Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Local Division The Hague
UPC_CFI_ 478/2025
UPC_CFI_ 585/2026

PROCEDURAL ORDER

of the Court of First Instance of the Unified Patent Court
issued on 24 November 2026

CLAIMANT:
Avient Protective Materials B.V.
Urmonderbaan 22, Building 200, 6167 RD Geleen The Netherlands
represented by: Tjibbe Douma, Laurens Buijtelaar and Philippa van Hengel (of Bird&Bird)

DEFENDANTS:
1.**Xingi Technology Co., Ltd**
2. **Jiangsu Jiuzhou Xingji High-Performance Fiber Products Co., Ltd.**
both established and domiciled in the People's Republic of China
represented by: Michael Rüberg, Karl-Heinz Metten and Lars-Oliver Eggersdorfer (of Boehmert&Boehmert)

PATENT AT ISSUE:
European patent n° **2 791 402** (the **"patent"**) of Avient Protective Materials B.V.

DECIDING JUDGES:
This order is issued by the panel, comprising:

Edger Brinkman	presiding judge
Stefan Schilling	legally qualified judge
Koen Callewaert	technically qualified judge
Margot Kokke	judge rapporteur (JR)

REQUEST AND POINTS AT ISSUE

1. Following the example of the parties, the written submissions exchanged in this infringement action and counterclaim proceedings, made in line with the rules of procedure of the UPC (**RoP**), are referred with the following letters and numbers (with C referring to Claimant and D to Defendants):
    - 13 June 2025 **C1** the statement of claim

- 12 February 2026 **D1a** the statement of defence
- 12 February 2026 **D1b** the counterclaim for revocation (**CC**)
- 17 April 2026 **C2** reply/defence CC/application to amend (**AtA**)
- 17 June 2026 **D2** the rejoinder/reply CC/defence AtA
- 17 July 2026 **C3** rejoinder CC/reply AtA
- 17 August 2026 **D3** rejoinder AtA

2. Further (R.36 RoP) submissions were filed with the permission of the Court in October 2026. These submissions concern the results of the testing of ballistic properties performed by external institute by TNO in October 2026 of samples of allegedly infringing products. These samples were provided by Xingi after all 'regular' written submissions had been filed, in accordance with a R.190 RoP order issued on 11 May 2026 (the **R.190 Order)** ordering Xingi, inter alia, to provide to Avient *'at least 30 kg each of UD Fabric/ballistic sheets of J300_120H_2UD and J300_130S_4UD, or samples of commercially equivalent available variants'*. The R.190 Order had been suspended by the CoA but became effective after dismissal of both the appeal and the cross-appeal by order of the CoA of 27 August 2026. TNO was able to test the samples thus obtained in the presence of representatives of the parties on 5 October 2026. The TNO Report became available on 14 October 2026. Avient subsequently commented on the report by brief of 21 October 2026, referred to as **C4** by the parties. Xingi's response of 30 October 2026 is referred to as **D4**.

3. An interim conference (**IC**) was held on 26 October 2026. The R.105.5 order confirming the decisions taken at the IC, was issued on 30 October 2026 (the **IC Order**). After the IC, several further applications were filed by the parties:
   - On 30 October 2026 Xingi filed a R.9.1 RoP application (the **R.9.1 Application**) objecting to the number of words of C4, asserting that these exceed the permitted wordcount of 2000. Avient responded on 4 November 2026, asserting that the material number of words (without the party names and footnotes) is below the permitted word count.
   - On 6 November 2026 Xingi filed a R.353 application (**Xingi's R.353 Application**) requesting clarification and/or rectification of the IC Order (regarding inter alia the date, the admissibility of exhibit D-Inf5a and the pleading times);
   - On 9 November 2026 Avient filed a R.333 RoP application (the **R.333 Application**), requesting the full panel to review the IC Order. The requested review is limited to paragraph I(b) of the operative part of the IC Order insofar as it provides that Avient's exhibits BB60A-I are not permitted into the proceedings, and to the consequential effects of that exclusion on the corresponding parts of Avient's submission of 17 July 2026 ("C3") and [redacted] Second Expert Statement (Exhibit BB59A). Xingi responded, requesting the Court to dismiss the R.333 Application, and to maintain the dismissal of exhibits BB60A-I as ordered by the JR. The text of paragraph I(b) and (c), the latter relating to Xingi's submissions, of the operative part of the IC Order is copied below:

     b. Avient's exhibits BB60A-I (further infringement evidence submitted with C3, Avient's rejoinder CC/reply application to amend) are not permitted into the proceedings; Exhibit BB59A is not permitted insofar as it relates to infringement of the patent as granted. A new version must be submitted; parts of C3 which relate thereto are also not permitted (Avient shall indicate which part);

c. The same applies to D-CfR33 and D3 (Xingi's rejoinder to the application to amend); of D3 only part 5A and of part 6 pp 88-105 are permitted as relating to the auxiliary requests; of D-CfR33 only para 6.3 and 6.5 is permitted; a new version of D-CfR33 must be submitted

- On 17 November 2026 Avient filed a R.353 application (**Avient's R.353 Application**), requesting clarification/rectification of the IC Order at H regarding the permitted number of validity attacks concerning the auxiliary requests (**ARs**), in reaction to Xingi's submission of 16 November 2026 listing the additional validity attacks to be relied on at the oral hearing for the ARs maintained by Avient (pursuant to the IC Order at H).

