Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

UPC Court of Appeal
UPC-CoA-40/2026
UPC-CoA-123/2026

ORDER

of the Court of Appeal of the Unified Patent Court
issued on 19 November 2026
concerning clarification on insolvency of a party (R. 311 RoP)

APPELLANT (CLAIMANT BEFORE THE COURT OF FIRST INSTANCE) IN UPC-COA-40/2026 AND RESPONDENT (COUNTER-DEFENDANT BEFORE THE COURT OF FIRST INSTANCE) IN UPC-COA-123/2026

Emboline Inc., Santa Cruz, United States

(hereinafter 'Emboline')

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

RESPONDENT (DEFENDANT BEFORE THE COURT OF FIRST INSTANCE) IN UPC-COA-40/2026 AND APPELLANT (COUNTER-CLAIMANT BEFORE THE COURT OF FIRST INSTANCE) IN UPC-COA-123/2026

AorticLab srl, Samone, Italy

(hereinafter 'AorticLab')

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

PATENT AT ISSUE

EP 2 129 425

DECIDING JUDGE

Rian Kalden, presiding judge and judge-rapporteur

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE

Decision of the Local Division Munich issued on 13 January 2026 in the infringement proceedings (UPC_CFI_628/2024) and counterclaim for revocation proceedings (UPC-CFI-125/2025)

POINT AT ISSUE

Clarification on insolvency of a party (R. 311 RoP)

LANGUAGE OF THE PROCEEDINGS

English

REASONS

1. AorticLab submitted on 3 November 2026 a communication to the Court of Appeal pursuant to R. 311 RoP informing, that, as of 28 October 2026, liquidation proceedings were opened against the company by the Italian Court of Ivrea, Insolvency Division. AorticLab indicated that the Court of Appeal would be informed as soon as it received notification of the Ivrea Court's decision on whether the present proceedings should continue. AorticLab further undertook to deal with the related procedural matters as expeditiously as possible, in view of the approaching date of the oral hearing scheduled for 21 December 2026.

2. On 11 November 2026, Emboline filed a communication to the Court indicating that it wishes the appeal proceedings to continue and that the oral hearing scheduled for 21 December 2026 be maintained.

3. R. 311 RoP states: "If a party is declared insolvent under the law applicable to the insolvency proceedings the Court shall stay the proceedings up to three months. They may be stayed until the competent national authority or person dealing with the insolvency has decided whether to continue the proceedings or not. Where the competent national authority or person dealing with the insolvency decides not to continue the proceedings, the Court may decide, upon a reasoned request by the other party, that the proceedings should be continued in accordance with the applicable national insolvency law".

4. It is presently unclear to the Court whether AorticLab has already been declared insolvent under the law applicable to the insolvency proceedings or whether such a declaration is expected to be made later, e.g. at the next hearing before the Court of Ivrea, currently scheduled for 27 January 2027. Clarification on this point is required.

5. Information should also be provided as to whether the competent national authority or person dealing with the insolvency has decided whether to continue the proceedings and – if not – when such a decision is to be expected.

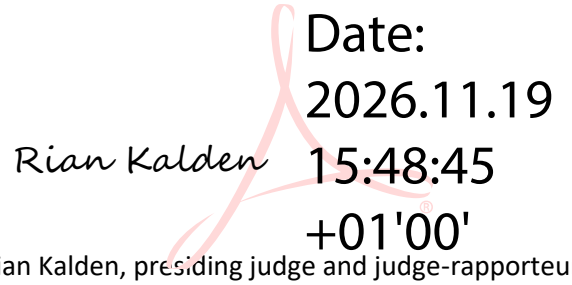
6. In view of the request by Emboline, AorticLab is also requested to inform the Court whether, if and when the competent national authority or person dealing with the insolvency decides not to continue the proceedings, the proceedings may or should be continued in accordance with the applicable national insolvency law.

7. AorticLab is invited to share any other information relevant to the question of continuation or stay of the proceedings.

ORDER

AorticLab is invited to provide the clarification and information requested under para. 4-7 above no later than **1 December 2026**.

Issued on 19 November 2026



Rian Kalden, presiding judge and judge-rapporteur

Case management decisions or orders made by the judge-rapporteur or the presiding judge shall be reviewed by the panel, on a reasoned Application by a party (R. 333.1 RoP).