Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Brussels - Local Division

UPC_CFI_1357/2025
UPC_CFI_629/2025

Procedural Order
R. 9 RoP and R. 24 RoP
of the Court of First Instance of the Unified Patent Court
Issued on 17 November 2026
Concerning EP 3 107 487 B1

APPLICANTS R.9 ROP/R. 24 ROP APPLICATION
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
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Hereafter referred to as: Collectively as "*Defendants*"

RESPONDENTS R. 9 ROP/R. 24 ROP APPLICATION
CLAIMANTS INFRINGEMENT ACTION (UPC_CFI_1357/2025)
DEFENDANTS COUNTERCLAIM FOR REVOCATION (UPC_CFI_629/2026)

ESTABLISHMENT LABS S.A.
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Hereafter referred to as: *"Claimant"* or "*LABS*"

PATENT AT ISSUE

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

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT MATTER: Procedural Order R. 9 RoP and R. 36 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. GROUNDS

1. On 26 June 2026, the Court issued its R. 190 RoP Order II. In this order LABS was required to produce evidence falling within specific categories (namely, Category B (as amended by the Court), Category C and Category D). Documents falling within Category C and D were provided to the Defendants on 7 July 2026.

2. At the date of the Interim Conference organized (27 October 2026), there remained an outstanding tranche of documents to be provided by LABS, namely those falling within Category B (as amended by the Court). The documents falling within Category B (as amended by the Court) were those that were responsive to the search terms set out in paragraph I.1 of the R. 190 RoP Order II, i.e. those that: (i) were identified as containing reference to one or more surface metrology terms in combination with "*silksurface", "smoothsilk"* and/or *"motiva*"; and (ii) which were subsequently confirmed as referring to or containing data relating to certain measurements of the surface topography of Motiva SilkSurface implants manufactured before 29 May 2015, irrespective of when the testing, data and/or document was generated. This tranche of documents was provided to the Representatives for the Defendants on 28 October 2026 and was designated as confidential by LABS, including redactions of material said to be confidential and irrelevant to the issues in dispute. Although the R. 190 RoP Order II required the Category B evidence to be provided within 28 days of the date of the disclosure order in the parallel UK litigation (i.e. within 28 days of 23 June 2026), the Court ordered that if the searches returned more than 500 pages then the parties should try to reach an agreement on alternative searches and/or a longer period for the disclosure (see paragraph I.1 of the R. 190 RoP Order II). The LABS's representatives in the UK litigation first notified the Defendants' representatives on 14 July 2026 that more than 500 pages of potentially disclosable pages of documents had been identified by the searches required in paragraph I.1(i) of the R. 190 RoP Order II. As a result, the parties'representatives in the UK

litigation entered into correspondence in the parallel UK litigation to try to reach an agreement on alternative searches. Such agreement was reached on 4 September 2026 and the alternative searches subsequently conducted. The Defendants state that they do not take issue in these UPC proceedings with the date on which the evidence in Category B was eventually provided.

3. The Defendants state that they reviewed the documents which came in their possession on 28 October 2026 (consisting of nine documents). The Defendants argue that they did not have any alternative means of obtaining these documents as they are all internal documents of LABS that were only produced to the Defendants on that date pursuant to the R. 190 RoP Order II.

4. The Defendants state that as the oral hearing has been scheduled for 2 December 2026, and they do not wish to jeopardise this, they introduced a R. 9 RoP and R. 24 RoP request on 6 November 2026. In this request, the Defendants argue that certain submitted documents are highly material to the issues in dispute before the Court. More specifically, they argue that these documents would support their position and/or contradict the position advanced by the LABS. The following requests were introduced by the Defendants:

27. The Defendants respectfully request that the Court:

a) Rule that the Defendants may introduce each of the following documents to the Counterclaim:

i. Document entitled "Sterile Silicone Breast Implant Motiva Implant Matrix® - SmoothSilkTM / SilkSurfaceTM – Surface Characterization Summary", exhibited as GCA-134;

ii. Document entitled "Technical Study Report – Old SilkSurface® and New SilkSurface® comparison through non-contact profilometry – TS-17-023.R", exhibited as GCA-135; and

iii. Document entitled "Mechanical and Surface Characterization of Silicone Breast Implants Post-Explantation: An In-Depth Analysis of Long-Term Performance and Degradation.", exhibited as GCA-136.

