pipework system that is laborious to clean.

52. Furthermore, EP 3 042 592 A1 discloses a device by means of which *either* cold or hot milk foam can be produced. *Different flow paths* are provided for this purpose, whereby a heating element is integrated into the flow path to produce warm milk foam, and the heating element can be bypassed by means of a further flow element to produce cold milk foam (para. [0007]).

53. The patent at issue (paragraph [0008]) sets out the objective of designing a compact device capable of producing either hot/warm or cold foam. The compact device is to be incorporated into a modular unit which can be ordered to be housed within a refrigeration unit.

54. To solve this problem, patent claim 1 of the patent at issue claims protection for a device defined by a combination of the following features:

1. A device (10) for foaming liquid, comprising:

1.1 at least one storage tank (12, 14) in which the liquid to be foamed is stored;

1.2 a pump (18);

1.3 a piping system;

1.4 an air-enrichment element (26);

1.5 a heating element (32).

2. The piping system comprises:

2.1 at least one first pipe (16),

2.1.1 via which the storage tank (12, 14) can be connected to the pump (18);

2.2 a second pipe (22),

2.2.1 via which the pump (18) can be connected to at least one outlet nozzle (24);

2.2.2 which is provided as the sole second pipe (22).

3. The liquid can be aerated via the air-enrichment element (26).

4. The heating element (32):

4.1 is designed as a flow-through heater;

4.2 is designed as a thick-film heater, whereby:

4.3 on the heating element (32)

4.3.1 an electrical heating resistor is mounted on a carrier;

4.3.2 a flow path for the liquid is provided on the carrier.

II. Principles

55.. 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 remedy 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 for protection (UPC_CoA_335/2023, Order of 26 February 2023 in conjunction with Order of 11 March 2024, GRUR-RS 2024, 2829, Headnote 2 and paras. 73–77 – 10x Genomics v Nano-String; UPC_COA_182/2024, Order of 25 September 2024, para. 82 – Mammut v Ortovox; see also UPC_CFI_7/2024 (Düsseldorf Court of Appeal), decision of 3 July 2024, ORD_598324/2023 – Franz Kaldewei v. Bette).

III. Scope of protection

1. Feature 1.5 (a heating element)

56. A person skilled in the art will understand the requirement for a heating element to be a generic term rather than a mandatory numerical specification.

neutral. In the overall context of the claim, there are other features which both indicate singularity (feature 2.2.2 ‘sole second pipe’) and permit a plurality of components (feature 1.1 ‘at least one storage tank’). Nor does the fact that feature group 4 refers to ‘the’ heating element and explains its design in more detail necessarily lead to the conclusion that there must be only a single heating element.

58. The claimant rightly draws attention to passages [0008] and [0018] of the description, which distinguish between hot and warm foam. Paragraph [0018] specifies temperature ranges between 50 and 80 degrees Celsius. The claimant also correctly concludes from paragraph [0023] that the process of switching on and off described there leaves it open to the person skilled in the art whether this switching on and off is carried out using a single heating device or several (serially connected) heating devices.

59. Insofar as the defendant relies on the fact that the patent at issue aims to achieve a compact design and that no additional connections or pipes for cold/hot foam are required, the person skilled in the art recognises that this function is also ensured by two heating elements connected in series. This is because, according to the patent at issue and in accordance with feature group 4, their configuration would be the same: even multiple heating elements are designed as instantaneous water heaters and formed as thick-film heaters, with electrical heating resistors mounted on carriers on the heating elements, on which, in turn, a flow path is provided for the fluid. Paragraphs [0018] and [0031] describe in this context how the supports may be configured (spiral-shaped flow path). Paragraph [0018] emphasises that such a configuration, together with short pipes, enables a compact design by ordering the heating element in a space-saving manner within the device. If the defendant objects that two thick-film heating elements take up more space than a single element, it is left to the person skilled in the art to determine to what extent they might compensate for this loss by using shorter pipes. This does not constitute a compelling argument against this interpretation, because the design of the heating element as such is already space-saving. Since the device is generally intended to ensure the frothing of liquids and mentions various types of milk in paragraph [0013], it is also correct that different temperatures may be relevant for frothing (consistency), as the different liquids have different properties. Finally, the defendant’s objection that the single second pipe would be inoperable if more than one heating element were installed is not comprehensible. The alleged inseparable functional link between the single second pipe and the purported single heating element is not apparent from the claim and is not explained in further detail by the defendant either.

60. Finally, the defendant’s argument that residual heat would not be dissipated quickly enough in the case of multiple heating elements is also unconvincing. Paragraph [0023] cites an exemplary cooling time of 3 seconds. The defendant does not, therefore, specify the exact time within which residual heat would unduly promote the contamination and rise in bacterial counts that the patent at issue is intended to prevent. In this respect, when designing the device with multiple heating elements, the person skilled in the art will also take this requirement into account accordingly and will not select an order that leads to an excessively high risk of contamination. Furthermore, the person skilled in the art is aware that the instantaneous water heater in the form of a thick-film heater is characterised by minimal thermal

inertia, such that the residual heat from two heating elements is negligible.

70. Finally, the alleged ‘reflectivity trap’ does not necessarily lead the person skilled in the art to adopt a narrower interpretation than the generic one with regard to the single heating element.

2. Feature group 2 (pipe system)

71. Claim 1 provides for a piping system comprising at least a first pipe connecting the storage tank and the pump, and a single second pipe via which the pump can be connected to at least one outlet nozzle. Functionally, the order facilitates the transport of the liquid, whilst the single second pipe between the pump and the outlet also contributes to a compact design, as the number of pipes is reduced.

72. The configuration claimed is characterised by the requirement that the system comprises only one pipe between the outlet nozzle and the pump (see paragraphs [0011], [0012]). The configuration ensures the transport of the liquid from the storage tank to the outlet. It follows from paragraph [0024] that the compact design significantly shortens the pipe runs, resulting in fewer losses during a cleaning cycle. Figures 1 and 2 each show a first pipe (16) and a second pipe (22). Upstream of the pump, the wording of the claim expressly permits the order of several pipes (‘at least’).