4. These applications are addressed by the panel below.

GROUNDS

Regarding the R.333 Application

5. The R.333 Application was timely filed, contains grounds and is thus admissible.

6. Exhibits BB60A-I, which are the subject of the R.333 application, were submitted with C3. They provide the results of experiments commissioned by Avient on 6 May 2026, after the filing of C2 on 17 April 2026. These exhibits concern the following:
    - BB60A is a general document containing a summary of all test results;
    - BB60B-E contain the results of tests performed on Xingi's J300 yarn that was in the possession of Avient since the start of the proceedings (i.e. not obtained pursuant to the R.190 Order).
        i. Exhibits BB60B and BB60D are a repetition of the tests submitted as BB12A with C1 performed on J300 with a crosshead speed of 250 mm/min.
        ii. BB60C and BB60E concern the simlilar tests on J300 at a crosshead speed of 50 mm/min.
    - Exhibits BB60F-I provide results of tests performed on Avient's yarn SK99 which were apparently performed to illustrate the influence of crosshead speed and gauge length on the measured tenacity.

7. The testing commissioned on 6 May 2026, was performed on 12 May 2026 according to the date of the reports (exhibit BB60). Had these results been sent to Xingi promptly, it could have commented on this additional evidence in D2 on 17 June 2026. Instead, Avient waited until its next written round C3, which was submitted on 17 July 2026, and which only concerned the counterclaim (validity) and the application to amend.

8. Contrary to Avient's assertions, and as correctly pointed out by Xingi:
    - The additional evidence submitted does not relate only to the infringement of the ARs, but equally to the claims as granted. Also, claimant has consistently taken the position (again in C3) that the feature to which the evidence relates (testing with a crosshead speed of 50 mm/min as defined in [0036] of the patent), explicitly included in most ARs, is implicitly part of the claims as granted already and thus is

not a new feature only to be considered for infringement of the ARs. In para 580 of C3 Avient asserts (in response to a clarity objection to AR1; emphasis added):

> (...) Tenacity is a method-dependant measurement (...) AR1 improves the clarity of the claim by explicitly identifying the operative measurement standard and directing the skilled person to paragraph [0036] for the specific parameters.

- Xingi did object to the submission of exhibits BB60A-I by Avient with C3, conditionally. Both in D3 (on page 12) and in its response of 6 October 2026 to Avient's R.9.2 application of 28 September 2026 (the **R.9.2 Application**), wherein Avient objected to additional information filed with Xingi's D3 relating to infringement, Xingi explicitly objected to exhibits 60A-I in case the Court would consider Avient's objections to Xingi exhibits and parts of submissions (listed in C3 and in the R.9.2 application) to succeed. In its 6 October response, Xingi requested inter alia:

> in the further alternative, and by way of a conditional application under R. 9.2 RoP, should the Court disregard any part of [D3] or of the [redacted] Second Statement, or not admit any of Exhibits D-Inf 4, D-Inf 5, D-Inf5A, D-Inf 6, D-CfR 33, D-CfR 33A and D-CfR 33B, disregard of [C3] the following:
> (a) (...)
> b) Exhibits BB 59A, BB 59B–BB 59M and BB 60A–BB 60I and the submissions based on them;
> (c) the passages of [C3] that respond to Defendants' rejoinder in the infringement action [part of D2], in particular paras. 518 and 534–536; (...)

- During the interim conference Avient's R.9.2 application (objection to inter alia infringement information in/with D3) was discussed and partly found to succeed. The exhibits BB60A-I thus came into play and were also raised by the JR ex officio as further infringement evidence which the JR potentially considered late-filed with C3. These exhibits were only briefly discussed.

9. In the R.333 Application, Avient differentiates between BB60B-E on the one hand, which concern infringement in particular of the ARs with Xingi's J300 product and BB60F-I, which concern test with Avient's SK99 yarn which, according to Avient, provide empirical support for the effect of different measurement conditions and is (mainly) relevant for validity of the ARs.

10. The panel considers that Avient could and should have filed the new evidence BB60A-I at an earlier stage. Avient filed its last submission regarding infringement and its AtA, C2, on 17 April 2026. As set out above, the tests were commissioned on 6 May 2026, with samples that were already in Avient's possession from the start of the proceedings. It was Avient's choice to commission the tests after the filing of C2 on 6 May 2026, where it should have filed the evidence with C2 or in any case at the latest when it became available on 12 May 2026. This timing shows that – contrary to what Avient asserts in the R.333 Application – these tests were not triggered by Xingi's D2 submission of 17 June 2026.

    Avient also asserts that the test were triggered by parallel Chinese invalidation proceedings 'of which it became aware on 22 April 2026'. The Court cannot verify this.