28. b) Rule that the Defendants may refer to each of the following documents at the Oral Hearing to be held on 2 December 2026 (or such other date on which it the Oral Hearing is held):

i. Document entitled "Sterile Silicone Breast Implant Motiva Implant Matrix® - SmoothSilkTM / SilkSurfaceTM – Surface Characterization Summary", exhibited as GCA-134;

ii. Document entitled "Technical Study Report – Old SilkSurface® and New SilkSurface® comparison through non-contact profilometry – TS-17-023.R, exhibited as GCA-135; and

iii. Document entitled "Mechanical and Surface Characterization of Silicone Breast Implants Post-Explantation: An In-Depth Analysis of Long-Term Performance and Degradation", exhibited as GCA-136.

5. As an alternative, should the Judge-Rapporteur prefer no to issue written Orders regarding admissibility in advance of the Oral Hearing, the Defendants request that their application under Rule 9 RoP and/or Rule 24 RoP (if required) be decided at the Oral Hearing or as part of

the final judgment following the Oral Hearing. The Defendants are of the view that this would provide procedural efficiency and avoid disrupting preparation for the Oral Hearing.

6. The Defendants further note that as they do not need to introduce an application under Rule 263 RoP, but "*out of an abundance of caution they make an application under Rule 9 RoP (Powers of the Court) and/or Rule 24 RoP (Contents of the Statement of Defence) for permission to refer to the three documents at the Oral Hearing, if such an application is required*". The Defendants state that they do not request permission to file further written submissions and are of the view that they can adequately address the relevant contents of the three documents within the time already allocated to them at the Oral Hearing.

7. By communication dated 6 November 2026, the Judge-Rapporteur requested LABS to submit comments to the above requests the latest by 10 November 2026. These comments were received by the Court on the mentioned date and the following requests (under §47 and 48) were introduced:

> *(47) The Claimant respectfully requests that the Court:*
> *(a) decline the Defendants' request at paragraph 27(a) that the Three Documents be "introduced to the Counterclaim";*
> *(b) alternatively, to the extent that it permits the Defendants to refer to the Three Documents at the Oral Hearing, to do so only on the conditions set out in Section F above;*
>
> Under Section F the following conditions are mentioned:
>
> > *30. If the Court permits the Defendants to refer to the Three Documents, the Claimant requests*
> > *that the permission be subject to the following conditions.*
> > *31.* ***Scope.*** *Reliance should be limited to the passages and propositions the Defendants themselves identify at paragraphs 7 to 14 of the Request. The Defendants should not be permitted to advance the allegations at paragraphs 15 to 17 of the Request unless the Claimant has first been given the opportunity to respond to their allegations.*
> > *32.* ***Written submissions****. Given the length and technical nature of the Three Documents, the Claimant considers that the parties should be directed to address their contents in short written submissions in advance of the Oral Hearing. This would enable the parties to identify and explain the relevant passages, measurements and technical issues in an orderly manner, rather than attempting to deal with them for the first time during the Oral Hearing.*
> > *(…)*
> > *(35)* ***Right to respond.*** *In any event, the Claimant should be permitted to file the witness statements and any short supplementary declarations requested at Section E above,*
> > *together with its written submissions.*

> *36. **Timing and directions.** The Judge-Rapporteur indicated at the Interim Conference a preference not to make written admissibility orders before the Oral Hearing. The Claimant respects that preference. Equally, it cannot properly prepare without knowing the scope on which the Defendants may rely, or whether its own responsive evidence may be filed.*
> *(...)*
> ***Confidentiality.** The Three Documents (and GCA-137 (being confidential metadata)) were produced under the Claimant's confidentiality designation and are, in the case of GCA-136, an unpublished draft. The Claimant's corresponding UK witness statements are also marked confidential. The Claimant requests that any permission be subject to the confidentiality regime already in place, including the protection of the Claimant's redactions, and to the Court's powers under R. 262A RoP.*
> *(...)*
>
> *(c) grant the Claimant permission to lodge and rely on the witness statements from Ms Hidalgo and Ms Wells Hernandez dated 30 October 2026, already served in the parallel UK proceedings, subject to appropriate confidentiality protection;*
> *(d) alternatively, to the extent that the Court considers any additional formalities necessary under R. 175 RoP, grant the Claimant permission to file short supplementary statements or declarations from those witnesses within 7 days of the Court's directions;*
> *(e) direct the parties to file short written submissions addressing the Three Documents, in the sequence and within the time limits set out at paragraph 33 above;*
> *(f) alternatively, if the Court does not direct the filing of written submissions, extend the speaking times allocated to each party at the Oral Hearing by at least 10 to 15 minutes;*
> *(g) give the procedural directions requested above in advance of the Oral Hearing; and*
> *(h) reserve the costs of the Request.*
>
> *(48) The Claimant reserves all its rights, including the right to supplement these comments in light of any further submission by the Defendants.*