3. Feature 4.2 (thick-film heater)

73. The heating element is characterised in more detail in feature 4.2 as a thick-film heater. In paragraph [0017], the patent at issue states that the heating element is based on thick-film technology. Reference is made to the heating element of EP 2 163 130 as an example of such a heating element. The order of a thick-film heater is then described by way of a further example: an electrical heating resistor is applied to a substrate in a heating zone using thick-film technology, and a temperature sensor associated with the heating zone is ordered thereon. However, the latter order is, in turn, merely an example of thick-film technology, but not a mandatory definition to which the claim is exclusively limited.

4. Features 1.1 – 1.5 (order of the components)

74. The claimant rightly points out that claim 1 does not require any particular order of the components. The only exception is the piping system already described, which provides for the storage tank to be situated before the pump and the outlet nozzle behind the pump.

75. Furthermore, it is left to the person skilled in the art to decide where to order the air-enrichment element and the heating element. The only requirement here is that they must be ordered within the apparatus in such a way as to maintain their suitability for frothing liquid. Although paragraph [0015] describes the order of the heating element after the air-enrichment element as advantageous for frothing milk and maintaining a stable foam, it does not limit the scope of the claim. It is therefore not apparent that a different order would eliminate or prevent the ability to froth liquids.

5. Feature 4.3.2 (a flow path provided on the support for the liquid)

76. The claim describes the configuration of the heating element such that an electrical

heating resistor is mounted on a support and a flow path for the liquid is provided on this support. Paragraph [0018] explains this in more detail: A flow path for the liquid to be heated is provided on the support in a suitable manner, e.g. in the form of a spirally arranged flow path running from the outside to the inside. Heating to a suitable temperature takes place along the flow path.

6. Sub-claim 2 (housing)

77. The design of the housing is not defined in detail in the patent at issue. On the one hand, it is described in functional terms and must be suitable for accommodating the device with connections which, in turn, provide electrical contact and a connection to a control unit. On the other hand, it must contain feed-throughs for the cables of the cabling system. In paragraph [0033], the housing is schematically indicated by reference number 36. As this is merely an example of one embodiment in which the control unit is shown outside the housing, it is also conceivable that the control unit could be located inside the housing.

7. Sub-claim 4 (cooling device)

78. Sub-claim 4 further specifies that the device can be accommodated within a cooling device. The cooling device is not further specified. Paragraph [0020] of the patent at issue mentions here an auxiliary device, but also an independent cooling device which can be connected to a coffee machine by means of appropriate connections. According to its wording ('can be accommodated'), the claim protects only the corresponding suitability of the device.

E. State of the art

I. Clarification of the scope of the claimant's defence against the counterclaim

79. The defendant has challenged the patent at issue in its entirety (that is to say, claims 1 to 13). In response to a question from the court, the Claimant clarified at the oral hearing that it considers (in addition to the granted claim 1) the granted sub-claims 2 to 13, in the order in which they were granted, to be valid and is defending them to that extent. Only in the event that none of the granted sub-claims should be valid does the Claimant rely on its alternative claims.

80. According to the case law of the Court of Appeal, no application for amendment is required for a defence of the patent based on dependent claims. In such a case, however, the patent proprietor must not only set out in a sufficiently reasoned manner *which* dependent claims he considers to be valid should an independent claim be declared invalid. If the patent holder wishes to rely on a combination of dependent claims which does not follow directly and unambiguously from their wording, as in the present case, because the dependent claims refer back to several or all of the preceding claims, they must also clearly specify which *combination or combinations* they consider to be valid (see CoA_473/2025, judgement of 13 July 2026, Headnotes 2 and 3, Fujifilm v Kodak). Unless the Claimant – as in this case – substantiates which specific combination(s) of claims it considers to be valid, the validity assessment in the case of multiple cross-references covers all combinations covered by the wording of the dependent claim. If any of the combinations covered prove not to be valid, the dependent claim is invalid in its entirety.

81. Taking this defence into account, the patent at issue is valid to the extent granted in sub-claim 12 and sub-claim 13, in so far as the latter refers back to claim 12, and the counterclaim is therefore only partially well-founded.

II. Principal claim 1

1. Inadmissible extension

82. The patent at issue meets the requirements of Article 123(2) EPC and is not inadmissibly extended.

a) Standard

83. According to the principles developed by the Court of Appeal, an inadmissible extension exists where the granted claim contains a subject-matter which goes beyond the content of the filed application. To determine this, the court must therefore first examine what a person skilled in the art, using their general technical knowledge and viewed objectively, would immediately and unambiguously derive from the entire application as filed as at the filing date, whereby an implicitly disclosed subject-matter, i.e. a subject-matter that is a clear and unambiguous consequence of what is expressly mentioned, is also regarded as part of its content. If the patent arises from a divisional application, this requirement applies to each earlier application. The subject-matter of the granted claim 1 must therefore not go beyond the disclosure of the filed application for the patent in dispute (UPC_CoA_764/2024, Order of 2 October 2025, Headnotes 1 and 2, paras. 64–65 – expert klein v Seoul Viosys). The assessment of whether an impermissible extension exists is a question of law to be decided on the basis of the facts presented by the parties. The facts are the relevant claims and the filed application. As the court is examining whether the relevant claims in the application as a whole have a basis, it may examine the entire document (UPC_CoA_528/2024, decision of 25 November 2025, Headnote 4, paras. 105–108 – Amgen v Sanofi).

b) The present case

Feature 1.5

84. The defendant bases its objection of impermissible extension on the ground that feature 1.5 (a heating element) is not disclosed in a generic sense in the original application. This argument is not convincing.

