Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Brussels - Local Division

UPC_CFI_1357/2025
UPC_CFI_629/2025

Procedural Order
R. 105.5 RoP
of the Court of First Instance of the Unified Patent Court
Issued on 28 October 2026
Concerning EP 3 107 487 B1

CLAIMANTS INFRINGEMENT ACTION (UPC_CFI_1357/2025)
DEFENDANTS COUNTERCLAIM FOR REVOCATION (UPC_CFI_629/2026)

ESTABLISHMENT LABS S.A.

Represented by:	Haseltine Lake Kempner LLP Haseltine Lake Kempner PartG mbB Joanna Deas Alex Rogers Harriet Crawford Joseph Lenthall
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Hereafter referred to as:	*"Claimant"* or "*LABS*"

DEFENDANTS INFRINGEMENT ACTION (UPC_CFI_1357/2025)
CLAIMANTS COUNTERCLAIM FOR REVOCATION (UPC_CFI_629/2026)

(1) GC AESTHETICS PARENTCO LIMITED
(2) NAGOR LIMITED
(3) GC AESTHETICS MANAGEMENT LIMITED
(4) GC AESTHETICS (DISTRIBUTION) LIMITED
(5) GC AESTHETICS (France) SAS
(6) EUROSILICONE SAS
(7) GC AESTHETICS ITALY S.R.L.
(8) GC AESTHETICS GmbH
(9) GC AESTHETICS SPAIN, S.L.U.
(10) GLOBAL CONSOLIDATED AESTHETICS (UK) LIMITED
(11) GC AESTHETICS HOLDINGS LIMITED
(12) GC AESTHETICS FINANCE LIMITED
(13) ROMED N.V.

Represented by:	Bristows (Ireland) LLP Brian Cordery Dr Gregory Bacon Andrew Bowler James Boon
Electronic address for servicing:	gregory.bacon@bristows.com
Hereafter referred to as:	Collectively as "*Defendants*"

PATENT AT ISSUE

Number	Proprietor(s)
EP 3 107 487 B1	ESTABLISHMENT LABS S.A.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT MATTER: R. 105 RoP

PANEL - LOCAL DIVISION

Presiding Judge (Judge-Rapporteur):	Samuel Granata
Legally Qualified Judge:	Carine Gillet
Legally Qualified Judge:	Marije Knijff
Technically Qualified Judge:	Paolo Gerli

DECIDING JUDGES: Order issued by the Judge-Rapporteur

I. THE INTERIM CONFERENCE

1. An interim conference (hereafter "*IC*") was organised via video conference (Webex) on 27 October 2026 at 10 am (CEST) and was recorded (R. 105 RoP and R. 106). All parties were represented by their respective representatives. For the Court, besides the JR (Samuel Granata) also Mrs. C. Gillet and Mr. Paolo Gerli attended.

2. During this IC, in accordance with Rule 104(a) of the Rules of Procedure (RoP), the parties discussed the main issues of the case, as identified by the Judge-Rapporteur in the draft agenda sent to the parties on 12 October 2026 (the "*Agenda*"). Along with sending the Agenda, the Judge-Rapporteur invited the parties to submit comments regarding this Agenda or additional issues to be addressed at the IC. Comments were received from the representatives of the Defendants dated 15 October 2026 (integrating the comments by both parties).

II.A. Possibilities to settle the dispute - R. 104 (d) RoP

3. It was clear from the position of the parties throughout their submissions that it is unrealistic to reach a settlement.

II.B. Value of the Case - R. 104 (i) RoP

4. Parties agreed that the value of the proceedings should be set at €8M for the infringement action and 12M (€8M+50%) for the revocation action, which is in line with the "*Guidelines for the determination of the court fees and the ceiling of recoverable costs*" (as adopted by decision of the Administrative Committee on 24 April 2023 and amended by decision of the Administrative Committee on 4 November 2025) (under Point II.2.b).

