Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Düsseldorf Local Division
UPC_CFI_3051/2026

Order
of the Court of First Instance of the Unified Patent Court
issued on 26 November 2026
concerning EP 4 494 574 B1

APPLICANT:

EDWARDS LIFESCIENCES CORPORATION, incorporated under the laws of the state of Delaware, USA and having its registered office at One Edwards Way, Irvine, California, 92614, USA

Represented by: Attorney-at-law Siddharth Kusumakar, Attorney-at law Bryce Matthewson, Attorney-at-law Callum Beamish-Lacey, Powell Gilbert (Europe) LLP, Pembroke House 28-32 Pembroke Street Upper, Dublin 2, D02 EK 84, Ireland

Attorney-at-law Adam Rimmer, Attorney-at-law Ellis King, Powell Gilbert LLP, 85 Fleet Street, London EC4Y 1AE, United Kingdom

Patent Attorney Bernhard Thum, Patent Attorney Dr Jonas Weickert, Ismaninger Straße 57, 81675 Munich, Germany

Electronic address for service: siddharth.kusumakar@powellgilbert.com

DEFENDANTS:

1. **JENSCARE SCIENTIFIC CO., LTD.**, incorporated under the laws of the People's Republic of China and having its registered office at Block 5, B Area, No. 777 Binhai 4th Road, Hangzhou Bay New Area, Ningbo, Zhejiang Province, PRC (hereinafter: Defendant 1)

2. **JENSCARE SCIENTIFIC (NETHERLANDS) B.V.**, incorporated under the laws of the Netherlands and having its registered office at High Tech Campus 9 Beta section E 2 930, Eindhoven, 5656 AE, Noord-Brabant, Netherlands (hereinafter: Defendant 2)

Represented by: Dr Ralph Nack (Rechtsanwalt) and Dr Niclas Gajeck (Rechtsanwalt), Noerr Partnerschaftsgesellschaft

mbB, Brienner Straße 28, 80333 Munich, Germany

Dr Frank Meyer-Wildhagen (Patentanwalt) MFG Patentanwälte, Meyer Wildhagen Meggle Freund Gerhard PartG mbB Amalienstr. 62, 80799 Munich, Germany

Electronic address for service: Ralph.Nack@noerr.com

PATENT IN SUIT:

European patent No. EP 4 494 574 B1

PANEL/DIVISION:

Panel 1 of the Local Division in Düsseldorf

DECIDING JUDGES:

This order was issued by the presiding judge Thomas, the legally qualified judge Ambrasaitė – Balynienė acting as judge-rapporteur, the legally qualified judge Dr Schumacher and the technically qualified judge Kitchen.

LANGUAGE OF THE PROCEEDINGS: English

SUBJECT OF THE PROCEEDINGS: R. 333.1 of the Rules of Procedure (RoP) – Panel review of the Communication of the Court dated 17 November 2026

PROCEDURAL HISTORY:

1. By way of an application for provisional measures, the Applicant seeks a preliminary injunction and further provisional measures against the Defendants in respect of an alleged infringement of EP 4 494 574 B1. The application for provisional measures was filed on 24 August 2026.

2. The Court issued a case management order on 25 August 2026, inviting the Defendants to lodge an objection to the application for provisional measures within three weeks of service of the Application. Paragraph 2 of the Order reads, *inter alia:*

> *'If arguments regarding the validity of the patent in suit are to be submitted, they shall be limited to three challenges'.*

3. By order dated 19 October 2026, service upon Defendant 2 is deemed effective as of 12 October 2026. On 26 October 2026, representatives of Defendant 2 informed the Court that they accept service of the Application on behalf of Defendant 1, subject to the extension of the time limit for the Defendants to lodge an objection to the Application to 16 November 2026. The deadline was extended accordingly by the Court's order

dated 29 October 2026.

4. On 16 November 2026, the Defendants lodged their objection to the application, containing, *inter alia*, a number of validity attacks against the patent in suit.

5. By a submission dated 17 November 2026, the Applicant requested the Court to disregard or limit the validity challenges, of which the Applicant counted at least ten, in accordance with the Court's order dated 25 August 2026.