85. The application in its original version (Annex A 16) provides, on page 4, line 15 et seq. and page 5 et seq., for a disclosure of the heating element corresponding to that in the specification of the contested patent:

> *"[…] Furthermore, the device for frothing liquid comprises a heating element which is ordered downstream of the pump and downstream of the air-injection element in the direction of flow of the liquid. The milk, which has already been aerated, can be warmed or heated in the heating element, which has a beneficial effect on the foaming of the milk and the formation of a stable foam. It proves to be highly advantageous to*

. This allows the device to be designed in a compact and space-saving manner. According to the invention, the heating element is based on thick-film technology. Such a heating element is described, for example, in EP 2 163 130 A. The heating element is suitable for heating liquids, wherein an electrical heating resistor is applied to a substrate in a heating zone using flat conductor technology, in particular thick-film technology, and a temperature sensor associated with the heating zone is ordered there. Furthermore, appropriate electrical connections are provided for making electrical contact with the electrical heating resistor and the temperature sensor. Such a heating element enables very rapid control whilst ensuring high process reliability and favourable cost and energy efficiency. A flow path for the liquid to be heated is provided in a suitable manner on the substrate of the heating element, for example in the form of a helically arranged flow path. In this arrangement, the liquid drawn from the at least one storage tank—which is, in particular, cooled—is fed in via an inlet, directed along a spiral-shaped flow path running from the outside to the inside to an outlet, and heated to a suitable temperature along the flow path, preferably within a temperature range of 50°C to 80°C. With a heating element constructed in this way and short pipes, a compact design can be achieved, so that the heating element can be arranged in the device according to the invention in a space-saving manner. The heating element of the device according to the invention for foaming liquid offers the advantage that its heat generation is minimal, i.e. the heat it emits into the surroundings is very low. Consequently, the device according to the invention, with its integrated heating element, can be placed within a cooling system. The heat emitted by the heating element is limited to such an extent that the cooling process is not affected, or only to a negligible degree. […]"

86. Furthermore, page 6 et seq. also states:

"Due to the preferred design, the heating element is largely maintained at ambient temperature, except for a brief phase whilst it is switched on. This makes it possible to use the device according to the invention to produce warm foam first, followed immediately by cold foam using the same device. The device according to the invention for foaming liquids is suitable for both types of milk foam, thereby enabling a simple system to be realised and eliminating the need for two separate devices with corresponding connections, components and pipes. In particular, when producing hot foam, liquid to be frothed is drawn from the at least one storage container, enriched with air and heated to a desired temperature by the activated heating element whilst flowing through it. The heating element is switched off once the desired quantity of milk foam has passed through it. Preferably, the heating element is switched off before the end of the milk frothing process, whereby cold liquid flowing in subsequently – in particular cold milk, milk substitute or water – cools the heating element. Alternatively, the heating element can also be cooled by flushing with cold water as part of a flushing process. The process of cooling the heating element takes place within a short period of time, for example within approximately 3 seconds. Thus, apart from the brief heating phase, the heating element remains cold. This is also ideal for counteracting the sharp increase in bacterial growth and contamination that occurs as the temperature rises. Furthermore, it is not necessary to remove the heating energy generated by the heating element from the

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[…]"

87. Claim 1 of the application reads:

. *"Apparatus (10) for foaming a liquid, comprising a pipework system and a pump (18), via which at least a first pipe (16) of the pipework system can be connected to at least one storage tank (12, 14) in which the liquid to be foamed is stored, and which can be connected via a second pipe (22) of the pipework system to at least one outlet nozzle (24), an air-enrichment element (26), by means of which the liquid can be mixed with air, and a heating element (32) designed as a flow-through heater, characterised in that the heating element (32) is constructed on the basis of thick-film technology."*

88. The person skilled in the art naturally adopts this broad understanding of the heating element when reading the application. The wording of the disclosure passages essentially corresponds to that of the patent at issue. In this respect, it is at least implicitly disclosed to the person skilled in the art that the heating element, understood generically, may comprise a configuration with several heating elements connected in series, provided this is achieved in a compact design.

89. The objection raised for the first time by the defendant during the interim proceedings—that the single second conductor (feature 2.2.2) is also not covered by the original disclosure—must in any event be rejected as out of time pursuant to Rule 9.2 of the RoP. The requirements relating to the wiring system had already played a role in the written procedure during the novelty examination, meaning that, given the familiar nature of the subject matter, the defendant could have raised this objection at an earlier stage.

2. Novelty

a) Standard

90. A technical teaching is novel if it differs from the state of the art in at least one of its features. For a lack of novelty to be established, it must be possible to derive every single feature of the claimed subject-matter directly and unambiguously from a single document of the state of the art (UPC_CFI_252/2023 (CD Munich), decision of 17 October 2024 – NanoString v Harvard College, Headnote 3; UPC_CFI_315/2023 (CD Paris), decision of 5 November 2024, para. 9.1 – NJOY v Juul Labs). Knowledge which a person skilled in the art acquires only through further consideration, by consulting further documents or through further use cannot be taken into account for the purposes of novelty (see UPC_CFI_16/2024 (Düsseldorf Regional Court), decision of 14 January 2025 – Ortovox v Mammut; UPC_CFI_7/2024 (Düsseldorf Regional Court), decision of 3 July 2024 – Kaldewei v Bette). The question of novelty must be answered from the perspective of the hypothetical person skilled in the art at the relevant date (UPC_CFI_100/2024 (Düsseldorf Regional Court), decision of 15 January 2026, para. 129 – Ona v Google).

91. The examination of the novelty objections follows the order now adopted by the defendant in the interim proceedings. The citations WO 400, WO 403 and EP 330 each render claim 1 of the patent at issue lacking in novelty.

b) WO 400 (Appendix E), (Product Information FTH mkII; Appendix F)

92. WO 400 is detrimental to the novelty of claim 1

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93. WO 400 discloses a device for foaming a liquid (see title, Annex E) and thus discloses feature 1. It provides for a reservoir (fluid reservoir 46) for the liquid to be foamed (see p. 15, line 5 et seq.). Feature 1.1 is thus disclosed.

94. Furthermore, the device comprises a pump 22 (Appendix E, p. 9, line 7; Figure 1; feature 1.2).

95. WO 400 discloses a pipe system as claimed within the meaning of feature 1.3 and feature group 2. This is not precluded by the fact that it comprises only a single pipe 16, which extends from the inlet 18 via the pump 22 and the heating element 26 to the outlet 20, as can be seen from Figure 1, which is shown on a slightly reduced scale.