11. This applies a fortiori to BB60B-E concerning infringement: this evidence should have been filed in support of infringement of the ARs (wherein the measurement method was

explicitly incorporated). In any case, it is difficult to understand why Avient who has the burden of proof for infringement, when explicitly including the measurement method in its ARs, including the crosshead speed of 50 mm/min, did not support this with evidence that the allegedly infringing products also comply with this feature, and rather relied on the evidence submitted with C1 where a crosshead speed of 250 mm/min was used.

12. On the other hand, Avient points out correctly that Xingi for the first time really disputed that it infringes the measurement method in D2 in the context of infringement of the ARs, asserting that it uses a different standard:

> As explained in detail below, all ARs which contain the feature "ASTM D885M", i.e. the standard as specified by para. [0036] *"wherein Ten is at least 39 cN/dtex, measured as specified in ASTM D885M, using a nominal gauge length of the fibre of 500 mm, a crosshead speed of 50mm/min and Instron 2714 clamps, of type 'Fibre Grip D5618C"*, are not infringed, because Defendants use a different standard and as far as a conversion between the standards could be calculated, the standard used by Defendants yields higher values than the ASTM D885M (as specified in para. [0036]), therefore making it plausible that the threshold of a tenacity of 39 cN/dtex is not reached by the attacked yarns when measured according to ASTM D885M (as specified in para. [0036]). Defendants have not made measurements under this standard and are not obliged to do so. (D2, p.189)

Furthermore, Xingi did respond extensively to Exhibit BB60A-I in D3, which parts were retained in the redacted version of D3 submitted on 6 November 2026, as instructed in the IC Order (at I(c)).

13. In these specific circumstances, without setting a general precedent for late-filing, the Court finds that the evidence will be admitted into the proceedings as it can be considered a specific response to defendants' previous submission concerning infringement (and validity) of the ARs. Exhibits BB60A-I will thus be admitted. Consequently, parts of C3 and of Exhibit 59A referring to those exhibits, are also permitted. It is not necessary to file a new version of C3. Xingi's post-IC filings are not affected by the admissions of exhibits BB60A-I.

<u>Regarding the other applications</u>

14. Xingi's R.9.1 RoP application in which it objected to the number of words of C4, is dismissed. The application is based on an incorrect counting method, including non-material words.

15. Xingi's R.353 application requesting clarification and/or rectification of the IC Order, is partly granted as set out in the operative part. The Court finds it unnecessary to correct minor typo's which do not affect the understanding of the IC Order. In view of the outcome of the R.333 Application, the requested rectification of the IC Order at I.b is no longer relevant.

16. Avient's R.353 Application will be granted. It was specifically discussed at the IC that the purpose is to focus the validity attacks, including those for the ARs. It was also mentioned that one additional validity attack per AR (i.e. in addition to the attacks maintained for the

patent as granted) is considered reasonable. This was not explicitly included in the operative part of the order at H and this will be rectified accordingly. In view of the R.333 decisions, it is now clear on which six ARs Avient relies in these proceedings (namely AR1, 2, 3, 5, 9 and 10). Xingi can thus submit a revised submission in accordance with the operative part of the IC Order at H as rectified. This revision shall replace the focussing of AR-attacks submitted on 16 November 2026 and must be filed on or before 26 November 2026. In case more than one additional attack per AR is maintained it must be explained why this is reasonable. As clarity is not a validity attack, this is not considered as an additional attack.

ORDER

The Court, having heard the parties, takes the following case management decisions:

I. revokes paragraph I(b) of the IC Order of 30 October 2026 insofar as it excludes Exhibits BB60A-I from the Proceedings;
II. consequently, Exhibits BB60A-I are admitted into the Proceedings, as well as passages of C3 and Exhibit BB59A relying on/referring to Exhibits BB60A-I;
III. The R.9.1 application concerning word count is dismissed;
IV. Clarifies/rectifies the IC Order as follows:
    a. the issuing date '30 November 2026' mentioned at the top of the order is rectified to *'30 October 2026'*;
    b. exhibit D-Inf5a is considered a part of D-Inf5 and is admitted into the proceedings (operative part I.a);
    c. the operative part at E can be considered deleted;
    d. the operative part at H is supplemented with the following:
        "A maximum of one (additional) attack per AR was suggested as reasonable."
    e. the operative part at K is replaced by the following:
        "K. At the oral hearing the maximum pleading time for each side is 90 minutes, with an additional 30 minutes rebuttal for each side. All issues are to be pleaded together, however, with Avient starting on all issues apart from validity (and ARs). The suggested schedule is as follows:
        • Avient all issues apart from validity: 60'
        • Xingi all issues (including response to Avient's first term above): 90'
        • Avient validity (including response to Xingi's first term) and rebuttal other issues : 30'+ 15' = 45'
        • Xingi rebuttal : 30'
        • Avient rebuttal validity: 15'
    Parties are free to vary the time spent on topics, provided the total pleading times set above are respected. Extra time will be added for interruptions by the Court."
V. In response to the clarification at IV.d above, Xingi can submit a revised submission on or before 27 November 2026 at 12 noon;
VI. Any other requests are dismissed.

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