8. Subsequently, the Judge-Rapporteur allowed the Defendants to respond to these requests by 13 November 2026 at the latest. In their response, the Defendants requested the following:

> *a) Paragraph 47(a) is denied. Whichever approach the Court adopts will give the Claimant a right to respond and the Defendants deny that the Claimant will suffer prejudice. In any event, it appears that the Claimant accepts the introduction of the 3 documents subject to certain conditions.*
> *b) As to paragraph 47(b), the Defendants have set out above their response to the conditions set out in paragraph F of the Claimant's R. 9 Response. The Defendants maintain that the Court should permit the Defendants to refer to the 3 documents at the Oral Hearing.*
> *c) Paragraph 47(c) is agreed.*
> *d) The Defendants do not consider that paragraph 47(d) is required. For the reasons given above, the Defendants would resist the filing of any supplemental evidence from*

Ms Hidalgo or Ms Hernandez (or any other witness) in respect of the 3 documents in question, and reserve their position whether to request hearing of those witnesses in respect of the evidence and to put questions to those witnesses under Rules 112(3) and 112(5) RoP.
e) In response to paragraph 47(e), the Defendants' primary position is that no further written submissions are required concerning the 3 documents, and therefore the Court does not need to direct the parties to file further written submissions. The 3 documents can be adequately addressed at the Oral Hearing once the witness statements of Yessica Elizondo Hidalgo and Maria Vanessa Wells Hernandez dated 30 October 2026 are introduced to the proceedings. To the extent that the Court directs the parties to file further written submissions, the Defendants confirm that they will rely on the contents of the R. 9 RoP Application. The Court should therefore order the Claimant to file any further written submissions within 3 working days of today's date. Such written submissions should be no more than 5 pages in length. The Court should direct that these should be strictly limited to addressing the specific information and data contained within the 3 documents and the two witness statements of Yessica Elizondo Hidalgo and Maria Vanessa Wells Hernandez dated 30 October 2026.
f) As made clear above, paragraph 47(f) is the Defendants' preferred approach. In such case, each party should be given an additional 10 minutes of speaking time to address validity.
g) Paragraph 47(g) is agreed, subject to the submissions above.
h) Paragraph 48(h) is agreed.

9. Finally, the LABS (being the defendant in the R. 9 and R. 24 RoP application) was allowed to submit comments by 17 November 2026. In its communication, the Judge-Rapporteur once again expressed its desire to resolve the aforementioned issues amicably in view of the oral hearing scheduled for 2 December 2026. Although some agreement seemed to have been reached (see §8), an overall agreement could not be reached. On 17 November 2026, LABS submitted (together with the Declarations (R. 175 RoP) together with witness statement) its final comments requesting the Court:

a) admit the Declarations of Ms Elizondo Hidalgo and Ms Wells Hernandez dated 30 October 2026, together with their accompanying statements complying with Rule 175 RoP, into the proceedings, subject to the existing confidentiality regime;
b) permit the parties to address the three documents and the Declarations at the oral hearing, with each party being a□orded an additional 10 minutes for that purpose; and
c) maintain the date of the oral hearing on 2 December 2026.

10. In view of the oral hearing scheduled for 2 December 2026, the Parties' and the Court's desire not to reschedule the hearing, the procedural issues that could arise from issuing a Judge-Rapporteur order this close to the oral hearing (e.g. requesting a review), and the Judge-Rapporteur's previously expressed desire to address any additional issues that may arise after the interim conference at the oral hearing, the Judge-Rapporteur informs the parties that all requests submitted in the aforementioned communication will be assessed by the panel at the oral hearing.

11. The parties are informed that the above may prevent the Court from presenting them with a preliminary opinion. If the Court were to provide such an opinion at the beginning of the hearing, it might encompass the requests set out above.

II. ORDER

The Judge-Rapporteur:

1. No further written submissions are permitted regarding requests made in the R. 9 and R. 24 RoP application introduced by the Defendants on 6 November 2026, or requests introduced in subsequent comments by the parties.
2. The parties are informed that the requests made in the R. 9 and R. 24 RoP application introduced by the Defendants on 6 November 2026, and requests introduced in subsequent comments by the parties, will be dealt with during the oral hearing. Parties will be informed of the adjustment to the indicative timetable (allowing oral arguments regarding the mentioned requests) at the beginning of the hearing.

Issued by the Judge-Rapporteur on 17 November 2026

Samuel GRANATA Judge-Rapporteur Presiding Judge LD Brussels Legally Qualified Judge	Samuel Rocco M Granata Digitally signed by Samuel Rocco M Granata Date: 2026.11.17 15:26:52 +01'00'