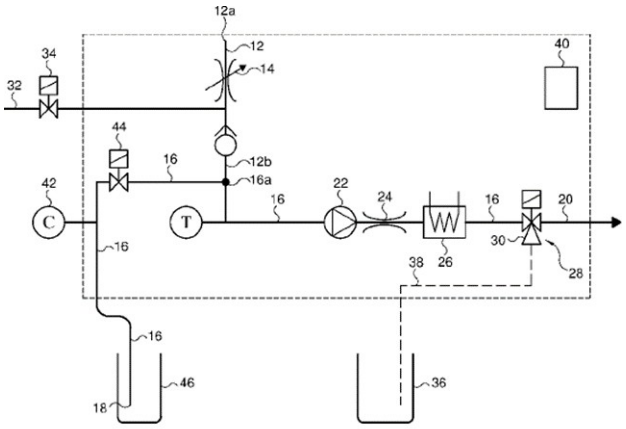


FIG. 1

96. The defendant argues that the distinction between the ‘first’ and ‘second conduit’ is purely linguistic in nature and that they are therefore technically and functionally the same. Thus, the section from the heating element 26 to the outlet 20 could also be regarded as a second conduit.

97. It is true that, given the specifications of the pipe system, claim 1 merely prescribes the transport of the fluid in functional terms. Nevertheless, the person skilled in the art takes seriously the requirement that the pipe system as claimed permits several ‘first’ pipes upstream of the pump, but only one downstream of it. However, the person skilled in the art considers WO 400 as a whole and will read Figure 1 in conjunction with the statement in paragraph 13, pages 10–17. It states there
‘[…] only a single fluid channel is required from which both hot and cold frothed fluids can be dispensed alternately’. The person skilled in the art will understand from this that, should they retain the single line to outlet 20, they are free to provide two supply lines 16 upstream of the heating element 26 – for example, when selecting different liquids – and that the advantage of the alternatively tempered liquids is not compromised by a line downstream of the heating element. In this respect, there is also a disclosure of feature 1.3 and feature group 2.

98. Furthermore, Figure 1 (reference numbers 12a, 14, 12b, 16a) and p. 2, lines 21–22, p. 8, line 22–p. 9,
Z.9 an air-enrichment element through which air is mixed with the liquid (features 1.4, 3). Shown is an air duct (12), the downstream end (12b) of which opens into the fluid duct (16) at an air inlet point (16a). This constitutes an air enrichment element by means of which the liquid can be permeated with air. In so far as the Claimant objects here that the mixing requires the result of stable foam, this technical effect is not part of device claim 1 (see UPC_CFI_714/2025 (CD Munich), decision of 21 July 2026, 1st headnote). As air is added to the liquid in WO 400, the liquid can be

can be saturated with air.

99. Furthermore, Figure 1 shows a heating element (features 1.5, 4, heating unit 26) which is designed as a flow-through heater within the meaning of feature 4.1 ('thick film flow through heating element', p. 13, lines 4–19).

100. Feature 4.2 is disclosed in WO 400, p. 13, lines 4–19 ('thick film flow-through heating element'), with specific reference to the product information for the FTH mkII from Ferro Techniek B.V. (Appendix F). This is a thick-film heater. In the case of such a reference document, its content is deemed to form part of the content of the basic document within the meaning of Article 54(3) EPC (see EPO Examination Guidelines, Part F, III-9, last paragraph). It is therefore not regarded as a separate, additional document which would defeat the claim of novelty, but is, for a person skilled in the art, an integral part of WO 400.

101. In a thick-film heater, an electrical heating resistor must, by virtue of its design, be applied to a substrate (features 4.3, 4.3.1). The Claimant has not raised any further substantial objections to this argument in the context of this challenge to novelty, and it is therefore accepted.

102. Finally, feature 4.3.2 is disclosed by the FTH mkII thick-film heater referred to in WO 400:

> *'FTH mkII is an ultra-fast, high-pressure instantaneous water heater (20 bar) based on a thick-film heating element. The water flows at high speed through a channel over the heating element.'*

103. The channel on the heating element is the flow path provided on the support.

c) WO 403 (Appendix C)

104. WO 403 also discloses a device for frothing milk (feature 1) and all other features of claim 1 directly and unambiguously. It relates to a device and a method for frothing a liquid.