5. There is no reason to divert from the agreement reached and the value of the proceedings is set at € 20M

II.C. Recoverable costs - R. 104 (j) and (k) RoP

6. As the value of the proceedings has been set at € 12M, the ceiling for recoverable costs is at €1.2M.

7. Based on the information received in the communication dated 23 October 2026 from the representative of the defendants (articulating the position of all parties), and on what was said during the IC, it seems that the parties are close to reaching an agreement on recoverable costs. However, an issue that still needs to be addressed is the possible reduction relating to the fact that Defendants 2 and 10 are not parties to the main proceedings (see R. 263.3 and R. 361 RoP Order dated 4 June 2026).

8. The Judge-Rapporteur pointed out that another issue to be addressed during these ongoing negotiations regarding recoverable costs is LABS's position regarding Defendants 11 and 12 in its *Reply to the Defence to the Counterclaim for Revocation, together with the Rejoinder to the Reply to the Statement of Defence and the Defence to the Application to Amend the Patent* (submitted on 30 June 2026), in which LABS stated the following under §1017:

> *"1017. Nevertheless, the Claimant accepts that no infringing acts have been linked to Defendants 11 or 12 at this stage and the Claimant provisionally does not pursue the claim in relation to these Defendants. The Claimant reserves the right to pursue the claim in the event that new information comes to light, for example, following an order to produce evidence under Rule 190 UPC RoP*

9. The Judge-Rapporteur pointed out that this would be of interest not only in the ongoing negotiations on recoverable costs, but also because LABS would be asked to inform the Court at the oral hearing whether it is still pursuing its claim against Defendants 11 and/or 12.

10. The parties agreed to inform the Court about the outcome of the ongoing negotiations regarding recoverable costs. The Judge-Rapporteur expects the parties to inform the Court by **16 November 2026** (6 pm) if such an agreement could be reached and, if so, what its terms are.

II.D. Main Legal and Technical points - R. 104 (a) RoP

11. The following issues were pointed at in the Agenda and some additional remarks by the Judge-Rapporteur were discussed during the IC:
    - Claim Construction
    - Skilled Person and Common General Knowledge
    - Objective technical problem
    - Validity

- Lack of novelty: SilkSurface/SmoothSilk + Cereform

The Judge-Rapporteur requested information regarding LABS' position on "*confidentiality*" in the UPC and UK proceedings (see §§126–129 of the Defendants' Rejoinder dated 7 September 2026 which pertains to the issue whether the surface characteristics of the SilkSurface/Smoothsilk implants sold before the priority date were made available to the public). More specifically, the Judge-Rapporteur raised the issue of an alleged inconsistency in these proceedings, namely that LABS supposedly "*dropped the confidentiality argument*" in the UK proceedings, stating in the cover letter that this was due to "*reasons specific to the UK procedure*". LABS further informed the Judge-Rapporteur of the specifics of the UK proceedings, especially the disproportionate costs of maintaining the confidentiality argument in the UK in relation to the value of the action in the UK. The Defendants also informed the Judge-Rapporteur that the Cereform-product was not used by the Defendants in the UK which will also leads to a different assessment. For this reason, the Defendants are maintaining their no-confidentiality argument at the UPC. The Judge-Rapporteur drew attention to the divergence (factual situation) on which the UK Court's and the UPC's assessments will have to be based, should the UPC accept the confidential nature of SilkSurface/Smoothsilk and/or its surface characteristics. The Judge-Rapporteur noted LABS's position, which the Court will consider further when assessing the case as a whole.