6. Accordingly, the Court issued a communication dated 17 November 2026, which reads as follows:

> *'According to paragraph 2. of the order dated 25 August 2026, Defendants are requested to limit their attacks on validity to three challenges. Defendants failed to comply with this requirement in their objection. They are therefore requested to specify the three validity attacks on which they intend to base their objection by 20 November 2026. It goes without saying that challenges to novelty and inventive step are each an independent validity attack, even if they are based on the same prior art document.'*

7. On 20 November 2026, the Defendants lodged an application pursuant to R. 333 RoP. The Applicant commented on the application on 23 November 2026.

INDICATION OF THE PARTIES' REQUESTS:

8. The Defendants request that:

> the case management decision of 17 November 2026 be reviewed by the panel;
>
> the case management decision of 17 November 2026 be amended so as to allow the Defendants to plead their invalidity case in its entirety, as set out in the Objection; and
>
> the Court schedule an Interim Conference to streamline the case after the submissions of both parties, i.e. after 14 December 2026.

9. As an auxiliary pleading only (Auxiliary Request IV), the Defendants specify the following three invalidity attacks in response to the Court's communication dated 17 November 2026: 1) lack of novelty of the subject-matter of the patent in suit over DN 1 (WO'747); 2) lack of novelty of the subject-matter of the patent in suit over DN 3 (WO'942); and 3) lack of inventive step of the subject-matter of the patent in suit starting from DN 4 (WO'124) as realistic starting point in combination with the protrusions disclosed in DN 1.

10. The Applicant requests that:

> the R. 333 application be declared inadmissible or rejected by the panel;
>
> in any event, the Court confirm that in the Applicant's reply, due on 30 November 2026, the Applicant needs to respond only to the three validity challenges set out

in Auxiliary Request IV of the Defendants' R. 333 application.

ARGUMENTS BY THE PARTIES:

11. The Defendants argue that:

12. The contested 'case management decision' of 17 November 2026 specifies for the first time that the order dated 25 August 2026 is to be understood as a binding upfront restriction on the number of legal arguments ('challenges') to be submitted by the Defendants.

13. Any exclusion of already submitted prior art from the Court's review would be contrary to established procedural law. Provisional measures must observe the rights of the defence and the principle of proportionality, as well as the right to be heard and the right to a fair trial. All these rights would be infringed if the Court unilaterally disregarded relevant evidence that is available to it, simply because it has indicated that it only wishes to look at a maximum of three challenges.

14. The Rules of Procedure provide for the exclusion of submissions only where they are filed late (cf. R. 9.2 RoP, R. 222 RoP). They contain no basis for limiting submissions in proceedings for provisional measures to the extent ordered by the Court.

15. Under general continental civil procedure principles, which are also reflected in Art. 43 and Art. 76(1) of the Agreement on a Unified Patent Court (UPCA), the parties have disposition over the subject matter of the dispute. This means that the Court may manage the proceedings, but only after having given the parties the opportunity to present their arguments; case management cannot deprive a defendant of the ability to present a decisive defence to the relief sought.

16. Validity is a central requirement for the relief sought, and the Court can only reach the required degree of certainty if it takes all available information into account. Where several clearly novelty-destroying attacks are on file, the Defendants cannot be denied the right to address them, and the Court cannot disregard them.

17. Selecting the most promising validity challenge (from a variety of options) depends on the question of claim construction. Therefore, limiting the focus to a set number of validity challenges as a measure of case management, i.e. as a tool for structuring the oral hearing, would only be compliant with the fundamental legal principles once the Court has indicated its – preliminary – view on claim construction. Consequently, it is imperative to schedule an Interim Conference to provide the parties with the Court's preliminary conclusions, before asking the parties to streamline their pleadings in light of the directions given by the Court.

18. The Applicant argues that:

19. The communication dated 17 November 2026 is not a case management decision or order within the meaning of R. 333 RoP that could be the subject of an application for panel review. It is merely a communication on the Case Management System (CMS) referring to the previous order dated 25 August 2026, which set out the already-ordered

requirement for the Defendants to limit their objection to three validity challenges. The order dated 25 August 2026 is therefore the relevant case management order in respect of which any R. 333 Application should have been filed. However, the latest possible date for the Defendants to file their R. 333 application against the order dated 25 August 2026 (even assuming generously in favour of the Defendants) is 10 November 2026 (i. e. 15 days after the Defendants accessed the CMS on 26 October 2026), and so the R. 333 Application is inadmissible.