105. Figure 1 of WO 403 is shown below in a slightly reduced size:

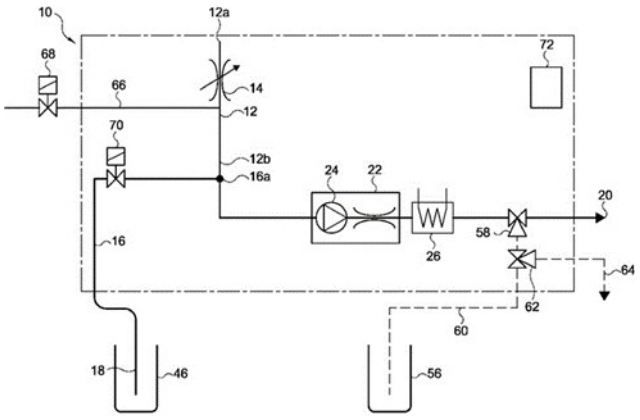


FIG. 1

106. WO 403 first describes an order comprising a fluid reservoir (46) which can be filled with milk (Fig. 1, reference number 46; p. 12, line 29 to p. 13, line 1; feature 1.1). Furthermore, the order comprises a pump (pump 24), which forms part of a frothing unit (p. 9, lines 3–4; Fig. 1; feature 1.2). Between the inlet and the outlet runs a conduit system in the form of a fluid channel 16, which extends from a fluid inlet 18 to a fluid outlet 20 (p. 9, lines 1–2; Fig. 1; feature 1.3). Furthermore, WO 403 discloses an air enrichment element comprising an air duct 12, an air inlet 12a, a downstream end 12b, a controllable air valve 14 and an air outlet 16a to which the downstream end of the air duct is connected (p. 8, line 25 to p. 9, line 2; Fig. 1, reference number 14, feature 1.4). Furthermore, an air supply assembly comprising an air source and an air duct is described, by means of which air is supplied to the liquid (p. 2, lines 15–17; feature 3). The claimed configuration of the piping system in feature group 2 is also fully disclosed. The fluid channel 16 connects the storage tank to the pump and leads on to the outlet (p. 9, lines 1–2; Fig. 1, reference numbers 46→24 and 24→20). Furthermore, WO 403 expressly discloses that only a single fluid line is required between the frothing unit and the fluid outlet ('only a single fluid line between the frothing unit and the fluid channel outlet is required') (Fig. 1; p. 3, line 29 to p. 4, line 9). The claimant here advances the same argument as that put forward in relation to WO 400, namely that only a single line 16 is disclosed. The same applies as has already been set out in this context in relation to WO 400: On reading the document as a whole, the person skilled in the art will realise that they may provide several feed lines 16 upstream of the pump, e.g. from different storage tanks. WO 403 further discloses a flow-through heater in the form of a flow-through heating unit 26 (p. 2, lines 23–26; p. 9, lines 3–5; Fig. 1, reference number 26; features 1.4, 4). The application expressly discloses that the heating element may be designed as a thick-film flow-through heating unit and comprises a thick-film heating element 28 (claim 2; p. 3, lines 24–28; p. 9, lines 3–5, 22–25: feature 4.2). By virtue of its design, such a thick-film heating element comprises a heating resistor arranged on a substrate (feature 4.3.1). Furthermore, the heating unit defines a heating unit fluid channel 30, which forms part of the fluid channel 16 (p. 9, lines 22–25; claim 4). This also discloses a flow path extending along the carrier within the meaning of feature 4.3.2.

107. The claimant argues that WO 403 sets out specific requirements for the temperature conditions of the heating element (inactive state, a milk volume of 40 to 60 ml of frothed milk at 7 degrees at the inlet is heated to a maximum of 20 degrees when it passes through the flow channel of the heating element 10 seconds after the heating element has been switched off). These specifications, it is argued, are not compatible with the requirements of the patent at issue in paragraphs [0022] and [0023]. However, this argument is not convincing. Paragraphs [0022] (production of cold foam) and [0023] (ambient temperature, switching on and off, cooling process, e.g. 3 seconds) also describe exemplary processes which have not been incorporated into the claim. Claim 1 of the patent at issue relates solely to the provision of a heating element. The temperature specifications for the thick-film heater shown in WO 403 therefore do not preclude the broader scope of disclosure relating to the heating element.

108. Finally, it is also irrelevant that WO 403 provides for a specific sequence of components, as this sequence is also covered by the invention according to the contested patent (see [0015]).

d) EP 330 (Annex A)

109. EP 330 also discloses all the features of claim 1 directly and unambiguously. The subject-matter of this citation is a method and a device for producing milk foam or hot milk drinks. This discloses feature 1, as milk is a liquid.

110. Figures 1–5 of EP 330 are shown below, slightly reduced in size.

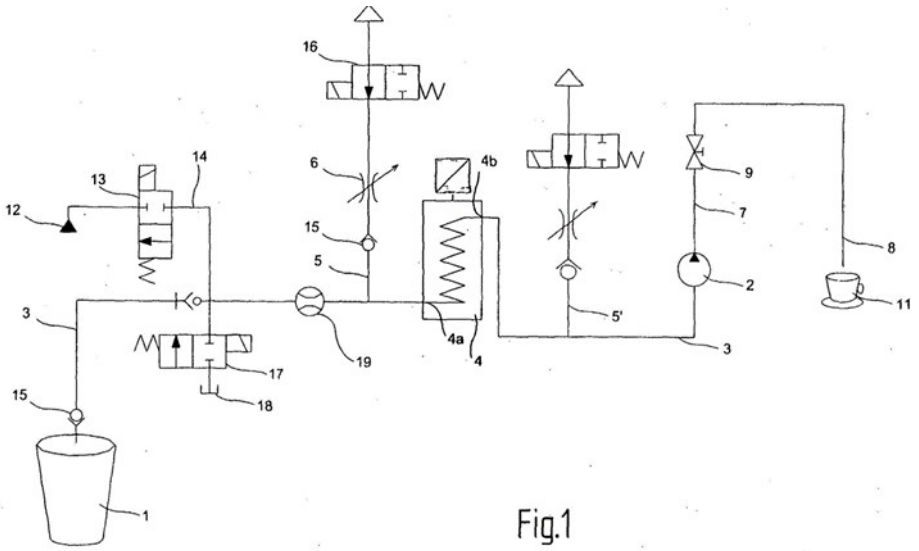
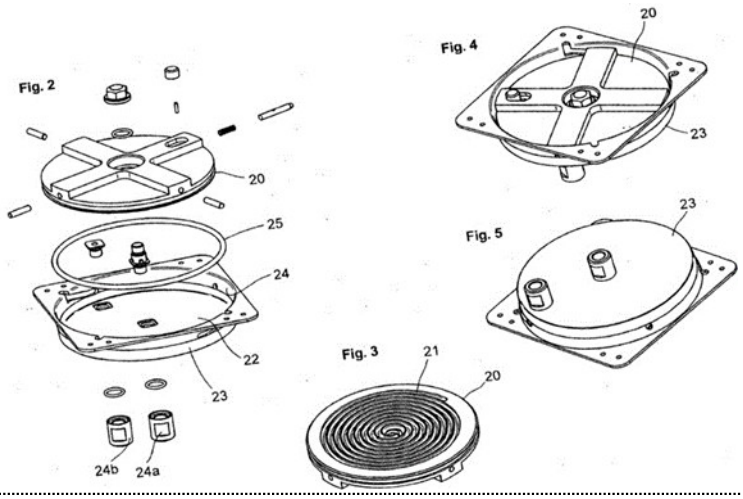


Fig.1



111. Features 1.1 and 1.2 are already disclosed in Figure 1 with reference numerals 1 and 2. Feature 1.3 is disclosed here with reference numbers 3 and 7, and feature 1.4 with reference number 5 and the descriptions in paragraph [0012] of EP 330 ("Before entering 4a into the instantaneous water heater 4, an air supply line 5 opens into the intake pipe 3, to which an adjustable air flow regulator 6 is assigned. However, a fixed nozzle could also be provided in place of this regulator […]").