- Inventive Step: (i) SilkSurface/SmoothSilk, (ii) LABS190-3-08, (iii)LABS190-3-08 combined with LABS-190-3-07; (iv) Bommarito and (v) Bommarito combined with Barr et al (2010)); (vi) EPO-based AgrEvo obviousness
- Added Subject Matter
- Sufficiency of disclosure

- Auxiliary requests: (LABS informed the Judge-Rapporteur that AR8 and AR9 are not asserted by LABS for infringement)
- Infringement (acts of infringement)
- Relief
- Security

12. Based on the comments received by the parties, the Judge-Rapporteur touched upon the issue of "*international competence*" and this specifically in regard to the R. 20 RoP Order issued on 15 January 2026. As an introductory note the Judge-Rapporteur noted that none of the arguments were addressed to the competence of the LD Brussels (as territorial division of the UPC). Parties confirmed this view. Subsequently, the Judge-Rapporteur informed the parties that they are expected to take a conclusive position on whether this issue can still be raised (taking into consideration R. 19.7 RoP and Art. 26(1) BR Regulation. The Judge-Rapporteur referred to the reading of the order of the LD Mannheim dated 11 March 2025 (§47) which the Defendants had introduced to argue the issue may still be raised.

13. If the Court still has the competence to assess its "*international jurisdiction*", the Judge-Rapporteur informed the parties that the Court would like them to elaborate on or clarify their position on the following issues:
- The "*anchor defendant(s)*" in view of the acceptance of the LD Brussels to be territorially competent to assess the actions. The Judge-Rapporteur requested the parties to examine the Procedural Order from the LD Hamburg dated 8 June 2026.
- The articles of the BR Regulation that the Court should assess related to the respective defendants.
- Where LABS argues the "joint" liability of the Defendants (or at least Defendant 1), which is also part of the arguments regarding "*international jurisdiction*", the law which should be applied to assess such "*joint liability*".

14. During the IC, the Technically Qualified Judge (TQJ) was asked which technical issues needed more clarification. The TQJ addressed the following issues:
- Claim Construction: The TQJ highlighted some issues to be clarified from both sides (e.g. the Defendants' apparently inconsistent position on claim construction when applied to validity compared to infringement, and LABS's apparently inconsistent position throughout their submissions). The Judge-Rapporteur allowed both parties to submit additional written submissions/clarifications on this issue. These submissions must be submitted by both parties by **12 November 2026** at 6pm CET. These additional submissions/clarifications should be no more than 5 pages (not including the title page) and should be of a "neutral nature", in the sense that they should only set out the respective position on claim construction and not counter the position of the opposing party(ies). Furthermore, no new lines of argument should be introduced. Only clarification of previously articulated arguments will be permitted. Finally, the parties were informed that any objections to the additional submissions/clarifications will be dealt with at the oral hearing, so no last-minute objections or applications for separate orders are expected.
- AgroEvo-Obviousness: The LQJ requested that the parties further be prepared to elaborate at the Oral Hearing on and/or clarify their respective positions, specifically pointing out the consistency (or inconsistency) between the experimental examples in the Patent and the terms/scope of claim 1.

II.E. Timeframe for the Oral Hearing

15. The following timeframe will be used as guidelines for the oral hearing, based on the proposals made in the Agenda regarding the timeframe for the oral hearing:

Guideline 1

The parties expressed their preference for the Court to provide a preliminary (non-binding) opinion on one or more of the issues to be assessed. The Judge-Rapporteur stated that a

written preliminary opinion would not be provided prior to the oral hearing, but one could be given at the start of the hearing.

If a preliminary (non-binding) opinion is expressed at the start of the oral hearing, the parties will be given 30 - 45 minutes to restructure their pleadings according to the timeframe adopted following the delivery of the preliminary non-binding opinion.

Guideline 2

If no preliminary (non-binding) opinion is expressed, the Judge-Rapporteur discussed the timeframe to be adopted with the parties and expressed gratitude for their efforts to reach an agreement. Based on this agreement and the agenda, the following timeframe was agreed by the representatives as a guideline:

Action	Maximum Term
Administration and Technical checks	5 min
Introduction by the Court	15-20 min
Presentation of the parties (including claim construction) by LABS	25 min
Presentation of the parties (including claim construction) by the Defendants	25 min
Questions by the Court on the patent and claim construction	
Pause	*TBD*
The Defendants on validity (including ARs)	70 min
Reply LABS on validity (including ARs)	70 min
lunchbreak	*TBD*
Questions by the Court on validity (possibly before lunch in order to allow parties to anticipate)	
Rebuttal Defendants and Reply LABS on validity (including answering the questions by the Court)	15 min each
LABS on international jurisdiction and infringement (including requests)	45 min
The Defendants on international jurisdiction and infringement (including requests)	45 min
Questions by the Court	
Rebuttal LABS and Reply Defendants (jurisdiction, infringement and requests) (including answering the questions by the Court)	15 min each
Final questions by the Court (if any)	
Closing remarks by the Court (setting date for decision)	

The parties were informed that these were rough guidelines and that the timetable may be adapted based on (i.a.) the Court's questions. Parties are informed that if questions are raised during the pleadings, this will not affect their total pleading time on an issue.

II.F. Further Practical Guideline

16. One issue that may affect the hearing is the alleged confidential nature of some of the pleadings. The Judge-Rapporteur informed the parties that third parties would be attending the hearing. Furthermore, some of the attendees, even if they are related to one or more of the parties, may not be part of the confidentiality circle. During the proceedings, these

individuals should not be permitted to attend (in person or virtually) the oral hearing. The parties informed the Judge-Rapporteur that, although many issues and facts were confidential, it would be possible to structure the oral pleadings so that, at certain moments, attendees could be requested to leave the courtroom (in person or virtually). The parties would also be able to agree among themselves which parts of the hearing should be kept confidential. This agreement could be reached once the visual aids for the hearing were available. Therefore, the parties must submit any visual aids they wish to use during the OH to the other party and the Court by 25 November 2026 (6PM CET). Subsequently, the parties must inform the Court by 30 November 2026 (6 pm CET) which parts of the oral hearing will be confidential.

17. In relation to the above, the Judge-Rapporteur informed the parties that they would receive the final decision under the "M" confidentiality code and be requested to inform the Court which parts should be blacked out in order to issue the decision under the "P" confidentiality code, within a very short timeframe (48 hours). Additionally, the parties were informed that, as long as the decision is issued under the "M" code, they should not inform their respective clients (except persons who are part of the confidentiality club) of any specific parts of the decision that are to be considered confidential.

18. The Parties are further informed of the following:
    - The Sub-Registry of the LD Brussels will inform the parties of any further practical arrangements relating to the OH and the premises where the OH is held.
    - The respective parties will provide the Sub-Registry of the LD Brussels (and the other party) with the names of those who wish to attend the hearing virtually or in person, along with their email addresses, one week prior to the hearing.

III. ORDER

The Judge-Rapporteur orders that:

1. The value of the infringement action (UPC_CFI_1357/2025) is set to € 8M and the value of the counterclaim (UPC_CFI_629/2026) at € 12M, resulting in a total value of the proceedings in the amount of € 20M (with a ceiling for recoverable costs at €1.2M).
2. The parties shall inform the Court via CMS, by **16 November 2026** (6 pm), whether an agreement was reached (and its terms) regarding the recoverable costs.
3. Parties will submit further written pleadings/clarification on claim construction by **12 November 2026** (6 pm). The following should be taken into consideration when submitting the additional written pleadings/clarification:
    - Not more than 5 pages (excluding the title page)
    - Neutral position (no counterarguments related to the position of the opposite party(ies))
    - No new line of arguments
4. Parties are to inform the Court and their respective counterparties on visual aids used during their oral pleadings the latest by **25 November 2026** (6 pm).

5. The latest by **30 November 2026** (6 pm), parties will jointly or separately inform the Court of which parts of their oral pleadings (based on the visual aids) will be a confidential nature.

Issued by the Judge-Rapporteur on 28 October 2026

Samuel GRANATA Judge-Rapporteur Presiding Judge LD Brussels Legally Qualified Judge	Samuel Rocco M Granata Digitally signed by Samuel Rocco M Granata Date: 2026.10.28 08:17:43 +01'00'