20. It is entirely clear from the order dated 25 August 2026 that the Defendants needed to limit themselves to three validity challenges in the objection if they wanted to submit arguments regarding the invalidity of the patent. In any event, this does not change the fact that the CMS communication is not a case management decision or order within the meaning of R. 333 RoP, and so it cannot be the subject of an R. 333 application.

21. If the Court deems the R. 333 RoP application admissible, it should nevertheless be rejected. The Rules of Procedure (e. g. R. 9, 332 and 334) provide the Court with wide-ranging case management powers. In the context of applications for provisional measures, R. 209 RoP grants the Court wide discretion on how to organise preliminary injunction proceedings. These provisions evidently include the ability to order that a defendant in provisional measures proceedings be limited to three validity challenges, as was done by the Court in the present case in its Order dated 25 August 2026. Because the Defendants were given full autonomy to select their own three strongest attacks, their right to be heard under Art. 56(2) UPCA is fully respected. Further, the Defendants have the right to raise all their validity challenges in main revocation proceedings.

GROUNDS FOR THE ORDER:

22. 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). An application for the review of a case management order shall be lodged within 15 days of service of the order. The Application shall set out the grounds for review and the evidence, if any, in support of the grounds (R. 333.2 RoP).

23. In their application, made pursuant to R. 333 RoP, the Defendants contest the limitation of validity challenges against the patent in suit imposed by the Court. This limitation was imposed on the Defendants by the Court's order dated 25 August 2026. The communication by the Court dated 17 November 2026 does not further limit the validity arguments; rather, it calls for compliance with the limitation already imposed.

24. Although the communication itself might be regarded as a case management decision insofar as it sets a time limit for the Defendants to comply with the previous order, the Defendants present no arguments whatsoever in this regard in their application. Based on the grounds for review set out in the application, the decision that the Defendants actually challenge is the Court's order dated 25 August 2026. That conclusion is further supported by the fact that, even if the communication by the Court dated 17 November 2026 were set aside, the Defendants would still be limited in their validity attacks by the Court's order dated 25 August 2026, and that is clearly not the result that the Defendants seek with their application.

25. The Court's order dated 25 August 2026 was served upon the Defendants together with the application for provisional measures, and the Defendants missed the 15-day deadline to lodge an application for panel review of it. The Defendants' application for review is therefore inadmissible.

26. The argument of the Defendants that the communication by the Court dated 17 November 2026 specifies for the first time that the Court's order dated 25 August 2026 is to be understood as a binding upfront restriction on the number of validity challenges to be submitted by the Defendants is not convincing and does not lead to a different conclusion.

27. First, the wording of paragraph 2 of the order is clear and leaves no room for the interpretation advanced by the Defendants.

28. Second, linking the deadlines set in R. 333.2 RoP to the parties' subjective interpretation of the content of a contested case management decision or order would render this provision entirely ineffective, insofar as it would allow a party to contest any case management decision or order at any stage of the proceedings based solely on its asserted understanding.

29. After finding the Defendants' application for review inadmissible, the panel will not proceed with analysing the arguments of the parties on the merits.

30. Consequently, only the attacks listed under Auxiliary Request IV of the Defendants' application will be considered by the court.

ORDER:

The Defendants' application for review is rejected as inadmissible.

Issued on 26 November 2026
NAMES AND SIGNATURES

Ronny Thomas Presiding Judge	Digitally signed Thomas Ronny 2026-11-25 19:35:27 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
Goda Ambrasaitė – Balynienė Judge-Rapporteur	Goda Ambrasaitė - Balynienė Digitally signed by Goda Ambrasaitė - Balynienė Date: 2026.11.26 09:45:21 +01'00'
Dr Jule Schumacher Legally Qualified Judge	Digitally signed Schumacher Jule Kathrin 2026-11-26 06:52:17 +0100 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet
Steven Richard Kitchen Technically Qualified Judge	STEVEN RICHARD KITCHEN Digitally signed by STEVEN RICHARD KITCHEN Date: 2026.11.25 21:54:07 +01'00'