112. Feature 1.5 is shown in Figure 1 with reference numerals 4, 4a and 4b, and in Figures 2–5 (the heating element 23). EP 330 describes a single instantaneous water heater (4) with an inlet (4a) and an outlet (4b), through which the milk is passed and heated during suction

(features 4, 4.1).

113. Feature group 2 is also shown. Reference numerals 7 and 8 in Figure 1 show a single outlet pipe downstream of the pump. It follows from claim 3 and paragraph [0015] of EP 330 that the milk is conveyed from the pump (2) via a single outlet pipe (7) to an outlet (8), to which only a throttle (9) is associated. The second (pressure-side) pipe is thus provided as the sole second pipe within the meaning of feature 2.2.2. Feature 2.1 is evident from Figure 1 (reference numerals 1, 3). In view of the above interpretation, it is irrelevant in this context that the heating element is ordered upstream of the pump, as the claim does not mandatorily prescribe this order.

114. Feature 3 is disclosed in paragraph [0012] of EP 330 ("A specific quantity of air can be mixed into the milk via the air supply line 5, whereupon the milk/air mixture (or the milk alone) is drawn in by the pump 2 and heated in the instantaneous water heater 4.")

115. Feature 4.1 is disclosed in paragraph [0014] ("In the instantaneous water heater 4, the milk or the milk/air mixture is passed through a coil-shaped or otherwise shaped pipe and heated by means of a heating element, which may be configured in various ways, for example as a resistive element.") and in Figures 2, 4 and 5.

116. Finally, EP 330 also discloses a thick-film heater in which the resistor is applied to a substrate (features 4.2, 4.3.1). The defendant submits that the heating element (23) described in paragraph [0020] forms the substrate, the front-facing heating surface (22) of which carries the electrical heating resistor applied to the substrate. The claimant, however, objects that the heating element is applied to the end face, which would preclude a spiral-shaped heating track. This interpretation does not, however, appear to be compelling. Rather, the person skilled in the art recognises the thick-film technology from the structural features specifically shown in Figures 2 to 5 of EP 1 593 330 B1: The flat, end-face heating surface 22, which is formed as part of a recess 24 directly on the end face of the heating element 23—which is designed as a flat support—and the flow guided directly along this support surface, which is formed by the labyrinth disc 20 fitted in a sealing manner with its spiral-shaped groove 21.

III. Main claim: Sub-claims 2–13

117. In accordance with the order requested by the Claimant, it defends the sub-claims in the order in which they were granted. All sub-claims except sub-claim 12 (and sub-claim 13, in so far as it refers back to claim 12) are rendered non-novel by either WO 400 or WO 403.

1. Claim 2

118. In addition to all the claim features of claim 1, WO 400 also discloses the housing according to sub-claim 2, for accommodating the device with terminals which provide electrical contact and a connection to a control unit, and with bushings for the cables of the cabling system.

119. According to the above interpretation, WO 400 discloses the feature of sub-claim 2 in the description on page 20, lines 10–19, and in Figure 5, reference numbers 52 and 48. The interior of the cooling chamber 52 (heating space) shown in Figure 2 is formed by its outer

. During the oral hearing, the defendant corrected its written submission regarding reference number 36. The disclosed cooling chamber constitutes a housing according to the invention. The defendant clarified that the dotted line without a reference symbol in the other figures schematically represents the housing (52, 48). In view of the above interpretation, it is not detrimental that the control unit 40 is located inside the housing in Figures 1 to 4. The disclosed housing is suitable for accommodating the device with control and electrical connections and provides feed-throughs for the cables.

120. Claim 2 is therefore not novel.

2. Claim 3

121. The fact that the liquid may be milk or a milk substitute is shown by both WO 400 (page 1, lines 4 et seq.) and WO 403 (see title).

122. Claim 3 is therefore also invalid on grounds of lack of novelty.

3. Claim 4

123. Claim 4 further specifies that the device can be accommodated within a cooling unit.

124. This feature is disclosed in WO 403 on page 17, lines 19–24, and in Figure 2. It states:

> *“In an embodiment, an example of which is shown in Figure 2, the assembly 10 may comprise a component tray 54 that is removably mounted in the refrigerator compartment 52. The component tray 54 may be removed from the refrigerator compartment 52 when the door 50 is in the open position. The component tray 54 may support at least the pump 24, the frothing unit 22, the heating unit 26 and at least part of the fluid channel 16.”*

125. The component tray contains the device 10 and is mounted in the refrigerator compartment in various ways (see also page 18, lines 4–6). Consequently, claim 4 is also not novel.

4. Claim 5

126. Claim 5 also lacks novelty.

127. Patent claim 5 further defines, by reference to patent claim 4, that the device can be accommodated in a modular unit which can be used in the refrigeration apparatus and in which the at least one storage container is accommodated.

128. Such a modular unit is shown in WO 403. The passages of the description of WO 403 cited in relation to claim 4 (p. 17, lines 19 et seq., p. 18, lines 1–6) disclose that the device is mounted in a removable manner. Here, the person skilled in the art recognises that it can therefore form part of a modular unit and be accommodated therein. This modular unit, in turn, can be inserted into the refrigeration unit, in which the at least one storage container is accommodated. The latter is also disclosed in Figure 2 by storage container 46. The storage container accommodated in the refrigeration unit

is designated by reference number 46 in Figure 2. The storage container is described in more detail on page 12, line 29 et seq. (“[…] preformed, reusable fluid reservoir 46 and that can be refilled with milk […]”.

