Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

The Hague - Local Division
UPC-CFI-2228/2025
UPC-CFI-1546/2026

Order
of the Court of First Instance of the Unified Patent Court
issued on 17 November 2026
regarding: R.105.5

Claimant:

BMS Innovations, LLC
1900 K Street, NW, Suite 725
Washington, D.C 20006
United States of America,
"**Claimant**" or "**BMSI**"

represented by Christian Dekoninck, Christopher Thornham, Thomas Witte and Laura Coucke

Defendants:

1) **BYD Company Ltd,** No. 3009, BYD Road, Pingshan, 518100 Shenzhen, Guangdong Province, People's Republic of China

2) **BYD Auto Co., Ltd,** No.1 Qinling Avenue West, Caotang, Science and Technology Industry Base, 710311 Xi'an, Shaanxi, People's Republic of China

3) **BYD Europe B.V.,** 's-Gravelandseweg 256, 3125 BK Schiedam, The Netherlands

4) **BYD France SAS,** 8 rue Leonard de Vinci, 60000 Beauvais, France

5) **BYD Automotive GmbH,** Albert-Dulk-Str. 9, 70327 Stuttgart, Germany

6) **BYD Mobility GmbH,** Albert-Dulk-Str. 9, 70327 Stuttgart, Germany

7) **BYD Sweden AB,** c/o United Spaces, Elektrogatan 10, 171 54 Solna, Sweden

8) -

9) **BYD POLSKA SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ,** ul. Domaniewska 48, 02-672 Warszawa, Poland

Defendants 1-7 and 9, collectively "**Defendants**" or "**BYD**", are represented by Rien Broekstra, Elard Schenck zu Schweinsberg, Rik Lambers, Chia-Jung Hu and Eveline Lots

PATENT AT ISSUE: EP3393001

DECIDING JUDGE
This order is issued by the judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English

Subject-matter of the proceedings: Infringement action and counterclaim for revocation

BACKGROUND AND GROUNDS

1. An interim conference (IC) was held on 4 November 2026 by Video Conference with the following attendees.
   On behalf of BMSI: Christian Dekoninck, Laura Coucke Christopher Thornam, Tom Witte, Paula Terzini Leite, Alexandre Ribeiro Dias, Etienne Lallias and Bertrand Loisel;
   On behalf of BYD: Cheung Hang For (In-house Counsel), Rien Broekstra, Elard Schenck zu Schweinsberg, Rik Lambers, Chia-Jung Hu, Liding Zhang and Eveline Lots.

   On behalf of the Court the TQJ participated, in addition to the JR.

2. During the IC, the Court set the case value and dealt, to the extent possible, with several outstanding applications and objections, as reflected in the operative part below. Furthermore, some preliminary guidance was provided on claim construction, infringement and validity. The decisions taken at the IC are herewith confirmed.

3. BMSI's R.176 Application of 23 October 2026 to hear Mr. Zheng, an engineer employed by BYD, was dismissed. Mr Zheng provided a written affidavit submitted as exhibit VB11 and a test report submitted as exhibit VB12 (the "BYD Test Report"). This evidence is relied on for (non) infringement. Both exhibits were submitted with BYD's Statement of Defence (SoD) on 5 May 2026. BMSI submitted that the written record alone does not permit the Court to resolve the disputed factual matters with confidence, and that a short, focused, in-person hearing of Mr Zheng is both necessary and proportionate for the oral hearing scheduled on 2 February 2027. BYD countered that BMSI is seeking to fish for evidence with the hearing of Mr Zheng, with which it hopes to substantiate its infringement allegations, rather than to confirm any facts that were mentioned in the written affidavit and report. The JR informed the parties that at this point in time, the Court sees no reason to hear Mr Zheng in person. It was noted that, in case the Court finds at a later stage that specific disputed facts need further confirmation or clarification, further evidence may be required, including the questioning of a party expert with respect to those specific facts. This may take place as part of the – one day - oral hearing. The (at least online) presence of any party experts at the oral hearing is consequently advisable.

ORDER

The Court, having heard the parties, confirms the following case management decisions and orders taken during the interim conference:

A. The value of both the claim and the (conditional) counterclaim are set at EUR 4,000,000 each;
B. Parties will provide a comprehensive overview of their exhibits and of the relief sought within two weeks from the IC;
C. BYD's objection to an asserted amended infringement mapping in BMSI's reply of 8 September 2026, is dismissed;
D. BMSI's objection to BYD's asserted late filed defense to equivalence arguments for features 1.5 and 1.6, is dismissed;
E. In so far as BMSI's rejoinder CC goes beyond the scope of R.29 e., last sentence, it is not permitted and BMSI is ordered to re-submit an abbreviated version of this submission;
F. The requested withdrawal of BYD's **R.333 application** of 6 October 2026 is herewith confirmed;
G. BMSI's **R.176 application** of 23 October 2026 is dismissed;
H. Within two weeks from the date of the IC, that is on 18 November 2026 at the latest, BYD shall clarify on which most promising validity attacks it intends to rely at the oral hearing to focus the case, specifying the parts of its submissions relevant thereto. During the IC a maximum of five attacks was mentioned as (just) manageable.
I. At the oral hearing, each party has 90 minutes pleading time and 30 minutes for rebuttals.
J. A PowerPoint presentation is permitted at the oral hearing under the condition that these do not include any new information. Such presentations must be exchanged and sent to the Court at the latest twenty-four hours before the start of the oral hearing. Dutch style pleading notes are also permitted under the conditions discussed (inter alia as a 'transcript'-aid to the court only, no legal status).
K. Unless parties reach an agreement on the costs (which they are urged to do; the maximum reimbursable amount can be based on the case values), parties are ordered to submit a specified overview of the costs that they will seek to recover to the court and to the other party one week before the start of the oral hearing.

On behalf of the Registry:

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The JR:

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