5. Claim 6

129. Claim 6 is also formulated in a manner detrimental to novelty.

130. This claim, by reference to patent claim 4, further defines that a coupling module is provided on the cooling device for connecting a control unit to the device and for establishing electrical contact with the device.

131. WO 403 also discloses these features on page 6, lines 10–23. It states:

“The invention further comprises a system for making coffee, comprising:

- an apparatus for providing coffee to a user; and

- an assembly according to the invention, or the refrigerator according to the invention;

wherein the coffee apparatus and the assembly are connected to form an integrated unit that is provided with an integrated electronic control system operable by means of a user interface provided on the coffee apparatus. The assembly or the refrigerator according to the invention can advantageously be combined with a variety of existing coffee-making machines, particularly those without a milk frothing unit, thereby enabling the dispensing of coffee containing frothed milk, such as cappuccino or latte macchiato.”

132. The person skilled in the art will recognise that the device and the coffee machine are connected to form an integrated unit, which is equipped with an integrated electronic control system that can be operated via a user interface provided on the coffee machine. As it has already been disclosed that the device can be inserted into the cooling unit, the person skilled in the art also recognises that, by forming an integrated unit, a coupling module is provided which connects the device to the control unit and to the power supply (electrical connection).

6. Claim 7

133. Claim 7 is also not novel.

134. This claim further specifies that the cooling device is an accessory to a beverage dispenser, preferably a coffee machine, and most preferably a fully automatic coffee machine. From the passages cited in relation to patent claim 6, the person skilled in the art immediately and unambiguously recognises that the cooling device can advantageously be combined with a wide range of existing coffee machines.

135. Patent claim 8 further specifies that cold foam is produced when the heating element is switched off.

136. Claim 8 lacks novelty in relation to WO 403 because, as stated on page 2, lines 11–12, the aim of that invention is to provide a device with which warm and cold milk foam can be produced in quick succession. Furthermore, it is directly and unambiguously disclosed on page 2, lines 3–5, that the invention shown in WO 403 allows cold-frothed milk to flow through the heating unit before it is dispensed from the outlet of the liquid channel, without the cold milk being heated in the process.

8. Claim 9

137. Claim 9, according to which hot foam is produced when the heating element is switched on, is also clearly and directly disclosed on page 3, lines 2–5 of WO 403 and is therefore deemed to lack novelty. Here, the person skilled in the art learns that the device's continuous-flow heating unit provides for an operating mode for the preparation of hot frothed milk.

9. Claim 10

138. Claim 10 is also disclosed by WO 403 in a manner that is detrimental to novelty.

139. Claim 10 requires that a container filled with a rinsing solution can be accommodated within the module unit. WO 403 discloses on page 12, lines 26–30, that the device comprises a liquid container 46 which provides a removable liquid inlet 18. In cleaning mode, this inlet can be connected to the cleaning container 56 (p. 14, lines 10–12). As shown on page 14, lines 20–26, the cleaning container 56 can be filled with water and detergent, and the cleaning fluid can be circulated. Figure 2 shows the container 56. As the person skilled in the art has already recognised the structure as a modular unit in claim 5, they will also interpret this possible configuration as falling within the scope of the invention.

10. Claim 11

140. The additional features of claim 11 are also disclosed in WO 403 in a manner prejudicial to novelty. According to claim 11, the device must be connected to the container for the rinsing solution via at least the first pipe. This is also directly and unambiguously disclosed in the passages of the description already cited in relation to claim 10 (pp. 12, 26–30, p. 14, lines 10–12). The same is found on page 13, lines 11–14: "[…] assembly 10 can be cleaned at any time by temporarily disconnecting or removing the fluid inlet 18 from the milk reservoir 46 and connecting or inserting the fluid inlet 18 into a cleaning fluid reservoir 56. […]".

11. Claim 12

a) Novelty

141. Claim 12, by reference to claim 11, encompasses the features of claims 1, 4, 5, 10 and 11. As explained, these are all disclosed in the prior art document WO 403. Only the additional feature of claim 12 is not directly and

unambiguously disclosed. According to claim 12, the pipe system, the pump, the air enrichment element and the heating element are flushed by means of the flushing solution pumped through the circuit.

142. The parties' submissions on this claim are not consistent. The defendant, who bears the burden of proof in this regard, cites a passage from the description of WO 400, but refers to reference marks in Figure 3 of WO 400 which do not correspond to those figure, but rather to the reference marks in Figure 1 of WO 403. The claimant defends itself by stating that WO 403 does not even disclose claim 11 and, consequently, not all the features of claim 12 are disclosed.

143. In view of the above arguments, whilst the latter statement is incorrect, the defendant has nevertheless failed to demonstrate convincingly that the additional feature of claim 12 is derived from WO 403. Only in this case would all the features of claim 12 be directly and unambiguously disclosed in a single document. Firstly, the reference numbers cited from WO 403 in relation to Figure 3 of WO 400 appear to be incorrect, as the defendant also quotes the relevant passage from the description in WO 400. This is on page 6, lines 8–27:

144. 'Additionally, the invention comprises a method for cleaning an assembly for frothing a fluid, wherein the method includes: providing an assembly for frothing a fluid according to the invention or a refrigerator according to the invention;

- establishing a fluid connection between the fluid inlet and the cleaning reservoir;

- performing a cleaning cycle, including:

~ switching the valve assembly from the first state to the second state; adding cleaning agent to the reservoir; recirculating the cleaning agent at least once through the closed circuit formed by the fluid channel comprising the fluid inlet, the return channel and the cleaning reservoir; switching the valve assembly from the second state to the first state;

~ dispensing the cleaning agent through the fluid outlet;

- performing a flushing cycle, comprising:

~ filling the cleaning reservoir with water; flushing the fluid channel, comprising the fluid inlet and the fluid outlet, with water from the cleaning reservoir."

145. Furthermore, on page 24, lines 23–25, it states:

"In one embodiment, the method may include heating the cleaning agent, or alternatively a cleaning agent/water mixture, during recirculation."

146. These passages of the description disclose that the cleaning agent is circulated at least once through the closed circuit, which is formed by the fluid channel—including the fluid inlet, the return channel and the cleaning reservoir—and that, where applicable, the heating element is also cleaned. No such disclosure has been claimed by the defendant in relation to WO 403, nor is there any comparable reference to a 'closed circuit' in WO 403. Rather, the text merely refers to a 'pre-rinse action […] via the water supply channel 66', whereby only line 66 (Figure 1 of

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WO 403) flushes through the air-enrichment element. The flushing of all components by means of a flushing solution pumped through the circuit is not directly and unambiguously shown.

147. In this respect, claim 12 is novel because not all the features of the claim are anticipated in a manner detrimental to novelty in the cited document WO 403.

b) Inventive step

148. The defendant has not contested the inventive step of sub-claim 12. It must therefore be assumed that sub-claim 12 is legally valid in this respect as well.

12. Claim 13

149. Claim 13 is valid in so far as it refers back to claim 12. This follows simply from the fact that claim 12 is valid. In this respect, the defendant lacks a legal interest in seeking a separate decision on the validity of this embodiment, as it falls within the scope of protection of claim 12 (see CoA_302/2025, decision of 17 February 2026, Rematec v Europe Forestry, 1st headnote).

150. The situation is different in so far as claim 13 is not dependent on claim 12 but (also) on claim 1. The claimant has not raised any independent objections to the disclosure set out by the defendant of the subject-matter of claim 13 in combination with the features of claim 1 in WO 400. In WO 400, a ‘conductivity sensor’ is disclosed on page 11, line 14 to page 12, line 2, and on page 18, line 27 to page 19, line 12, under reference number 42, meaning that novelty is lacking in this respect.

IV. Auxiliary claims

151. Since the patent at issue is legally valid within the scope of sub-claim 12 and sub-claim 13, in so far as the latter refers back to claim 12, there is no need for further discussion of the auxiliary claims.

F. Action for infringement

152. The action for infringement is unfounded, as the claimant has not sufficiently demonstrated an infringement of the features of claim 12.

153. Claim 12, by reference to claim 11, also incorporates the features of that claim. The claimant has not argued to what extent, in the contested embodiment, the at least first conduit can be connected to the flushing solution reservoir.

154. Her submission, referring to Annex A 4, is limited to the assertion that flushing solution is pumped through valves 1, 2 and 3 and pipe X1 (the air enrichment element) via pipe X3, and subsequently through the pipe system, the pump and both heating elements. In this context, the connection of line X3 via valve 4 to the heating elements is said to allow the flushing solution to be pumped in a circuit as defined in claim 12. However, this latter

be readily identified, in particular the flushing within the circuit. However, the defendant has not disputed this either.

155. It remains the case, however, that no argument has been put forward as to which first pipe can be connected to the flushing solution tank. According to the concept of claim 11, the at least first pipe can be connected to the flushing solution tank instead of, or in addition to, the storage tank. The claimant has, however, argued in relation to claim 1 that pipe X0 is the at least first pipe within the meaning of the patent at issue. Even viewed favourably, this cannot readily be reconciled with the argument regarding claim 12 that pipes X3 and X1 are exclusively involved in the flushing process.

G. Decision on costs

156. Pursuant to Article 69(2) of the UPC Agreement in conjunction with Rule 118(5) of the RoP and Rule 265(2)(c) of the RoP, a decision on costs must be made.

157. As the infringement action was unsuccessful, the claimant must bear the costs of the infringement action. In the context of the counterclaim, the patent at issue was upheld only to a minor extent, so that the apportionment of costs set out in the decision appears appropriate in this case.

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H. Recoverable legal representation costs

158. At the oral hearing, the parties agreed that the recoverable costs for both the infringement action and the nullity action would be mutually recognised up to an amount of EUR 80,000.00, subject to the order for costs. The parties have thus waived their right to challenge the recoverability of individual cost items up to this amount.

159. As the upper limit for reimbursable costs has not been reached in this case, the question of the defendant's status as a small business is no longer relevant. In any event, she was not entitled to be recognised as such, as no corresponding application to reduce the upper limit had been made.

DECISION:

A. The action for infringement is dismissed.

B. EP 3 281 569 B1 is declared partially invalid for the Member States of Austria, Germany, Denmark, France, Italy and the Netherlands, in so far as it extends beyond sub-claim 12 and sub-claim 13, in so far as the latter refers back to sub-claim 12:

12. Apparatus (10) according to claim 11, characterised in that the

piping system, the pump (18), the air-enrichment element (26) and the heating element (32) are flushed by means of the flushing solution pumped through the circuit.

13. Apparatus according to claim 12, characterised in that a conductivity sensor (48) is provided for determining the conductivity of a liquid present in the pipe system.

In all other respects, the counterclaim for declaration of invalidity is dismissed.

C. The claimant shall bear the costs of the infringement action.

D. The claimant shall bear 80% of the costs of the counterclaim for nullity; the defendant shall bear the remaining 20%.

E. The value in dispute for the infringement action and the counterclaim for nullity is set at EUR 500,000.00 in each case.

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Düsseldorf, 22 October 2026

NAMES AND SIGNATURES

Presiding Judge Dr Thom	
Legally qualified judge Dr Rinken	
Legally qualified judge Kupecz	
Technically qualified judge Dr Parrini	
On behalf of the Deputy-Registrar	

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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), 224(1)(a) of the RoP).

Information on enforcement (Article 82 UPC Agreement, Article 37(2) UPC Agreement, Rule 118(8), 158(2),
354, 355(4) of the 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.

A certified copy of the decision shall be forwarded to the European Patent Office, the Austrian Patent Office, the German Patent and Trade Mark Office, the Patent- og Varemærkestyrelsen, the Institut National de la Propriété, the Ufficio Italiano Brevetti e Marchi and the Octrooicentrum Nederland as soon as the decision on the action for revocation has become final.

This decision was pronounced in open court on 22 October 2026. Presiding Judge Dr

Thom